Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0870 0012345 dfes.ministers@dfes.gsi.gov.uk
Rt Hon Charles Clarke MP

Sir Martin Harris
Director for Fair Access to Higher Education

October 2004

Following your appointment as the first Director of Fair Access, I am now sending you a formal letter of guidance. This letter was published in draft in July this year, an earlier draft having been published in February. Its contents have been discussed in detail with the sector and I hope it will be helpful to you in carrying out your important work.

Charles Clarke

1 Introduction

1.1 Section 32(3) of the Higher Education Act 2004 requires the Director of Fair Access to Higher Education to have regard to any guidance issued by the Secretary of State. Laid out below are my expectations and suggestions for how you might approach the approval and monitoring of institutions' access agreements. I hope that this letter will also provide additional clarity to institutions on the thinking behind our policy, what the legislation requires of them, and the aspects on which you may wish to focus.

1.2 I believe the Office for Fair Access (OFFA), which you lead, has an extremely important function. We, as a Government, are determined to ensure that access to higher education is broadened, not narrowed. The judgements that you will exercise, in ensuring that higher education providers that decide to introduce tuition fees above the standard level do so without jeopardising the aim of widening participation, will have far-reaching consequences. Your independence, and freedom to challenge institutions where necessary, are an important safeguard and public reassurance.

1.3 Much of this letter gives more detailed guidance on particular aspects of OFFA's work, which I hope will be useful to you. But there are three general points that I should make at the outset.

2 OFFA philosophy – well-focused and non-bureaucratic

2.1 First, the philosophy behind the creation of OFFA is that institutions that decide to raise their fees above the current standard level should plan how they will safeguard and promote access. In particular there is an expectation that they will plough some of their extra income back into bursaries and other financial support for students, and outreach work. That is a general expectation for all institutions. However, I would expect that you would expect the most, in terms of outreach and financial support, from institutions whose records suggest that they have furthest to go in securing a diverse student body.

2.2 Second, while I attach great importance to what OFFA does, I attach equal importance to how it does it. We have created OFFA as an independent body because we believe it would be wrong to ask HEFCE, whose focus is on the funding and financial health of institutions, to perform the regulatory function of approving institutions' access agreements. But in creating OFFA we have not intended to add to the bureaucratic burden on institutions; indeed the access agreements will subsume the current strategies on widening participation which institutions already provide to HEFCE. Institutions should not be required to collect or supply new data, except what they need for their own internal management. Nor should institutions be required to send identical information twice to HEFCE and to OFFA. And as far as possible, OFFA should not impose extra monitoring requirements beyond what HEFCE already requires from higher education institutions. I would therefore expect HEFCE and OFFA to work very closely together and to exchange data freely. And OFFA should in general be mindful of the principles of good regulation: transparency, accountability, proportionality, consistency and proper targeting.

2.3 Thirdly, I hope you will be open to views from within the sector. Representative bodies of different interests, such as Universities UK (UUK), the Standing Conference of Principals (SCOP) and the National Union of Students (NUS), will naturally take a keen interest in your work, and I expect you will have discussions with them from time to time. Should you decide to issue guidance to institutions, I would expect you to discuss it with

relevant stakeholders.

3 Remit of the Director of Fair Access to Higher Education

3.1 The remit of the Director of Fair Access to Higher Education, as agreed by Parliament, is to regulate the charging of higher tuition fees by institutions offering higher education courses. No institution may charge fees for full-time students above the standard level without an access agreement that you have approved (these agreements are described in the Higher Education Act 2004 as "access plans").

3.2 You also have the power, where you consider it appropriate, to identify good practice around fair access to full time or part time higher education, and give advice on this to publicly funded institutions.

3.3 The law puts the contents of particular courses and the manner in which they are taught, as well as institutions' admissions policies and procedures, outside your remit.

