



Draft minutes of the OfS board meeting, 26 May 2022

Location: by video or telephone conference

Timings: 1330-1700

- Present members:
- James Wharton (chair)
 - John Blake (Director for Fair Access and Participation)
 - Martin Coleman
 - Elizabeth Fagan
 - Katja Hall
 - Verity Hancock
 - Kate Lander
 - Susan Lapworth (interim chief executive)
 - Simon Levine
 - Martha Longdon
 - Dayo Olukoshi
 - David Palfreyman
 - Monisha Shah
- Attendees:
- Emma Davies, Department for Education (DfE) representative
- Apologies:
- Rachel Houchen
 - Michael Spence
- Officers:
- Jean Arnold, Director of Quality
 - Louisa Baker, Head of Governance
 - Jamie Black, Head of Compliance and Student Protection (for paper 7.1)
 - Ed Davison
 - Gary Downing, Strategic Business Manager
 - Paul Huffer, Head of Legal
 - 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
 - David Smy, Director of Monitoring and Intervention
 - Mike Spooner

Chair's welcome

1. In opening the meeting, the chair welcomed members and noted that Rachel Houchen had sent her apologies. At the last meeting, he had confirmed the appointment of Dr Michael Spence to the OfS board. He advised that in response to Kathryn King's recent departure, the DfE had brought forward his start date to 9 May. Unfortunately, Dr Spence has had to send his apologies for today's meeting as he has a prior commitment.
2. At the last meeting the board were advised of the interim management arrangements put in place following Nicola Dandridge's departure. The chair welcomed Jean Arnold and David Smy to the meeting in their respective roles of Director of Quality and Director of Monitoring and Intervention, and Gary Downing, a Strategic Business Manager at the OfS. He noted that Jamie Black, Head of Compliance and Student Protection, will join the meeting for the item on the financial sustainability of registered providers (agenda item 7.1).
3. He also welcomed Emma Davies, the DfE representative, who was attending in place of Hannah Sheehan.
4. The chair noted Monisha Shah's comment that she had no conflict of interest in any discussions relating to ALRA following her term of office as chair of Rose Bruford College ending in Autumn 2021.
5. The chair updated the board on his recent meetings, including with IndependentHE members at TEDI-London. Work continues on the Specialist Provider Panel which he is chairing, and he expected the process to be concluded soon. He thanked Nolan Smith for his contribution to this work.
6. The chair commented on recent press reports regarding his appearance at the recent US Republican Party CPAC conference in Hungary. He had provided a video to the conference days before the event in his position as a Conservative peer. He was not aware that an individual who has expressed racist and antisemitic views was also speaking at the event. Immediately following the press reports, the chair met the Union of Jewish Students to personally reassure them and address their concerns. That meeting had been extremely positive. He advised the board that both he personally and the OfS are committed to tackling racism and intolerance and are committed to supporting free speech and academic freedom.
7. The board noted its general duties as set out on the agenda and the need to have regard to these and other relevant considerations as it considered papers and made decisions.

Approval of March minutes (paper 2.1)

8. The minutes of the board meeting held on 24 March 2022 were approved.

Interim chief executive's report (paper 3.1)

9. The interim 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 24 March 2022.
10. The following points were raised:
 - a. The first group of quality investigations have been launched which will assess whether business and management courses at eight providers meet the revised B conditions relating to quality. The board will be updated on progress. Academic

expert assessors are being recruited to help carry out the investigations. TEF panellists are being recruited at the same time.

- b. Exempt from publication.
- c. Emerging lessons learned on the OfS's approach to the recent market exit of ALRA had been discussed at the recent meeting of the Provider Risk Committee. A substantive paper on this and the approach we would take if similar circumstances arise will come to the July board meeting.
- d. Exempt from publication.

11. The board noted the updates contained in the report.

Review of risk, risk appetite and tolerance (paper 4.1)

12. Kate Lander, chair of the Risk and Audit Committee (RAC), and the Head of Governance introduced a paper setting out draft strategic risks for the OfS and associated risk appetite and tolerance. These have been identified through discussion with the directors' group and with the RAC.

13. The Head of Governance confirmed there is already a good level of assurance over the OfS's management of risk, including from Internal Audit who review this annually. The OfS's aim is to mature the approach it takes and to be more proactive in identifying emerging risk.

