



Chief executive's report

Purpose

1. This paper provides an update on work undertaken and issues that have arisen since my report to the last board meeting on 8 December 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 regular risk report contained in Annex A
 - c. Note the OfS communications overview at Annex B

Further information

4. Available from Susan Lapworth.

Summary of main activity

5. Nolan Smith, Director of Resources and Finance, was awarded an OBE for services to higher education in the King's first new year's honours list. Nicola Dandridge was awarded a Damehood for services to higher education.
6. The OfS imposed a monetary penalty of £37,231 on the University of Buckingham after it failed to meet the deadline for submitting its signed audited financial statements for the year ended 2019. This is the first such financial penalty that the OfS has imposed.
7. We hosted an Insight event on 15 December 2022 on Freedom of Speech in Higher Education. Legislation currently before Parliament would, if enacted, strengthen the OfS's role in relation to freedom of speech and academic freedom in higher education. The event was accompanied by the publication of an Insight Brief on 'Freedom to Question, Challenge and Debate'.
8. The OfS's annual review of English higher education 2022 was published on 15 December 2022.

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.

Our strategic goal is:

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

Quality investigations

9. Our programme of investigations into the quality of courses continues. We expect to have completed two onsite visits for each of the eight providers subject to investigations relating to the quality of business and management courses by early March. We have also opened similar investigations relating to computing courses at three providers, with all visits planned to conclude by mid-April. At the time of writing, arrangements for visits may be affected by industrial action in the sector, in particular by the UCU, and this may require some adjustment to our approach and timelines. Exempt from publication.
10. We are progressing desk-based quality investigations into the credibility of awards at a further three providers. These investigations are focused on whether those providers are awarding qualifications that are credible, including by comparison to awards granted previously.
11. A more detailed briefing on our programme of quality investigations is being provided for the Board's planning day.
12. We have selected 18 providers as part of the 2022 assessment cycle of general monitoring in relation to ongoing condition B3 (student outcomes). This selection was based on the process set out in regulatory advice 20 and we published our prioritised categories for 2022 in November 2022.
13. In making decisions about which providers to select we considered:
 - a. The number of students affected by performance below a numerical threshold in the prioritised categories.
 - b. The distance from the relevant numerical threshold in the prioritised categories.
 - c. The statistical certainty we have that a provider's underlying performance is below a relevant numerical threshold.
 - d. The number of a provider's indicators or split indicators not in the prioritised categories that are below a numerical threshold.
 - e. Other regulatory intelligence held by the OfS.

14. We are proceeding to the next stages of our assessment process, but have delayed requesting information from providers until after the TEF submission date to spread out the burden on the selected providers. We expect to engage with providers in February.
15. We have also moved forward our plans to evaluate the impact of the introduction of revised condition B3. We plan to gather information about data trends (for example, changes in outcomes and recruitment trends) as well as providers' behaviour (for example, seeking evidence of changes providers have introduced following our changes to condition B3).

Teaching Excellence Framework

16. We have held a series of guidance sessions for providers and students working on TEF submissions. The deadline was 24 January 2023 and we have received submissions from 227 providers.
17. In December we announced the appointment of members of the new TEF panel. The panel comprises a range of academic experts in teaching and learning, and student representatives from across the sector. We are now planning training for panel members to ensure they are equipped to carry out assessments and decide the rating for each provider taking part in the TEF. We expect to be able to share provisional outcomes with providers in July 2023, with final outcomes published from September 2023.

Engagement on quality and standards

18. On 8 December we published a briefing note explaining how quality is regulated in England to assist providers in explaining the regulatory arrangements to international partners. The briefing set out the two integrated and mutually reinforcing parts of our regulation of quality:
 - a. A high quality baseline that ensures students receive a high quality education and successful outcomes. This is delivered through our conditions of registration.
 - b. The TEF, which incentivises universities and colleges to go beyond the high quality baseline, and deliver excellence for their students.
19. We published a blog post based on my speech to Universities UK members on 2 December in which I underlined the academic focus we are bringing to our current assessment of the quality of business and management courses.
20. We also published a briefing note on the statutory framework for quality and standards following a roundtable discussion with sector representative groups. In that discussion we explained the basis for the assessment of quality and standards as set out in HERA and the implications of the legislation for how quality and standards assessment functions are performed in the future, either by the OfS or any designated body. We will continue discussions with sector representative groups in the coming months.