4 Coverage of an access agreement – institutions and courses

4.1 Access agreements cover institutions, not courses, so an institution should not need more than a single access agreement. It is up to an institution what tuition fees to set for which courses, up to the £3,000 limit. It must ensure that the prices it charges are clearly set out and publicly available, and that students are told about the price for the whole duration of their course before they sign up for the first year. Institutions should not be expected in their access agreements to list the fee limit for every course separately, unless it is different for every course.

4.2 Institutions should not be charging higher fees to students who started their courses before 1 September 2006. Nor should institutions charge higher fees to students who took a gap year and deferred their entry to higher education from the 2005/06 academic year to 2006/07.

4.3 You have a legal duty to protect academic freedom, as set out in the Higher Education Act 2004. This means that you may not require institutions to frame their access agreements by reference to individual courses. An institution may, of its own free will, wish to draw your attention to its access arrangements for a particular course or group of courses, but that would be at their choice.

4.4 Franchised courses

4.4.1 Where a further education college receives direct funding from HEFCE or TTA for a course for which it wishes to charge higher fees, then that college will need its own access agreement covering that and other directly funded courses. Where a higher education course in a further education college is funded through a higher education institution (HEI), it will be for the HEI, not the further education college, to include that franchised course in its access agreement, if it wishes to charge higher fees for it.

4.5 Collaboration

4.5.1 Many institutions already do much effective collaborative work on widening participation. Access agreements can, and preferably should, build on this. It is possible that some institutions may want to submit a joint access agreement. Joint access agreements should be acceptable to you, provided of course, that it is clear what each institution is undertaking to do and that you are satisfied that each institution has demonstrated a genuine commitment to fair access.

5 Coverage of an access agreement - content

5.1 The access agreement must cover, as a minimum:

- Institutions' plans for additional bursaries and other financial support for students
- Any additional outreach work, which institutions plan to encourage more potential students to consider higher education and how this complements their existing provision
- The provision of financial information to prospective students on available funding
- Institutions' own objectives (milestones), set by themselves, by which they will monitor whether their efforts to safeguard and improve access are succeeding.

5.2 Access agreements are institutions' documents, and will be published. Institutions may therefore wish to include details which go well beyond the minimum. That is their decision. If an institution decides to include something not covered by your remit, (eg, on its admissions policy), your decision to approve or reject their agreement would not be affected by that additional information.

6 Approving an access agreement

6.1 It is for institutions to make proposals to you in their access agreement for what they undertake to do to safeguard and maintain access. It is your decision whether to approve their proposals. My general expectation, as set out earlier in this letter, is that you will be robust in expecting more, in financial support and outreach activity, from institutions whose records suggest that they have furthest to go in securing a broadly-based intake of students. However, one of the Government's objectives, in allowing institutions to charge variable fees, is to increase the resources available to the HE sector. It would be in the spirit of this policy for the lion's share of any extra income raised by any institution from its higher tuition fees to be available to that institution to spend as it sees fit, rather than required to be spent under its access agreement.

6.2 Financial support for students

6.2.1 There is one particular priority which I would like you to insist that every institution meets.

6.2.2 As you will know, there has been concern that students from the poorest backgrounds might be put off applying to higher education because of the perceived deterrent of higher fees – despite the central safeguard that no fees need to be paid by the

student while they are studying. For this reason, a central plank in our policy is to ensure that this perceived deterrent is minimised.

6.2.3 It is our policy that the poorest students on the most expensive courses should receive a total package (state maintenance support plus institutional bursary) of non-repayable support of at least £3,000. Those students will then be no worse off than they are now, although the balance of support for fees and for maintenance will be different from now. By "poorest students", we mean those on the full Higher Education maintenance grant of £2,700, as it will exist in 2006. This grant is an entitlement and is not related to the fee level of the student's course. For any of these students who are on courses which charge more than £2,700, there will be a difference of up to £300 between the fee that the institution charges them, and the state maintenance support that they receive. **I would expect every access agreement, as a minimum requirement, to show how the institution will give financial support to students on full state support, to make up this difference.** It is for institutions to make their own proposals on precisely how they will do this. I estimate that this minimum requirement should not cost any institution more than around 10% of their extra fee income.

