

## WRITTEN EVIDENCE SUBMITTED BY UCAS (HERB 10)

### HIGHER EDUCATION AND RESEARCH BILL (HERB): COMMITTEE STAGE, HOUSE OF COMMONS

#### Executive summary

- UCAS welcomes the government’s focus on promoting the interests of students. It is important that students have access to the information they need to make well informed choices about higher education, including access to information about teaching quality.
- UCAS broadly supports the proposals for the provision and use of “application to acceptance data” for qualifying research purposes (as set out in clauses 71 and 72 of the Bill). However, given the young age of many of the students using UCAS services and the fact that students will not be able to opt out of having their data shared for qualifying research, protecting students’ personal data and maintaining their trust and confidence in our services is critical.
- UCAS is proposing four amendments to ensure that we can give students sufficient reassurance about how their data will be held, managed and used in order to maintain their confidence and trust in UCAS’ services. These amendments seek to:
  - ensure that the research undertaken with students’ data is intended to have a public benefit
  - qualify the nature and frequency of requests for data
  - enable UCAS to cover reasonable operational costs if required to deal with significant numbers of requests for data
  - clarify that the research undertaken with students’ data is not used for commercial gain and does not prejudice UCAS’ activities.
- These proposals are consistent with existing and proposed legislation including the Freedom of Information Act 2000 and the Digital Economy Bill 2016.

#### About UCAS

1. UCAS’ mission is to inspire and facilitate progression in education through information and admissions services. We are a company limited by guarantee with charitable status. Our charitable objects are focused on the advancement of education through the provision of information, advice and admissions services. We have a wholly owned commercial subsidiary, UCAS Media Ltd, whose profits are gift-aided to the charity.
2. UCAS provides students with impartial information and advice to help them explore and understand the range of study choices available, particularly at the ages of 16 and 18. Every year we help over 700,000 UK, EU and international students to apply for full-time undergraduate courses at UK universities and colleges. A national, centralised admission service for undergraduate courses helps to ensure that admissions are fair and transparent as well as offering efficiency benefits for all participants.
3. This critical public service is paid for by its users – principally students and higher education providers (HEPs) - and has never had any recourse to public funding.
4. UCAS publishes and makes available to higher education providers and other organisations, anonymised “application to acceptance data” that can safely be used for research. For example, in June 2016 UCAS published over 200,000 data points about the applications, offers and acceptances for UK students by sex, ethnic group and area background by named universities, over the period 2010 to 2015. These reports also place applicant numbers in the context of

population differences, and place differences in offer rates in the context of predicted grades and courses applied to. These reports are designed to further understanding of social mobility in higher education and all of the underpinning data is available in an open data format for others to download and re-use.

5. However, sometimes researchers need access to individual level data, for example to link to other datasets such as the National Pupil Database. It is these individual level data that the provisions in the Bill relate to.

### **Why we are submitting evidence**

6. The Bill introduces new legislation (clauses 71 and 72) which will require UCAS to share data assets with both the government and whomsoever the Secretary of State decides should have access to these assets for qualifying research. UCAS is an independent service business with charitable status and regulated by the Charity Commission. This is the first time that UCAS has been brought within the scope of legislation in this way. We are not aware of any precedent for doing so.
7. Where individual level data are made available for research it is important that stringent safeguards are applied to ensure that data are held securely, are subject to controls to remove personal identifiers like names and addresses and that published results do not identify individuals. This is recognised in the government's recent consultation on "The Better Use of Data in Government" and the subsequent government response which acknowledges that *"Strong safeguards to protect the identity of individuals or organisations remain key to the effectiveness of this proposal"*<sup>1</sup> i.e. *"the use of de-identified data to support accredited researchers to access and link data in secure facilities to carry out research for public benefit."*<sup>2</sup>
8. Recognising that researchers need access to individual level data, UCAS has entered into a partnership with the Administrative Data Research Network (ADRN) to make "application to acceptance data" available for use by academic researchers. Through the ADRN, approved academic researchers will be able to access historical application to acceptance data going back to 2007, and this will be updated annually.
9. Given the young age of many of the students using UCAS services, protecting their data and maintaining their trust and confidence in our services is critical. We can give applicants appropriate reassurances about how their data will be held, managed, and used for research when it accessed via the ADRN and we want to be able to give an equal level of reassurance to students in relation to the supply of data to the government and whomever the Secretary of State requires UCAS to provide data to. This is essential to maintaining confidence and trust in UCAS' admissions services, particularly since students will not be able to opt out of having their data shared for qualifying research purposes.
10. UCAS is proposing four amendments to enable us to provide reassurance to students about the security, management and use of their data for research, and maintain the level of service that students and HEPs expect of UCAS. These are detailed at Appendix A.