Our strategic goal is:

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

21. We have begun to speak more publicly about our work on freedom of speech in anticipation of new legislation. On 15 December we published an Insight brief which sets out the legal and regulatory framework within which universities and colleges must make decisions about matters relating to freedom of speech and academic freedom. In particular, the brief underlines the obligation placed on universities to 'take steps' to secure free speech within the law and draws out the parts of the Equality Act 2010 that are particularly relevant in this context.
22. The Insight brief was published ahead of an Insight event exploring how universities and colleges can promote freedom of speech in practice and navigate difficult issues as they arise on campus. Claire Coutinho MP (Minister for Children, Families and Wellbeing and responsible for the current Bill) gave an opening address and there were valuable contributions from Akua Reindorf KC (commissioner at EHRC), Dr John Tomasi (president of the Heterodox Academy), Baroness Anderson (chief executive of Index on Censorship), Professor Steve West (president of Universities UK), and Patrick O'Donnell (former president of University of York Students' Union).
23. We published my keynote speech in blog entitled 'Freedom to question, challenge and debate'. I provided wider context for the OfS's work on freedom of speech and identified matters that universities and college may wish to revisit before any new legislation comes into effect.
24. The Insight brief and Insight event received significant coverage in the national media, including an article on the front page of the Daily Telegraph, and pieces in the Daily Mail, Guardian, Times and Times Higher Education.
25. Lord Wharton and I met with Claire Coutinho MP, on 7 December 2022 to discuss progress of the Bill through Parliament.
26. We continue to consider matters connected to freedom of speech and academic freedom at the University of Sussex.

Our strategic goal is:

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

27. We continue to engage with the Department for Education (DfE) in support of the Government's ongoing reforms to technical education and the lifelong loan entitlement (LLE). Our project to fund a trial of the development of short courses has largely been concluded, and we plan to extend our evaluation of the project to gather further information to support planning for the introduction of LLE.
28. We currently expect the DfE to publish the outcomes of its consultation on LLE shortly. We anticipate that the OfS will need to engage in significant activity to support the introduction of

the LLE and expect to have further conversations with DfE colleagues to plan and resource this activity.

Equality of opportunity

Our strategic goal is:

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

Equality of opportunity reforms

29. Work continues to develop our 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 should consider when setting objectives for their APPs.
30. During December, the OfS worked with TASO to call for evidence and literature on aspects of equality of opportunity in higher education. This information will inform the development of the EORR as an important component of our reforms to access and participation plans. We expect to continue to engage with sector representative groups and other stakeholders ahead of publication of the EORR, to gather feedback on its structure and content.
31. We expect to make final decisions following our consultation on our [new approach to regulating equality of opportunity in English higher education](#) before the next Board meeting.

Cost of living

32. We have conducted student polling and held a series of roundtables with students' unions, mission groups and providers, to better understand the impact of cost of living pressures on students. Our analysis of the information we have gathered will inform our next Insight Brief, to be published in early March. In the interim we published a [blog](#) about the likely differential impact of cost of living pressures on students. These issues could pose a risk to equality of opportunity and successful participation in higher education.

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.

Funding

33. The OfS invited bids for [funding](#) to encourage providers to supply scholarships to students studying artificial intelligence and data science postgraduate conversion courses. The competition closed on 11 January and we expect to allocate up to £17 million to address workplace digital skills gaps.
34. We announced [capital funding](#) for financial years 2022-23 to 2024-25 on 8 December, following a competitive bidding exercise.

Market entry

35. Since the last board meeting we have registered one provider, authorised degree awarding powers (DAPs) for two providers, and varied existing DAPs authorisations for a further two providers. We are making good progress to resolve a number of longstanding applications for registration and expect to make decisions in relation to the majority of these in the first quarter of 2023.
36. We are continuing to monitor the progress of the Open University to deliver its funded project to extend validation opportunities and support to further education colleges that may not have previously delivered higher education. We expect the next tranche of providers to be identified shortly.

Our strategic goal is:

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

37. We expect to publish shortly a consultation on a new condition of registration relating to harassment and sexual misconduct at registered providers. The proposed condition will set out minimum requirements for a provider's approach to preventing harassment and sexual misconduct and responding effectively where incidents do occur.
38. We expect our consultation to include proposals to restrict the use of non-disclosure agreements, and to address the particular risks relating to relationships between staff and students.
39. We have started procurement for a supplier to conduct a pilot survey to help us understand the prevalence of instances of sexual misconduct experienced by students in England. The pilot will survey students from a range of universities and colleges and will help us understand how we could extend this to a full provider-level prevalence survey in future years.

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.

40. The OfS funds the University Mental Health Charter, which sets out principles for good practice for universities to prioritise the mental health of students and staff. On 14 December, Student Minds announced the first group of providers in England that had achieved the University Mental Health Charter Award: University of Bristol, University of East London, Hartpury University, University College London.

