



Draft minutes of the OfS board meeting, 13 May 2021

Location: by video or telephone conference

Timings: 1330-1700

- Present members: James Wharton (chair)
Martin Coleman
Nicola Dandridge (chief executive)
Gurpreet Dehal
Elizabeth Fagan
Katja Hall
Verity Hancock
Kathryn King
Kate Lander
Simon Levine
Martha Longdon
Chris Millward (Director for Fair Access and Participation)
David Palfreyman
Monisha Shah
Steve West
- Attendees: Hannah Sheehan, Department for Education (DfE) representative
- Apologies: None
- Officers: Camilla Briault, Strategic Business Manager
Ed Davison
Josh Fleming
Paul Huffer, Head of Legal
Hilary Jones, Competition and Registration Manager (for paper 7.1)
Susan Lapworth, Director of Regulation
Paula McLeod, Corporate Governance Senior Adviser (clerk)
Richard Puttock, Director of Data, Foresight and Analysis
Conor Ryan, Director of External Relations
Nolan Smith, Director of Resources and Finance
Ben Whitestone, Head of Governance

Chair's welcome

1. The chair welcomed members to the meeting. He also welcomed Hannah Sheehan from the Department for Education (DfE) and Camilla Briault, Strategic Business Manager at the OfS. He advised that Hilary Jones, Competition and Registration Manager at the OfS would be joining the meeting for the item on monetary penalties.
2. He noted that this was Steve West's last board meeting and he placed on record his own thanks and the thanks of the whole board for Steve's valuable contribution and insight over the last 3 years.
3. Since taking over in the role, the chair advised the board that he had met with a number of providers and other stakeholders as part of an induction programme.
4. The board noted its general duties as set out on the agenda and the need to have regard to these as it considered papers and made decisions.

Approval of April minutes (paper 2.1)

5. The minutes of the board meeting held on 22 April 2021 were approved.

Chief executive's report (paper 3.1)

6. The chief executive presented her paper which provided an update on work undertaken and issues that have arisen since the date of the last regular board meeting on 9 March 2021.
7. The chief executive advised that:
 - a. Exempt from publication
 - b. In relation to the OfS's response to coronavirus, there has been a decrease in the number of notifications being received from students and other third parties. We are still following up with providers where issues of poor quality during lockdown may have been identified. The focus now is on the return to campus and admissions over the summer and autumn.
 - c. Phase 1 of the quality and standards consultation is being analysed. The phase 2 consultation will be published in two parts, in July and September.
 - d. The DfE are involving the OfS in its policy development and thinking, particularly around the free speech agenda and on the Lifelong Loan Entitlement.
 - e. The funding consultation has generated an unprecedented number of responses. These are being analysed.
 - f. We are consulting with staff about a return to the office and proposals around a hybrid model of home and office working. Piloting will take place over the summer.
 - g. A key performance measure on regulatory burden will be published next week. This sets out a baseline for measuring our performance.
 - h. Completion and outcome metrics (now referred to as 'Proceed') will also be published next week as an official statistic. This is likely to include provider level data, taking into consideration some of the issues raised in a recent consultation with providers, students and careers advisers.
 - i. An Insight Event on mature students is being held on 27 May 2021.
 - j. We are planning to publish the OfS annual report and accounts on 8 June 2021. A draft will be shared with the board shortly for comment.
8. The board noted the updates contained in the report.

