



Chief executive's report

Purpose

1. This paper provides an update on work undertaken and issues that have arisen since the last board meeting on 30 September 2022 to the extent that they are not covered in other board papers.
2. The paper is structured around the headings and goals of the OfS strategy 2022-2025 and therefore provides a progress report in delivering those goals.

Recommendations/decisions required by the board

3. The board is invited to:
 - a. Note the updates contained in this paper.
 - b. Note the OfS communications overview at Annex A.
 - c. Note the risk report at Annex B.
 - d. Approve the recommendation at paragraph 72 to release the final tranche of funding for Data Futures of £38,442 in 2023-24.
 - e. Note that Regulations made by the Secretary of State under section 71 of HERA have activated OfS powers to recover the costs of investigations and the information provided about the nature and scope of those powers – see paragraphs 60-64.
 - f. Agree that no changes should be made to the published scheme of delegation and existing delegation arrangements remain appropriate for all the relevant decisions that may need to be taken in connection with the exercise of powers to recover investigation costs – see paragraphs 60-64

Further information

4. Available from Susan Lapworth.

Summary of main activity

5. The following ministerial appointments were made in the Department for Education in October:
 - a. Gillian Keegan was appointed Secretary of State for Education.
 - b. Robert Halfon was appointed Minister of State, with responsibilities including the Department's relationship with the OfS.
 - c. Claire Coutinho was appointed Parliamentary Under Secretary of State, with responsibilities including the passage of the Higher Education (Freedom of Speech) Bill through Parliament.
 - d. Baroness Barran was re-appointed Parliamentary Under Secretary of State, with responsibilities including the student finance system.
6. James Wharton met with the new Secretary of State on 3 November and we will arrange routine engagement in the months to follow.
7. Our consultation on regulating equality of opportunity in higher education was launched on 6 October. The consultation seeks views on our proposals for access and participation plans and the development of a new equality of opportunity risk register. The consultation closed on 10 November and we have begun to analyse the responses. A separate initial analysis of responses is covered in more detail in paper 6.1.
8. The Secretary of State appointed Jisc as the new designated data body (DDB) following its merger with HESA, with effect from 4 October 2022.
9. Following the QAA's announcement that it no longer consents to being the designated quality body (DQB) after the current DQB year ends on 31 March 2023, we published a [statement](#) setting out arrangements for assessing quality and standards from April 2023. We have finalised our triennial report to the Secretary of State on the performance of the DQB. Further detail is contained in paragraphs 65-67.

Quality and standards

Our strategic goal is:

Students receive a high-quality academic experience that improves their knowledge and skills, with increasing numbers receiving excellent provision.

New and ongoing investigations

11. Our programme of investigations into the quality of business and management courses is progressing and assessment teams have undertaken initial visits at seven of the eight providers under investigation. We expect the first assessment reports to be available in February 2023. We would normally expect to publish these reports before considering whether there are any compliance issues. **Exempt from publication.**

Review of blended learning

12. On 19 October, we published the report of the OfS-appointed Blended Learning Review Panel and the OfS's response to the review panel's findings. The report considers different approaches to blended learning in the context of the OfS's regulatory requirements to provide a high-quality academic experience with appropriate resources, support, and student engagement. Findings of the review panel's report included that:

- There are examples of high quality blended approaches and innovation that support students' learning.
- There are pockets of poor online teaching practice and poor online learning resources.
- The balance between face-to-face and online delivery is not the key determinant of teaching quality.
- Students reported that they received less timely and lower quality feedback in online learning settings than in face-to-face settings.
- Students identified a negative impact on their sense of belonging to an academic community during national lockdowns because of an absence of peer networks and support during periods of isolation.

13. The OfS response to the report considers how the themes identified by the panel link to the OfS's conditions of registration B1 and B2 and indicates where approaches observed in the review would be likely to raise compliance concerns.

14. Alongside the report, we also published a short online guide for students, parents or interested members of the public. The guide explains what students can do if they have concerns about their academic experience and how to use this report to understand what they can expect from a blended learning experience.

15. Both the Lead Reviewer, Professor Susan Orr, and our Director of Quality, Jean Arnold, spoke at a parliamentary event on 15 November 2022, marking the launch of the report. The event

was hosted by Policy Connect, a cross-party think tank, and chaired by Lord Norton of Louth, Chair of the Higher Education Commission.

16. The review represented a novel approach for the OfS and the reports have been broadly welcomed by the sector. Over the next year, we will be evaluating the extent to which our blended learning review has supported understanding of the OfS's requirements and influenced how providers approach the delivery of blended learning.