6.2.4 We have not written into legislation any "minimum percentage" that every institution must recycle from its extra income and spend on financial support and bursaries. However, a reserve power to make regulations on this does exist in the legislation, and I will use this if necessary to protect the poorest students.

6.2.5 Of course, many institutions will be in a position to provide more generous bursaries, or bursaries to a wider group of students, and it is right that they should be expected do so. The details are for the institution to decide. There are many possibilities, and many groups of students who might benefit. For example, institutions might want to give particular support to under-represented groups of students – some ethnic minorities, or those with children or eldercare responsibilities, or people with a disability. Equally, institutions might want to spend additional income on pastoral care and additional tuition to improve retention. There is also no reason why institutions should not, if they wished, use additional income from courses for which they are charging higher fees to benefit students on courses for which they are charging the standard fee or lower, which could include part-time students.

6.3 Outreach activities

6.3.1 There is a collective need for the sector to raise the aspirations of under-represented groups who would not otherwise consider entering higher education. In particular, institutions that generally attract a narrower range of students may want to put more money into outreach activity to raise aspirations, in addition to bursaries and financial support. I appreciate that much of this work may not result in recruitment directly to the HEI carrying it out, and sometimes has a long lead time. Therefore, I would not expect an institution's efforts on outreach to be necessarily measured by, or reflected in, changes in its own applications.

6.3.2 As you will know, there can be many different sorts of under-representation in higher education. Focusing on the participation of students from the poorest backgrounds will cover a great deal of this, but not all of it; for example, poverty is not the only factor in determining ethnic minority under-representation in different institutions. I hope you will want to discuss these questions with bodies such as the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission, and work with them to help institutions understand best practice in these areas.

6.3.3 The phrase "under-represented in higher education" will need pragmatic and sensible interpretation. It is not meant to be a strict statistical term. I would not, for example, expect an access agreement to cover every under-represented group. The "under-representation" is meant to refer to groups under-represented in higher education as a whole, rather than at a particular university. Nor would I expect an access agreement that had provisions about attracting applications from disabled students to contain an exhaustive list of those disabilities.

6.4 Additionality

6.4.1 It is clearly in the spirit of our policy that the outreach and financial assistance to which institutions commit themselves in their access agreements should be additional to what they are already undertaking, so that extra income into an institution is accompanied by extra investment in measures to safeguard access. Many institutions are already demonstrating their commitment to widening participation by providing financial assistance to their students, using their own resources or trusts and endowments funded by their alumni. Such activity is plainly part of an institution's track record in seeking to widen participation, and it would not be right for such institutions to be treated identically to similar institutions which have taken fewer initiatives. In applying the spirit of our policy, I hope you will acknowledge institutions' track records, and differentiate appropriately between them.

6.5 Financial Information

6.5.1 If institutions are to be successful in attracting more applications from disadvantaged groups, it is essential that those groups know about the financial support that they might receive in higher education – both from the State, and from an individual institution. You will want to satisfy yourself that institutions are effective in telling prospective students about the costs they are likely to incur over the whole period of their course, and the support available. I hope that the great majority of institutions will find a standard format for explaining the financial support they offer students, perhaps drawing on work by UUK and SCOP on behalf of the sector.

6. 6 Milestones

6.6.1 The milestones in an institution's access agreement are their own. They are the yardsticks by which institutions will monitor whether their efforts to safeguard and improve access are succeeding. They could draw on a range of data.

6.6.2 You will be free to comment on milestones where you do not consider them stretching enough. It is theoretically possible, although very unlikely, that an institution's milestones are, in your view, so unambitious as to cast serious doubt on their commitment to safeguarding or improving access at all. The legislation therefore gives you the right to refuse to approve an agreement on that basis. I hope that this will, in practice, never be necessary.

7 Changes to an access agreement

7.1 The access agreement will set out how the institution plans to evolve its variable fee policies over the duration of the agreement. If an institution wants to make changes beyond

those already noted in the access agreement, it will have to notify you. It will be for you to decide, depending on the scale or extent of the change proposed, whether to call in the whole access agreement for reconsideration.