Enabling regulation

Our strategic goal is:

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

Enforcement action

41. On 22 December we published a regulatory case report for the University of Buckingham, which explains why the OfS decided to impose a £37,231 monetary penalty. The provider had failed to provide the OfS with signed audited financial statements for the year ending 2019, despite 3 extensions to the deadline. This information is an essential component of the OfS's work to understand risks to financial viability and sustainability for a provider. We had concluded that the provider had breached condition F3 (provision of information to the OfS) and that imposing a monetary penalty was appropriate. The audited financial statements have now been submitted. This penalty was the first of its kind to be imposed by the OfS.

Annual financial return

42. Accountable Officers were reminded of the deadlines and requirements for the Annual Financial Return 2023. All registered providers (excluding further education colleges and sixth form colleges) are required to submit financial data, financial and student number forecasts, and other relevant contextual information. This information is essential for the OfS's statutory duty to monitor the financial sustainability of registered providers, and to inform our judgements about financial risk for individual providers and for the sector as a whole.

Potential fraud cases

43. At the December board meeting we presented a paper on our ongoing work to tackle potential fraud in relation to funding dispersed by the Student Loans Company (SLC). We continue to engage with the DfE and the SLC where appropriate and are progressing our own regulatory interests independently. Exempt from publication.
44. 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.

Consumer protection

45. Following the introduction of our agreement with National Trading Standards we are considering possible cases for referral, for example, in relation to contractual terms and conditions for students, and the use of the legally protected term 'university' in the name of unregistered providers.

The National Student Survey

46. On 16 December we published a [blog post](#) about a refresh for the questions in the National Student Survey (NSS). This had been prompted by our decision to update the style of questions we ask students to include more direct questions and a 4-point scale, improved wording, and new questions on current topics such as freedom of expression and mental health support. The revised NSS will be implemented from January 2023.

Industrial action

47. The University and College Union (UCU) confirmed on 25 January that relevant staff would be taking further strike action on 18 days between February and March 2023. We have previously issued guidance to providers about our expectations in these circumstances and we will monitor the impact of this latest action on students, through our notifications system and other regulatory intelligence that we gather. [Exempt from publication](#).

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.

48. On 26 January, we [published](#) the report from Shift Learning based on interviews with accountable officers, a summary of which we shared at the last board meeting. I have written a [blog](#) setting out our response to the report and the actions we plan to take to refresh our engagement with providers. We are now developing more detailed plans for regular opportunities to meet vice-chancellors and other senior staff, and a schedule of visits to providers. We will extend invitations to these visits to board members.

Efficient and Effective OfS

Designated bodies

49. On 26 January we published a [summary](#) of the triennial report to the Secretary of State on the performance of QAA as the designated quality body. We had previously provided the QAA with a copy of the final triennial report that we had submitted to the Secretary of State and informed the QAA of our intention to publish a summary of the report. Following careful consideration of the QAA's representations in relation to publication, including the possible impact of publication

on the QAA, we concluded that there was a strong public interest in the performance of assessment functions by the QAA because the QAA's performance has affected the OfS's regulatory activity in the past four years. We therefore took the view that the sector, including higher education providers, students, and taxpayers deserved to have information about these matters.

Public bodies review

50. We are expecting a routine 'public bodies review' to be conducted in 2023-24. These reviews are conducted by the government department responsible for overseeing the relevant public body. We expect to engage closely with DfE during this process and will update the board further on the review's scope as this develops.

Industrial action

51. The Public and Commercial Services (PCS) union balloted its members nationally for strike action, following an ongoing dispute in relation to pay, pensions, job security and redundancy terms. Of the 214 organisations balloted, 126 voted in favour of strike action, including the OfS. The PCS has now written to confirm that it will ask OfS members to take strike action on Wednesday 1 February 2023. We understand that all organisations that voted in favour of strike action will be taking strike action on this date. We will update the board at its meeting on any further developments.

Regular risk report

52. The regular risk report is attached in Annex A of this paper, for the board's information. The board should note:

- a. The ongoing volatile external environment, which is driving some of our medium and high risks scores.
- b. We are currently undertaking our annual internal audit of risk management, which will report to the Risk and Audit Committee (RAC) at its meeting on 23 February.
- c. We are currently undertaking a risk assurance mapping exercise, which will be shared with the RAC at its meeting on 23 February for its input.
- d. We will undertake the annual review of our strategic risks and bring that to the July 2023 board meeting.

Governance framework

53. The framework agreement between the OfS and the DfE has been refreshed and published. The document sets out the broad governance framework within which we agree to operate. It includes the OfS's main responsibilities, describes the governance and accountability framework that applies, and sets out how the day-to-day relationship works in practice. The document does not impose any legal powers or duties on the OfS.