Revised condition of registration B3

17. We published the final outcomes of our consultation on a revised approach to regulating student outcomes in September 2022. We have adopted a revised condition B3 (student outcomes) and published a range of technical documents to support the condition including a set of minimum numerical thresholds. Alongside these regulatory documents, we published data on the performance of all registered providers in relation to our chosen student outcome measures and contextual information about the nature of the higher education they offer and the characteristics of their students.
18. We have subsequently begun implementation of the revised approach by publishing details of the prioritised categories for assessment in 2022 and provisional categories for 2023. We will select and engage with up to 20 registered providers in relation to our ongoing monitoring of condition B3 this year.
19. There was coverage of the introduction of revised condition B3 and the associated numerical thresholds in [The Guardian](#), [Telegraph](#), [Independent](#), Sun and Times (both in print, not online). There was also coverage from the specialist higher education media in [Times Higher](#), [Wonkhe](#) and [Research Professional](#). There has been ongoing media interest in our approach throughout the Autumn.

The TEF

20. On 7 October, we published [Regulatory Advice 22](#), which sets out guidance for the TEF exercise that will take place during 2022-23. The guidance focuses on explaining which providers can or must take part, what evidence needs to be submitted, the assessment framework, and the timetable for publishing outcomes.
21. Alongside Regulatory Advice 22, we also published a [TEF student submission guide](#). The guide advises TEF student contacts on preparing a TEF student submission, explaining how to create and submit evidence. The TEF panel will use the student submission alongside any other evidence when deciding which TEF rating to award to a university or college.

Arrangements for assessing quality and standards from April 2023

22. Following the announcement by the QAA that it would no longer consent to be the designated body in England after the current designation year ends on 31 March 2023, we published a [statement](#) in October setting out arrangements for assessing quality and standards from April 2023. From 1 April 2023, we will undertake the assessment activities that are currently delivered by the designated quality body. Since the announcement, the OfS has been working closely with the QAA and DfE to ensure there is a smooth transition to new arrangements from 1 April 2023. We plan to continue to discuss longer-term arrangements with sector representative groups, keeping universities and colleges informed as these discussions progress.

23. There has been substantial reporting of the QAA's subject benchmark statements, including on the front page of the Daily Mail. There was also coverage in The Times, Daily Telegraph and LBC. The media reports included the OfS's response to this story that made it clear that this guidance is unrelated to the work the QAA carries out as designated quality body. We were also clear that we do not expect or require providers to adopt this QAA guidance and, if they choose to do so, they must also continue to meet OfS requirements, including in relation to freedom of speech and academic freedom.

Our strategic goal is:

Students are rigorously assessed, and the qualifications they are awarded are credible and comparable to those granted previously.

Ongoing investigations

24. We continue to progress three investigations into the credibility of awards. We imposed cooperation and information requirements through F3 notices on the providers and continue to assess the information received in response.

Our strategic goal is:

Providers secure free speech within the law for students, staff and visiting speakers.

25. Our forthcoming online insight event on freedom of speech in higher education will be held on 15 December 2022. During the event we will be hosting a wide-ranging discussion which will focus on navigating challenging issues on campus and how universities and colleges can secure freedom of speech in practice. During the event, panellists will consider universities' existing duties relating to freedom of speech and equality matters; student and staff experiences of free speech issues; and the OfS's current and future role in ensuring freedom of speech in higher education in England.

26. We continue to consider matters connected to freedom of speech and academic freedom at the University of Sussex.

27. We continue to engage with the Department for Education regarding the provisions in the Higher Education (Freedom of Speech) Bill and the implications of these for the OfS's work.

Our strategic goal is:

Graduates contribute to local and national prosperity, and the government's 'levelling up' agenda.

28. Our work in this area is focused on the role that OfS can play in national efforts to support economic growth. Our recent progress in establishing new and revised conditions of registration for quality and standards is relevant to this goal. Particularly relevant are our requirements that providers deliver positive progression outcomes for students, and all higher

education courses are up-to-date, challenging and well delivered, and equip students with the skills they will need after graduation.

29. We are separately working with the Department for Education to support its reforms of technical education and the lifelong loan entitlement (LLE). We are an active partner in these reforms as we ensure that the regulatory system remains fit for purpose. For example, we are working with DfE to establish the regulatory mechanisms needed to secure quality in higher education that may be delivered through modules funded by a future LLE.

Equality of opportunity

Our strategic goal is:

Students' access, success and progression are not limited by their background, location or characteristics.