### **Amendments to clause 71: Power to require "application to acceptance data"**

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/535063/better\\_use\\_of\\_data\\_in\\_government\\_response\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535063/better_use_of_data_in_government_response_final.pdf)

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/503905/29-02-16\\_Data\\_Legislation\\_Proposals\\_-\\_Con\\_Doc\\_-\\_final\\_3\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final_3_.pdf)

11. UCAS supports the provisions that require organisations providing admissions services to English HEPs to make “application to acceptance data” available for use in qualifying research.
12. We are proposing three amendments to:
  - Ensure that the research undertaken is intended to have a public benefit;
  - Qualify the frequency and nature of requests; and
  - Charge a fee to cover reasonable operational costs, if UCAS is required to deal with significant numbers of requests for data.

*Why it is necessary that research is intended to have a public benefit?*

13. UCAS understands that the policy intent is to enable researchers to access de-identified data for research with a clear public benefit through organisations such as the ADRN. The Bill will require UCAS to provide data to the government and other organisations and individuals designated by the Secretary of State.
14. Students want reassurances from UCAS that their data will be used for the public good, whomever UCAS is required to supply their data to. We know this because UCAS’ survey of the 2015 UK applicant cohort, which generated 37,000 responses, showed that the majority of respondents were happy for their data to be shared for research purposes where there is a clear public benefit.<sup>3</sup>
15. Additionally, we note that many respondents to the government’s 2016 consultation on “Better Use of Data” *“felt strongly that publicly-held data should not be accessed by researchers for commercial or profit-making purposes”*. In response the government has concluded that *“research will only be allowed where there is a public benefit”*<sup>4</sup> and this is reflected in the draft Digital Economy Bill clause 61(1)(4).<sup>5</sup>
16. If UCAS is unable to provide reassurances to students – for example if the Bill creates an open-ended right to use or supply applicants’ data for research on any topic – this could undermine applicants’ trust in the admissions service, degrade the quality of data collected, and potentially deter some people from applying to university altogether.

*Why does the content, format and frequency of requests needs to be qualified?*

17. UCAS is first and foremost the provider of the UK’s undergraduate admissions service. We are a non-profit charitable organisation funded by the administrative fees paid by students and HEPs for our shared services, as well as by revenue from individual customers for tailored services.
18. The provisions in the Bill could require UCAS to offer an “on demand” service providing “application to acceptance data” to numerous approved persons, at any point in time and in any format requested. UCAS does not have the capability, resources, or infrastructure to offer this kind of service. To do so would adversely impact on the services UCAS provides for students and universities and colleges.
19. UCAS will be providing an annual set of “application to acceptance data” to the ADRN and to the government. The ADRN should be the default means for researchers to access these data. However if the Secretary of State should require UCAS to provide data to another “approved

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<sup>3</sup> [https://www.ucas.com/sites/default/files/ucas\\_applicant\\_data\\_survey\\_key\\_results\\_0.pdf](https://www.ucas.com/sites/default/files/ucas_applicant_data_survey_key_results_0.pdf)

<sup>4</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/535063/better\\_use\\_of\\_data\\_in\\_government\\_response\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535063/better_use_of_data_in_government_response_final.pdf)

<sup>5</sup> <http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0045/17045.pdf>

person”, this should be subject to a test of reasonableness in relation to content, format and frequency. This will ensure that students continue to receive a high level of service from UCAS, and it reflects similar reasonableness qualifications in other legislation such as the Freedom of Information Act 2000 and the data gathering powers of the HMRC in the Finance Act 2011.