14. The chair of the RAC confirmed the proposed articulation of strategic risks had been well received at its recent meeting. The Head of Internal Audit and the NAO were also supportive of the proposals. The committee was seeking clarification from the board on appetite and tolerance levels so that it could track and monitor risks against these. It would also use its 'deep dives' to be more future focused. Strategic risks, appetite and tolerance will be brought to the board on at least an annual basis for review and revision.

15. The following points were made in discussion:

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

16. In concluding its discussions, the board:

- a. Noted the approach taken to identify draft strategic risks, risk appetite and tolerance.
- b. Confirmed it was content with the draft revised strategic risks for the OfS, associated risk appetite and tolerance and behaviours, and the proposed approach to identifying and monitoring emerging risks.

Key Performance Measures review (paper 5.1)

17. The interim chief executive introduced her paper updating the board on the approach being taken to revise the OfS's key performance measures. She advised that:

- a. The KPMs need to be refreshed to reflect the new OfS strategy and to support our narrative on the key policy areas.
- b. Following the recent Public Accounts Committee hearing, a commitment had been made to produce new KPMs by summer 2022.
- c. The board was being asked for its views on this initial draft, particularly in relation to the options for how value for money should feature in the KPMs.
- d. These comments will be used to further revise the KPMs and will inform final proposals to be brought to the board in July.

18. The following points were raised in discussion:

- a. Exempt from publication.
- b. Exempt from publication.
- c. Exempt from publication.
- d. Exempt from publication.
- e. Exempt from publication.
- f. Exempt from publication.
- g. Exempt from publication.

19. The board:

- a. Noted the content of the paper.
- b. Welcomed receiving a further iteration of the KPMs at its July meeting.

Consultation update: Regulating student outcomes/TEF (paper 6.1)

20. The Director of Quality gave a presentation on the outcomes from the recent OfS consultations on regulating student outcomes and the TEF. She advised that:

- a. Overall, the responses were generally positive but there had been some concern expressed about the number of concurrent consultations and the timescale for responses. This resulted in some comments about the burden this placed on providers, particularly small providers.
- b. In relation to regulating student outcomes, the volume of data was raised as an issue. However, the OfS's view is that the proposals were appropriate and proportionate in order to effectively regulate pockets of poor performance at larger providers. We would expect to work to improve the presentation of data in order to support smaller providers.
- c. A number of respondents were concerned about the use of student progression as a measure as some providers took the view that the further study or employment outcomes of students were outside of their control.
- d. Points were also made about the impact of the proposed approach to regulation of student outcomes on equality of opportunity with some respondents suggesting that this would make some providers more risk averse and would make them less willing to recruit students from underrepresented groups.

21. In relation to the TEF consultation, the director advised that:

- a. There had been broad support for the overall approach.
- b. Some points had been made about the inclusion of students studying under subcontractual arrangements and the team was looking at the practical implications of this.
- c. There was a view that the proposed September to November submission window is too short and may not allow high quality student submissions to be made. Consideration is now be given to extending this, while ensuring that outcomes from the TEF are made in time to inform student choices for entry in the 2024 academic year.
- d. Although supportive of the proposal in principle, there had been some concern about the use of the rating 'requires improvement' for a new fourth TEF category as respondents considered that this had negative connotations related to its use by Ofsted.

22. In concluding her presentation, the director noted that final policy decisions will be made in July. In parallel, recruitment is underway to recruit TEF panel members.

23. The chair of the Quality Assessment Committee noted that the committee had received a similar presentation at its recent meeting and confirmed it was supportive of the proposals,

particularly in relation to the use of progression as an indicator of successful student outcomes. Students and employers need to have confidence that their courses will equip them for suitable employment and it is important that the OfS as a regulator takes a firm line on this.

24. The following points were raised in discussion:

- a. In supporting the introduction of the fourth category in TEF, the language used to describe it and the length of time before reassessment should not deter providers from being innovative and seeking ways to drive improvement.
- b. The OfS is right to focus on ensuring equality of opportunity and to recognise that providers that recruit students from underrepresented groups may have to fund and provide additional support to ensure students achieve successful outcomes. The impact and outcomes of any revised approach should be monitored.
- c. Exempt from publication.