Approach to regulating equality of opportunity

30. On 6 October 2022, we published our [consultation on a new approach to regulating equality of opportunity in English higher education](#). A significant focus of our proposed reforms is the next cycle of access and participation plans (APPs) which we propose should come into effect from 2024-25 onwards. We also plan to develop an Equality of Opportunity Risk Register (EORR). This will set out sector-level risks to equality of opportunity in higher education which we proposed that universities and colleges would be expected to consider when setting objectives for their APPs.
31. We plan to make final decisions about our approach to access and participation plans in spring 2023. We also plan to set out how we would implement any changes to APPs for 2024-25 onwards. We will also consider the responses to our consultation as we develop guidance on effective practice for inclusion in a revised [Regulatory advice 6](#).
32. John Blake was interviewed by national and sector outlets ahead of the publication of our consultation on the future of equality of opportunity regulation. The story was reported in [The Times](#), [Telegraph](#), [Daily Mail](#), [Times Higher](#), [Wonkhe](#) and [Research Professional](#).

Student characteristics data

33. On 11 November, we released interactive data dashboard displaying [student characteristics data](#) relating to student outcomes. The data dashboard displays continuation rates, completion rates, attainment rates and progression rates for various student characteristics. Alongside the data dashboard, we published a report which highlights some of the data, and explores the differences in the rates of completion, completion, attainment, and progression rates for students with different characteristics.
34. The student population included in the latest dashboard extends the coverage of the previously published [access and participation data dashboard](#) and [student outcomes data dashboard](#). While the previous dashboards report sector-level and data for individual providers, the student characteristics data considers a wider range of student characteristics, as well as some characteristics at a more disaggregated level than is available in other publications.

Our strategic goal is:

Prospective students can choose from a diverse range of courses and providers at any stage of their life, with a wide range of flexible and innovative opportunities.

Information to support student choice

35. On 28 October, we published our [analysis of responses and decisions](#) made following the consultation on changes to the National Student Survey (NSS) which was conducted between 28 July and 1 September 2022. The purpose of the consultation was to ensure that the survey continues to provide high quality information on student perceptions of their academic experience. We received 250 responses to the consultation, mainly from higher education providers, including in Scotland, Wales, and Northern Ireland.
36. In our analysis of the responses, we concluded that the current criteria for the core NSS remain fit for purpose and should be retained. We have, however, made some changes to the survey, including:
- a. The introduction of a four-point scale and a move to direct questions. Direct questions are questions which elicit respondents' views on issues of interest by asking about them directly, with questionnaire response options being tailored specifically to match the question.
 - b. New additional questions on freedom of expression and mental wellbeing provision to be included from 2023.
 - c. The removal of the summative question for England, and continuing with the existing summative question for Scotland, Wales, and Northern Ireland.
 - d. Introduction of a four-year review cycle with scope for additional reviews as appropriate to ensure the NSS continues to meet our needs.
37. We announced [arrangements for the NSS 2023](#). The guidance sets out actions and key milestones for higher education providers, and an overview of the administration of the survey, provider support contact details, a survey timetable, and dissemination of results.

Specialist provider funding

38. The specialist provider panel had its final meeting on 26 September to conclude its work. We have written to successful providers confirming the funding they are receiving for the 2021-22 and 2022-23 academic years and reflected these allocations in recurrent grant payments made in November 2022. We expect the allocations for 2022-23 to continue up to 2026-27, subject to providers' continued eligibility and the outcome of future government funding settlements.
39. We expect to publish on 8 December information about our these funding decisions for the 2021-22 and 2022-23 academic years. That will include information about transition funding we are making available to providers that were unsuccessful but had previously benefited directly or indirectly from specialist funding.

40. We are also launching a new funding initiative to support specialist performing arts providers that either did not make a submission to the panel, or were not successful. The purpose of this funding (which is part of funding for national facilities and regulatory initiatives and has a budget of a little under £10 million) is to enhance the provision of, and access to, performing arts education and training at specialist providers, with a particular focus on contemporary music, drama and dance. We expect this funding to continue for academic years 2022-23 to 2026-27 (subject to providers' compliance with terms and conditions and the outcome of future government funding settlements). We do not expect to publish information about this additional funding stream until we have concluded engagement with relevant providers on eligibility matters.

Our strategic goal is:

Providers act to prevent harassment and sexual misconduct and respond effectively if incidents do occur.