*Why should UCAS be able to recover the cost of providing the service?*

20. If UCAS is required by the Secretary of State to provide data to approved persons, other than those persons using the ADRN service, this could require the re-engineering of systems and employment of additional staff. Additional costs would have to be borne by students and universities and colleges unless UCAS is able to recover the cost of providing this service.
21. Therefore, if UCAS is required by the government to service requests for data we believe that UCAS should be able to charge a reasonable sum to recover the costs from the approved person. This is consistent with information obligations under the Freedom of Information Act 2000, as well as the new Digital Economy Bill which will enable public authorities to be able to charge for work to disclose information for research purposes.

#### **Amendments to clause 72: Use of “application-to-acceptance data” for research purposes**

22. UCAS supports the provisions regarding the use of “application to acceptance” data for “qualifying” research purposes.
23. We are proposing an amendment to clarify the scope of what can be published so that we can reassure students about how their data will be used, whomever UCAS is required to supply their data to, and to ensure that costs are minimised for students and universities and colleges.
24. As currently drafted, the Bill includes safeguards to prevent the identification of individuals and a protection to prevent the publication of data “that may be regarded as commercially sensitive”. We believe that this is open to interpretation and that the wording should be more explicit to ensure that the results of research are not published for commercial gain. We therefore propose the amendment to prevent any publication that may be “commercially prejudicial” to the organisation providing the data.
25. UCAS guarantees to students that the personal data contained in their applications will only be shared with “*educational establishments who participate in UCAS’ admissions schemes, certain organisations who have statutory or regulatory responsibilities, and trusted, non-commercial organisations to enable research about higher education.*” If UCAS is unable to provide reassurance to students about how their data are used - for example if the Bill enables the results of research to be published for commercial gain (which was strongly opposed by the respondents to the government’s consultation on “Better Use of Data” see paragraph 15 above) - this could undermine applicants’ trust in the admissions service, degrade the quality of data collected, and potentially deter some people from applying to university altogether.
26. Additionally, UCAS is a not-for-profit charity which does not receive any direct government support. UCAS’ information and advice and admissions services are paid for by the students and universities and colleges who use them. UCAS seeks to minimise the costs for these users by undertaking income generating activities via its wholly owned subsidiary, UCAS Media Ltd, the profits of which are gift aided to the charity. If not explicitly defined, there is a risk that commercial publication activities could undermine this business model, necessitating cost increases for students and HEPs alike.

**APPENDIX A: PROPOSED AMENDMENTS TO THE HIGHER EDUCATION AND RESEARCH BILL**

|    | <b>Proposed amendment</b>   | <b>Redline changes</b>   |
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|    | <b>Clause 71</b>  |  |
| 1. | Page 43, in line 13, after 'Secretary of State' insert the words 'providing that it demonstrates a potential public benefit'.   | (c) research into any other topic approved by the Secretary of State <b>providing that it demonstrates a potential public benefit.</b>   |
| 2. | Page 43, in line 14, after 'may' insert the words 'so far as is reasonable having regard to the frequency of requests, the availability of data from other sources, the form in which the information is held by the body and the volume of the data requested.'<br><br>and after line 16 insert:<br><br>'A section 71(2) body shall provide the data by way of a single annual submission to either the Secretary of State and/or an approved body.' | (5) The notice under subsection (1) may <b>so far as is reasonable having regard for the frequency of requests, the availability of data from other sources, the form in which the information is held by the body, and the volume of data requested</b> require the information to be provided<br><br>(a) by a time specified in the notice, and (b) in a form and manner specified in the notice.<br><br><b>A section 71(2) body shall provide the data by way of a single annual submission to either the Secretary of State and/or an approved body.</b> |
| 3. | Page 43, at line 17 insert a new subsection (6) –<br>'(6) A body within subsection (2) may, within the period for complying with section 5(a), give notice in writing stating that a fee of a reasonable amount specified in the notice is to be charged by the body for complying with subsection (1).'  | <b>(6) A body within subsection (2) may, within the period for complying with subsection 5(a), give notice in writing stating that a fee of a reasonable amount specified in the notice is to be charged by the body for complying with subsection (1).</b>  |
|    | <b>Clause 72</b>  |  |
| 4. | Page 43, in line 38, delete the word 'sensitive' and add the words ' <u>prejudicial to the section 71(2) body</u> '.  | (c) the publication does not include information obtained under section 71 that may be regarded as commercially <b>sensitive prejudicial to the section 71(2) body</b>   |

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