7.2 In assessing proposed changes, a key principle should be that students should know, before committing to a course, what fees they can expect to be paying. Students should be protected against institutions changing fee levels where the possibility of that change has not been notified to the student cohort before they committed themselves to the course.

8 Monitoring and good practice

8.1 The legislation places a duty on institutions that have an access agreement, to monitor their progress and to inform you, on a regular basis over the length of the agreement, that they have satisfied their obligations. It will be for you to determine the most effective monitoring arrangements. I am sure you will want to visit a sample of institutions from time to time to get a feel for how access agreements are working in practice.

8.2 I expect you will come to have an active role in identifying and supporting best practice. Through your overview of access agreements, you will be well placed to see what interventions are most successful, and to make institutions aware of one another's successes. This will make a valuable contribution to other work which is already going on through UUK, SCOP, Action on Access and others, and which you will want to avoid duplicating. This good practice role should be equally applicable to part-time students and to full-time.

8.3 Any suggestions that institutions are not honouring their access agreements should cause you concern, and lead you to investigate further.

8.4 An institution should not have to provide the same information both to OFFA and to HEFCE, or to OFFA and to the TTA. That is why legislation has put a duty on you, HEFCE and the TTA to share all relevant information.

9 Sanctions and Review

9.1 I expect the vast majority of institutions to honour the requirements of the access agreements. Any wilful and serious breach of an agreement is likely to be extremely rare. Such a breach could be, for example, an institution disregarding its access agreement by significant failure to provide bursaries at the level or scale promised; or an institution charging higher fees than the limits set out in its access agreement.

9.2 You will want to investigate suspected breaches, and to consider carefully the facts and background, before deciding on any sanctions. However, it is right that you should impose sanctions where the seriousness of the breach warrants it. You have two sanctions available to you.

9.3 One is to refuse to renew an institution's access agreement. It will be a matter for your judgement to determine how long any "ban" should last.

9.4 The other is a more direct financial penalty, since you will be able to direct HEFCE to reduce an institution's grant. This sanction is in two parts.

- You can ask HEFCE in effect to suspend part of an institution's grant until the institution has made restitution to any students who have been disadvantaged, or has taken the measures it promised to take. Thus, if an institution has charged students £3,000 for a course, when its access agreement says it will not charge above £2,000 for any course, the institution must refund the overpayment to the students, and some grant will be withheld until they have done so. Similarly, if an institution promised to undertake extra outreach work and has made no attempt to do so, some grant can be withheld until the commitment has been honoured.

- In addition, you have the right to impose a fine, by directing HEFCE or the TTA (whichever funding body is appropriate) to reduce the offending institution's future grant by a reasonable sum, up to a maximum of £500,000.

9.5 An institution's failure to meet milestones should not in itself be grounds for any kind of sanction. Nor should an institution be sanctioned for breaching its plan if it has made all reasonable efforts to comply. Institutions will themselves want to review their progress against their own milestones when an access agreement comes up for renewal. Where progress has been less than the institution expected, it will want to identify any underlying causes and address them. You will want to take this into account when considering renewal.

9.6 If an institution disagrees with any of your decisions (either on non-approval of an access agreement or a variation, or on the imposition of a sanction), they have a right to ask for that decision to be reviewed by an independent person or panel. I will be making arrangements for this review through regulations, and after due consultation.

10 Annual Report

10.1 Schedule 5 of the 2004 Higher Education Act puts a requirement on you to provide an annual report to me or my successors, and other reports as directed by me. This report should contain a brief survey of access agreements, the methods institutions are using to improve outreach, and typical practice on bursaries and financial support.

10.2 Any report to me will also be laid before Parliament. The relevant Select Committee, in either House of Parliament, may decide to discuss the report, or to interest itself in your work; naturally you would want to pay close heed to recommendations from any Parliamentary Select Committee.

10.3 Your reports will also inform the work of the Commission which will review the operation of the first three years of variable tuition fees.