Tackling sexual misconduct

41. We published an independent evaluation of the initial impact of the statement of expectations on 10 November. Our statement of expectations was published in April 2021 and provides a set of recommendations that set out a clear framework for colleges and universities to prevent and respond to incidents of harassment and sexual misconduct that affect their students.
42. The evaluation found that whilst the statement has led to improvements in policies, increased attention to addressing harassment and sexual misconduct, and some excellent practice, including recruitment of specially trained staff to support victims of sexual misconduct, progress has been inconsistent and slow. We recognise that further regulatory intervention is likely to be needed to ensure universities and colleges tackle this issue in the way students would expect.
43. Alongside the evaluation, we published an Insight Brief on tackling sexual misconduct in universities and colleges. The brief finds there is limited data focusing on the experience of students and highlights the negative effects on those subjected to sexual assault and other forms of misconduct, including mental ill health, disrupted study and some students leaving higher education altogether.
44. There was substantial coverage of the independent evaluation in The Independent, The Times (print only), Times Higher and WonkHE, and I was interviewed by LBC News to discuss the OfS's concerns about this issue, and the need for us to deploy sharper regulation.

Consultation on a new condition of registration

45. On 12 October, I provided oral evidence to the House of Commons Women and Equalities Select Committee investigation into attitudes towards women and girls in educational settings. As part of my evidence, I announced that the OfS would bring forward proposals to introduce new regulatory requirements on harassment and sexual misconduct. I also announced that the OfS would be developing a prevalence survey to understand the scale and nature of sexual misconduct in the sector.

46. Our public consultation on the introduction of a new condition on harassment and sexual misconduct is likely to commence in January 2023, and we expect to propose that any new condition would be in place for the beginning of the 2023-2024 academic year.
47. The proposed condition itself is generally aligned with our principles-based approach but may introduce some more rules-based elements where we consider this to be appropriate. We are considering proposing particular requirements in the areas of staff-student relationships and the use of non-disclosure agreements. The consultation will clearly set out possible alternative options in these areas, and will encourage responses in relation to the range of options.
48. The project team is working with the student engagement team, as well as the student panel, to ensure that our approach to engaging with students during the consultation period is appropriate. We plan to pilot our approach to a prevalence survey in the coming months, with initial outcomes from the pilot expected in October 2023.

Our strategic goal is:

Providers encourage and support an environment conducive to the good mental health and wellbeing that students need to succeed in their higher education.

Funded programmes

49. Between June 2019 and July 2022 we delivered a funding programme to improve joint working between providers and the NHS to support student mental health. The Mental Health Challenges Competition funded higher education providers to support the development and testing of approaches to improve mental health outcomes for students.
50. We commissioned Wavehill to conduct an evaluation of the Mental Health Challenge Competition. The final reports of this evaluation were published on 13 October and explore the impact of the programme, as well as the potential scalability and replicability of individual projects.
51. The key findings of the evaluation suggest that the programme was well received by project staff, wider stakeholders, and students. It has supported 10 higher education providers in England to deliver projects that have reached 19,000 students. This includes 373 students who were involved in activities to shape the design and implementation of projects, over 2,300 students who have benefitted from new forms of mental health support, and over 16,700 students across further education and higher education benefitting from support to help them with transitions from further education, into higher education.
52. Wavehill also reported evidence that the programme has improved connectivity between higher education providers and others involved in supporting student mental health, improved access to services for students to receive the right support at the right time and improved the range of preventative and proactive mental health support available to students.

Enabling regulation

Our strategic goal is:

Providers are financially viable and sustainable and have effective governance arrangements.

Financial sustainability

53. At the last board meeting, we discussed system-level financial risks and our approach to market exit cases. We will return to these issues at the board planning day in February when we plan to run an interactive session on our system for assessing risks for the sector and individual providers and explore with the board how we apply our risk appetite in practice. We will discuss real cases for which we have considered imposing student protection directions because financial challenges could place a provider at risk of market exit.
54. In the meantime, we continue to develop our approach to financial risk to ensure we understand the risks that providers face beyond their baseline forecast scenario. This includes more systematically feeding sector risks, and combinations of risks, into our annual and responsive assessments of providers' financial position, and ensuring that we can identify potentially vulnerable providers when market conditions change.
55. We have modelled the impact of changes to student numbers, inflation and pay costs, and the loss of certain types of funding. We have also engaged with a number of providers where there has been uncertainty about their income or financial support arrangements. We have also supported the Government's work to understand the impact of energy and other costs on the sector.

Approach to potential fraud

56. On 18 October, we published a [blog](#) on our website about preventing fraud. It considered how providers might be vulnerable to fraud, and what they should be doing to protect themselves, students and taxpayers. It sets out the steps the OfS is currently taking to tackle these issues, and provides examples to demonstrate why effective internal controls are needed. It also suggests the questions that university and college governing bodies, audit committees and executive teams should be asking in this area. **Exempt from publication.**

Our strategic goal is:

Students receive the academic experience they were promised by their provider and their interests as consumers are protected before, during and after their studies.

