



Minutes of the OfS Board meeting, 29 May 2018

Location: Finlaison House, London

Timings: 14.00-17.00

- Present members:
- Sir Michael Barber (Chair)
 - Martin Coleman (Deputy chair)
 - Ruth Carlson
 - Nicola Dandridge (Chief executive)
 - Gurpreet Dehal
 - Elisabeth Fagan
 - Katja Hall
 - Kate Lander
 - Chris Millward (Director for fair access and participation)
 - David Palfreyman
 - Monisha Shah
 - Steve West
- Observer:
- Ian Coates, Department for Education
- Apologies:
- Simon Levine
- Officers:
- Edward Davison, Head of office: chair and chief executive
 - Josh Fleming, Chief of staff to Sir Michael Barber
 - Yvonne Hawkins, Director of teaching excellence and student experience
 - Susan Lapworth, Director for competition and the register
 - Paula McLeod, Governance adviser
 - Richard Puttock, Head of data, foresight and analysis
 - Conor Ryan, Director of external relations
 - Nolan Smith, Director of resources, finance and transformation

Shaded sections exempt from publication

Chair's welcome

1. The Chair welcomed Conor Ryan, OfS's new Director of external relations and Ian Coates from the DfE who was attending in place of Philippa Lloyd. He noted that Simon Levine had sent his apologies.
2. Members were advised that Carl Lygo had tendered his resignation from the board. He had taken on a new job and felt that the resulting increased workload would not give him sufficient time to devote to OfS duties.
3. The Chair and the board passed on their thanks to the Executive team for the smooth way the transition from HEFCE/OFFA to OfS had happened in April.
4. The Chair reported that he had visited a number of providers since the last board meeting and would continue to do so to provide reassurance to the sector about the OfS and its work. Overall, he had received positive feedback on the registration process.
5. The Chair and Chief executive had met with both the Secretary of State and the Universities Minister, to discuss the OfS and its work. They had also met with Philip Augar, the lead on the Post-18 funding review and offered support and data from OfS as necessary.
6. An agenda for the board's off-site meeting in September is being developed. This will include considering proposals for a horizon scanning committee as well as the outcomes of discussions on board effectiveness, and the Chair advised he would be initiating some independent work on this shortly.
7. 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 March minutes (paper 2.1)

8. The minutes of the meeting held on 26 March 2018 were approved.

Student panel report (paper 3.1)

9. Ruth Carlson introduced the report from the Student panel, including the minutes of its meeting held on 24 April 2018. In order to manage the workload in this transition year, she noted that two sub-panels had been established.
10. The board received the report.

Implementing the OfS strategy (paper 4.1)

11. The Chief executive introduced the paper updating the board on the OfS strategy, setting out what has been done to date and what work still needs to be done. She advised that PA Consulting are helping the Executive with the organisational design and creating a structure that is fit for purpose. This is expected to be operational by September. Alongside this, a transformation programme is in place to create a new culture for the OfS. This is being led by the Director of resources, finance and transformation and staff are being invited to fully engage in all four strands of the programme.
12. The board recognised that these were vital pieces of work and it was important for staff to have clarity and confidence in the new organisation. The Chief executive noted that she would welcome the involvement of board members in the programme, particularly the 'values and behaviours' strand.
13. As a new organisation and as a regulator, the OfS needed to create an identity. The board were asked to consider the proposed identity principles set out in the paper.
14. The following points were raised in discussion:
 - i. Understanding the OfS's role in relation to Government needed to be clearer. Whilst it had to maintain and demonstrate a level of independence, the OfS was still accountable to DfE for the public funding it received and was required to have regard to any guidance issued to it by the Secretary of State.
 - ii. It was important for the OfS to help the sector understand how it is different from its predecessor bodies, particularly as its funding function is part of a broader regulatory remit.
 - iii. The principles need to make it clear that OfS does not create the market. It is there to regulate the sector in the market. It also needs to recognise that there are a number of markets in higher education, including in research.
 - iv. There should be a clear link to the student engagement strategy.
15. The Chief executive thanked the board for their comments. These, along with comments received from staff, would be used to finesse the principles. A revised version would be brought back to a future board meeting for further discussion.

OfS key performance measures (paper 5.1)

16. The Chair introduced the paper setting out thinking to date on key performance measures for the OfS and asked the board to comment on the rationale for setting the KPMs and what they would see as success.

Shaded sections exempt from publication

17. The following points were raised in discussion:
- i. Short-term operational measures are required alongside the sector level outcomes.
 - ii. Metrics would be more meaningful if put in context with some additional narrative.
 - iii. There needs to be consistency within and across each of the measures.
 - iv. Thought needs to be given to the behaviours OfS is trying to influence and the outcomes it is trying to achieve whilst avoiding any unintended consequences.
 - v. It needs to be clear when the data will be available and how reliable it is. Also, what will be the frequency of reporting?
18. The Chair advised further work would be done on the KPMs taking into account the board's comments and an updated paper brought back to the board in July for approval.