9. The Director of Resources and Finance updated the board on the recent funding consultations issued by OfS. He noted that based on initial analysis the main issues raised in relation to the capital consultation were around the burden of a bidding exercise, particularly for smaller providers, and the timescale within which any money needed to be spent. These responses would be taken into account in the decision making process. Reductions in funding for the arts and in the London weighting were the common themes arising in the media from the consultation on recurrent funding. Analysis of the responses had just begun and final decisions on funding will be made in June.
10. He also briefed the board on analysis of the annual financial returns received from providers in the last few months. Overall, the data indicates an aggregate position for the sector that is broadly satisfactory in the short term but more challenging in the longer term. However, there is considerable variability between providers. Key points to note were:
 - a. In aggregate, income has been flat over the last 3 years but there is a predicted increase over the next 3 years. This is mainly due to an assumed increase in student numbers, both from the UK and overseas (non-EU). The UK growth is in line with demographic changes with providers assuming tuition fees for undergraduates does not reduce from the current limit of £9,250. There is a further assumption that growth rates for international students return to pre-pandemic levels.
 - b. Pensions and pay costs are likely to be big challenges for the future.
 - c. Lenders may become more selective about which providers they lend to.
11. The following points were made in discussion:
 - a. It would be helpful if the financial data could be used to identify any systemic risks for the sector. Even a small number of providers in financial difficulty could have a large impact. Any change in interest rates could negatively affect cash and surpluses.
 - b. Coronavirus has resulted in additional costs for providers. Any further unplanned costs may not be sustainable for some providers.
 - c. A reduction in statutory fee limits would be challenging for many providers.
 - d. The financial failure of any provider might affect lenders' views of the sector overall.
 - e. Assumptions about significant increases in fee income from international students may not be realistic. If these forecasts are achieved they do not appear to be matched by projected increases in expenditure.
12. In response, the director advised that further scenario modelling was being undertaken in line with the suggestions made and he would consider how best to present this to the board at a future meeting.
13. The DfE representative updated the board on the recent Queen's Speech and the implications for higher education.

Update on delivery of OfS activities (paper 4.1)

14. Exempt from publication
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17. Exempt from publication

Strategy 2022-25 update (paper 5.1)

18. Exempt from publication

19. Exempt from publication

20. Exempt from publication

21. Exempt from publication

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- f. Exempt from publication

22. Exempt from publication

23. There would be further discussions on the strategy at the July board meeting.

Risk report (paper 6.1)

24. The Head of Governance updated the board on the OfS's strategic and principal risks as set out in the risk report.

25. In discussing the issues raised in the paper, the board noted the areas of high risk which could potentially remain high for some time. The board asked the Risk and Audit Committee to consider how the most significant risks are being managed and to provide it with assurance that there will be a reduction in the level of risk over time and in line with its risk appetite.

Consultation on calculation of monetary penalties (paper 7.1)

26. The Director of Regulation introduced her presentation on monetary penalties, advising on the analysis of responses to the recent consultation and the OfS's emerging policy response. She advised that:

- a. The consultation focussed on how the OfS should calculate a penalty once it has been decided it is needed.
- b. Consultation responses contained a wide range of views on how any penalties should be calculated, with some supporting the proposal to use a percentage of a provider's qualifying income as the starting point for a penalty. Other suggestions had also been made and the team would consider these before making recommendations. Similarly, there was some support for the proposed five-step process to calculate a penalty. Other responses requested a more rules-based approach to provide a greater degree of certainty about the likely size of a penalty. This approach could make it difficult to ensure that the particular circumstances of an individual case were taken into account and recommendations for decision-makers would address this point.

- c. In line with the practices of other regulators, the OfS had proposed to agree to a reduced monetary penalty if a provider admits a breach and agrees to the penalty at an early stage.
 - d. The OfS needs to begin to use its power to impose a monetary penalty because this is an important way to incentivise compliance in a risk-based regulatory system.
27. Issues relating to the consultation had been considered at the recent Provider Risk Committee meeting and the chair of the committee advised that it had been supportive of the emerging policy approach. The committee agreed that an appropriate settlement regime was in line with the OfS's objectives of being a risk-based regulator and that money should not be spent on carrying out investigations where it was unnecessary. Where a provider disagreed with the imposition of a penalty, it was able to take an appeal to the first-tier tribunal.
28. In expressing their support for the emerging policy position, the following points were made in discussion:
- e. Early decisions by the OfS to impose a penalty must be purposeful and would set the context for future actions.
 - f. It would be important to consider the impact of a penalty on a provider's financial position, along with other relevant factors.
 - g. Publishing information about any penalties imposed, and the reasons for this, would be a useful tool for providing guidance to the sector about compliance and allowing providers to learn from the experience of others.
 - h. The OfS should continue to learn lessons from other regulators that have experience in imposing monetary penalties.