57. On 24 November, the OfS announced a new agreement with National Trading Standards (NTS) which will deliver a legal backstop for the enforcement of consumer protection law on matters relating to higher education. The agreement guarantees that trading standards will review cases referred by the OfS with a view to taking action if it considers there is a probable breach of consumer law. The OfS has agreed with NTS that the agreement will focus on (but not be limited to):

- Organisations wrongly claiming to be registered with the OfS, or holding degree awarding powers or university title.
- Unfair terms and conditions in contracts with students.
- Misleading advertising by essay mills.

58. We will refer cases that we identify through our general monitoring activity which raise consumer protection concerns. Trading Standards will then write to the individual, company or provider concerned to set out the issues of concern, and request action to address these. This could include seeking informal undertakings from providers, individuals and companies. Trading Standards may take enforcement action if it cannot resolve concerns. The OfS will be advised of the outcome in all cases we refer.

59. The scope of the agreement also includes access to expert NTS teams such as online consumer fraud and legal databases.

Our strategic goal is:

The OfS minimises the regulatory burden it places on providers, while ensuring action is effective in meeting its goals and regulatory objectives.

Efficient and effective OfS

Exempt from publication

60. Exempt from publication.

61. Exempt from publication.

62. Exempt from publication.

63. Exempt from publication.

64. We therefore recommend that the board notes the nature and scope of the powers to recover investigation costs under section 71 Regulations and confirms that no changes should be made to the published scheme of delegation.

Triennial report of the performance of the DQB

65. This OfS compiled a provisional triennial report which we shared with the QAA in April 2022. The QAA provided comments in response to the provisional report. We considered those comments carefully and made some changes to the report before submitting it to the Secretary of State in November 2022. While we were finalising the triennial report, the QAA announced in July 2022 that it had asked the Secretary of State to remove its designation from 31 March 2023.

66. Our conclusion in the final report was that the QAA has not performed, and is unlikely in future to perform, the assessment functions such that effective assessment of quality and standards is secured. We set out our view that the QAA can no longer be considered to meet the

requirements set out in schedule 4 of HERA to be a 'suitable body' as it no longer meets Condition A which is that the body is capable of performing the assessment functions in an effective manner.

67. The final report was shared with the QAA, along with a summary of the triennial report which we proposed to publish. We have received representations from the QAA about publication matters and are considering these before making a final decision about whether any report should be published and, if so, the content of that report.

Data futures and data collection

68. Earlier this year we consulted on changes to the data that we ask the DDB to collect on our behalf. We published our response to part one of the consultation in May 2022 – this related to the move to in-year data collection through the new Data Futures model. We have decided not to make decisions in relation to the proposals in parts 2 and 3 of the consultation because there have been several significant developments that are likely to affect our requirements. These include the designation of Jisc as designated data body, our current consultation on a new approach to regulating equality of opportunity, and an increased focus on the costs of living for students. We published a statement setting out our approach.

69. Exempt from publication.

70. Exempt from publication.

71. The programme is on track to deliver the new data platform in April 2023 with the code expected to be completed by 21 December 2022. Development work on validation rules and credibility checks will continue during quarter one of 2023 as planned.

72. On 2 December 2021, the board agreed funding for Data Futures of £2,672,969 comprising £2,634,547 for 2022-23 and £38,442 for 2023-24. Given the continued progress with delivery of the programme and the board's previous agreement in principle to fund the planned expenditure, I am now recommending that we release the £38,422 agreed in principle in December 2021 for the 2023-24 financial year.

73. Exempt from publication.

Industrial action – OfS staff

74. On 10 November the Public and Commercial Services union (PCS) wrote to me with the outcomes of its national ballot for strike action. Of 390 OfS employees, 172 are members of PCS. 123 of these employees voted, with 106 (87.8%) voting for strike action. We await further information from the PCS about whether strike action will happen and when this might be. We are keeping in close contact with our local PCS branch and with DfE in relation to government-wide action.

Risk report

75. The Risk and Audit Committee will meet on 7 December and so an oral report from that meeting will be provided as a separate item on the board's agenda. The regular risk report is attached at Annex B of this paper, for the board's information. The board should note:

a. Exempt from publication.

b. Exempt from publication.

Board committees

76. A number of new appointments have been made to our board committees:

- Rachel Houchen will chair the Remuneration and Nominations Committee from 1 January 2023 to replace Monisha Shah.
- Dayo Olukoshi has become a member of the Quality Assessment Committee from October 2022.
- Martyn Oliver has been co-opted to the Risk and Audit Committee until 31 December 2022. He will become a full member when his term of office on the board commences on 1 January 2023.

Exempt from publication

77. Exempt from publication.