25. The board:

- a. Noted the content of the presentation and the current policy thinking regarding the OfS response.
- b. Agreed to delegate authority to a group consisting of the OfS chair, the OfS deputy chair, the chief executive and the director of quality, to take any decisions in respect of, or directly or indirectly connected with, the following matters that would otherwise be expressly reserved to the board:
 - i. any final decision to make changes to the regulatory framework which add, remove or vary initial and ongoing conditions of registration relating to the regulation of student outcomes
- c. Confirmed that this new delegated authority is in addition to, and does not in any way restrict or limit, any existing delegated authority under the published scheme of delegation (for example, the delegated authority of the chief executive and directors).

Review of financial sustainability of small providers (paper 7.1)

26. The Director of Resources and Finance introduced his paper updating the board on early analysis by the OfS of the most recent financial data returned by registered providers via the Annual Financial Return (AFR21). It also provided an analysis of the position for small providers. He advised that:

- a. Aggregate forecasts show a marginal decline in the short term, then pick up towards the end of the forecast period as a result of a forecast increase in student numbers.
- b. Providers are forecasting an increase in expenditure which may not be matched by an increase in income. Due to the timing of the collection of the data, the forecasts were based on lower rates of inflation than have subsequently arisen.
- c. Financial strength across the sector is variable.
- d. Providers in aggregate are currently holding significant amounts of cash compared to previous years. This is reflected in forecast reductions in the levels of new borrowing.
- e. Small providers are those most likely to have negative cashflows and low asset values. They tend to operate on finer margins so even a small change can have a big impact. Although there were obvious challenges for small providers, some were supported by larger groups or guarantors, so it was important to consider individual contextual factors.

27. Exempt from publication.

28. The following points were made in discussion:

- a. Given the challenging economic environment, ongoing monitoring of all providers is important.
- b. During the pandemic, the sector in general demonstrated a good level of resilience. Providers had managed to cut costs and maintain income streams. Demand has been maintained, both from UK and international students. However, action needs to be taken now to manage large increases in costs.
- c. Although the data showed continuing high demand from international students, providers' forecasts indicated a reduction in the rate of growth. It would be helpful to undertake further work on stress testing forecast data and on considering the longer-term impact on providers of likely recruitment trends.
- d. More work was underway to translate the aggregate sector-level data and to identify the risks facing individual providers. The OfS will then be better able to identify the actions required in response.
- e. The Risk and Audit Committee would be well-positioned to test the robustness of our approach to identifying and mitigating risk and to provide assurance to the board.

29. The board noted the paper

Student panel update (paper 8.1)

30. The chair of the student panel presented her report to the board on the outcomes of its most recent meeting held on 6 April 2022. Its next meeting in June will be the last one of the current cycle before recruitment for new panellists takes place over the summer. She encouraged board members to draw the vacancy details to the attention of students and encourage applications. Her student representative role on the board is currently being advertised on the Cabinet Office website and she encouraged members to draw that vacancy to the attention of potential candidates.

31. The board received the report from the student panel.

Oral report from the Provider Risk Committee

32. The chair of the Provider Risk Committee presented his report to the board on the outcomes of its most recent meeting held on 16 May 2022. Exempt from publication.

33. The board received the oral report from the Provider Risk Committee.

Report from the Quality Assessment Committee (paper 10.1)

34. The chair of the Quality Assessment Committee presented his report to the board on the outcomes of its most recent meeting held on 9 May 2022, most of which had been discussed at this board meeting. The committee had discussed:

- a. Progress with implementing quality and standards conditions.
- b. The monitoring of the DQB's performance and progress with the triennial review.

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

Oral report from the Risk and Audit Committee

36. The chair of the Risk and Audit Committee presented her report to the board on the outcomes of its most recent meeting held on 18 May 2022. The committee had discussed:

- a. The recent external audit and progress with the annual report and accounts, noting she expected these to be signed off shortly; again making the OfS one of the earliest organisations to achieve this.

- b. The OfS's new draft strategic risks and associated risk appetite and tolerance as discussed earlier by the board.
- c. Exempt from publication.

37. Exempt from publication.

38. The board:

- a. Exempt from publication.
- b. Received the report from the Risk and Audit Committee.

Closing remarks

39. The chair thanked members for their attendance and participation. He reminded members that the next meeting of the board will be held on 13 July 2022, and it was agreed that this will be held by Teams. The meeting in September will be held in person in the London office.

The interim chief executive, the directors and other attendees left the meeting at 15.52.

Oral report from the Remuneration and Nominations Committee

40. Confidential minute.

The meeting closed at 1600.