Postgraduate taught student survey development (paper 8.1)

29. The Director of External Relations introduced his paper setting out the results of a recent feasibility study relating to PGT. He advised that there is little public information on the experience of postgraduates and the approach proposed in the paper will provide valuable data to inform public information and OfS activities. Initially he was proposing to pilot a questionnaire. This activity will sit alongside work being done on the NSS questions in the second phase of the NSS review, saving cost to the OfS and reducing burden on providers. The outcomes of the pilot will be brought back to the board for a final decision on whether to carry out a full annual survey.
30. In strongly welcoming the proposals and agreeing that the survey should continue to the pilot stage, the following points were made in discussion:
- i. Carrying out this survey sends a clear message to stakeholders that the OfS values postgraduate education. It also encourages equality of opportunity and plays a significant role in the levelling up agenda.
 - j. Although others might question if this was a priority for the OfS at a time when its resources are under pressure, carrying out the pilot alongside work on the NSS means there will be efficiency savings.
 - k. The OfS needs to better understand the postgraduate sector which makes up a significant proportion of the student population.
 - l. Postgraduate education is seen as an important part of employability and enables us to be globally competitive.
 - m. This data will help employers better understand the quality of postgraduate qualifications.
 - n. It is difficult for the OfS to be an effective regulator when there is an evidence gap.

Digital teaching and learning review (paper 9.1)

31. The Head of Strategy Oversight and Implementation introduced a paper setting out how the OfS might take forward the findings of Sir Michael Barber's recent review of digital teaching and learning in its work. He noted that although the report has no regulatory status, there were some useful findings which could be considered for the future OfS strategy. These were already factoring in to work on quality and access and participation.
32. The following points were made in discussion:
- o. The OfS should encourage providers to think about the report as part of their digital teaching and learning strategies.
 - p. The application of digital delivery should factor into the OfS's ongoing activities on quality and inclusion.
 - q. Digital delivery should be seen as a tool to help in pedagogic design and the limitations recognised. It doesn't always work for those students that are neurodiverse or in some forms of practice-based provision. Lack of hardware and access to reliable broadband also need to be taken into account, as per the report's exploration of digital access.
 - r. Including questions on digital delivery in the postgraduate survey could provide some useful data.
33. The board:
- s. Agreed that, where appropriate, the findings in the report will be considered as part of work on the new OfS strategy.
 - t. Noted the chair would write to Sir Michael Barber to advise him of the outcomes of the board's discussion.

Report from the student panel (paper 10.1)

34. The chair of the student panel presented her reporting on the work of the panel since March board meeting, including a report of the panel meeting held on 8 April 2021.
35. Noting that some members were coming towards the end of their term, the chair of the panel expressed her thanks to all the panellists. The panel had taken on more than was asked of it over the last year but carried out its work with enthusiasm and dedication.
36. The chair advised he had attended the meeting and found the discussions to be useful and engaging. Gurpreet Dehal had also been in attendance and noted that the contributions from the International Student Affairs Council on culture had prompted him to think more widely about the diversity of the student body
37. The board received the report from the student panel.

Report from the Provider Risk Committee (paper 11.1)

38. The chair of the Provide Risk Committee presented his report updating the board on the outcomes of its most recent meetings held on 8 March, 29 March and 6 May 2021.

39. Exempt from publication

- a. Exempt from publication
- b. Exempt from publication

40. The board received the report from the Provider Risk Committee.

Report from the Quality Assessment Committee (paper 12.1)

41. The chair of the Quality Assessment Committee presented his report to the board on the outcomes of its most recent meeting held on 10 February 2021.

42. Exempt from publication

- a. Exempt from publication
- b. Exempt from publication
- c. Exempt from publication

43. The board received the report from the Quality Assessment Committee

Report from the Risk and Audit Committee (paper 13.1)

44. The chair of the Risk and Audit Committee updated the board on the outcomes of its most recent meetings held on 10 December 2020 and 25 February 2021. She advised that:

- d. The committee had considered the processes around the Data Futures project and would do so again at its meeting the following week.
- e. The programme of “deep dives” into particular areas on the risk register was ongoing. This helped the committee consider issues in more detail and the process by which risks were being assessed and mitigated.
- f. As requested by the board, the committee would pick up the risk-related issues around workload and prioritisation at its next meeting.

45. The board received the report from the Risk and Audit Committee

Closing remarks

46. The chair advised the board that he would be speaking at a meeting of UUK members the following day and would cover the levelling up agenda as well as free speech.

47. He reiterated his thanks to Steve West on behalf of the whole board for his significant contribution to the work of the OfS. He was looking forward to working with him in future in his new role at UUK.

48. The chair thanked the board for their thoughtful contributions and reminded members that the next meeting is scheduled for 13 July 2021.

The meeting closed at 1614.