OfS role as a sector regulator (paper 6.1)

19. The Director of teaching excellence and student experience introduced the paper exploring how the OfS will carry out its regulatory role at sector-level. She was using a case study on student welfare and safeguarding to show how the OfS could perform its functions under the regulatory framework whilst still having regard to the need to protect institutional autonomy.
20. The following points were raised in discussion:
- i. The case study highlighted a complex issue which required multi-agency working and Government support. If OfS did not take the lead on this it would be difficult to understand who else would.
 - ii. The approach needs to recognise that students all need different levels of support. The variation in size of providers will also impact on what they want or are able to do.
 - iii. Whilst there needs to be a clear framework in which OfS operates at sector-level, a different approach may be required for each issue the OfS is involved with. It is about providing the OfS with the ability to influence providers, Government or others and adding value and distinctiveness.
21. The board:
- i. Endorsed the approach set out for this aspect of the OfS's sector level activity.
 - ii. Agreed on the case study sets out an appropriate approach for OfS to perform its functions at sector level.

Shaded sections exempt from publication

Ensuring freedom of speech (paper 7.1)

22. In introducing this item, the Chair stressed that this was an important issue for OfS and one of public concern.

23. The Director of teaching excellence and student experience introduced the paper setting out the current context for free speech in the higher education sector and proposals for how the OfS will exercise its functions in this area. The paper also included findings from the recently published investigation into free speech at universities by the Joint Committee on Human Rights (JCHR). This had identified an underlying concern that whilst there isn't a widespread problem, there are instances of self-censorship and freedom of speech being suppressed.

24. The following points were raised in discussion:
 - i. There have been some questions raised in relation to Students' Unions. This is not an area in which the OfS has any regulatory remit.
 - ii. HEFCE's work on Prevent monitoring had not found any evidence of an event being cancelled.
 - iii. The Minister has an interest in the broader issue of deviation of views not being allowed in all universities and he is encouraging a debate in the sector about this.
 - iv. It was agreed OfS could use its position in the sector to gather evidence to gain a better understanding of the issues and the extent of any problems.

25. The board:
 - i. Discussed the OfS's proposed approach to working with others across the sector in championing freedom of speech within the law.
 - ii. Noted the proposed approach to communications activity until year end 2018.

The Prevent duty (paper 8.1)

26. In introducing this item, the Chair advised the board that this represents a strengthening and further targeting of previous approaches in order to focus more sharply on areas of increased risk.

27. The Director of teaching excellence and student experience updated the board on the OfS's role as monitor of the Prevent duty. She noted that the sector is largely compliant and takes its responsibilities very seriously. In proposing a more risk-based and targeted approach to future monitoring, she advised base line data will still be required and at a more granular level. Resources will be

Shaded sections exempt from publication

concentrated on those providers where there are concerns, and will allow better engagement with DfE, Home Office and other relevant parties.

28. In response to a question from a member, the Director advised that every governing body will still be required to confirm that it has assured itself that it has fulfilled its obligations under the Prevent duty.

29. The board:

- i. Agreed on the principles and proposals for moving towards a more risk-based approach to monitoring of the Prevent duty.
- ii. Noted the compliance outcome decisions taken by the Chief executive for the 2016-17 annual reporting cycle.

OfS and the Industrial Strategy (paper 9.1)

30. The Director of fair access and participation introduced a paper seeking the board's views on how the OfS should engage with the Government's Industrial Strategy, and in particular the section of the strategy that is focussed on People, which is most relevant to the OfS's own strategy.

31. The following points were raised in discussion:

- i. LEPs are forming their own local industrial strategies. We need to understand how universities will engage at the regional and national level.
- ii. It needs to be clear where the role of the OfS is to inform the strategy and where it is expected to deliver it.
- iii. The link between students and industry made possible by work experience is crucial for students to form relationships and develop their skills.
- iv. Degree apprenticeships have the potential to anchor partnerships between universities, students and employers locally and nationally.
- v. Whilst the focus on STEM is important, not all students are involved in these subjects but still make a valuable contribution to the nation's productivity and prosperity. The supply of healthcare professionals will be an underpinning requirement for a successful economy.
- vi. It would be important for OfS to identify a small number of priority areas where it could add value for students, providers, industry and government.

32. In summing up the points raised, the Director highlighted four key priorities:

- i. Embedding employer insights and career destinations within the OfS's strategy for information, advice and guidance for students.

Shaded sections exempt from publication

- ii. Unlocking the potential of degree apprenticeships by addressing barriers to their delivery by providers and employers and their take-up by students.
- iii. Promoting work experience for students from all backgrounds.
- iv. Gathering and acting on robust evidence on higher level skills gaps and opportunities, now and into the future.

33. The board:

- i. Noted the priorities within the government's Industrial Strategy and how the OfS strategy and regulatory framework intersects with this.
- ii. Advised on the proposals for how OfS should conduct analysis to understand skills gaps and the future needs of the economy.
- iii. Advised on ways in which OfS should engage with the Industrial Strategy.

Innovation Challenge Fund (paper 10.1)

34. The Director of teaching excellence and student experience introduced a paper setting out proposals for the implementation and operation of the new Innovation Challenge Fund. She advised that this is a discretionary fund to address gaps in the market and market weaknesses, including any demands arising for the OfS's engagement with the Industrial Strategy. The purpose for any funding needs to be clear and not open to suggestion of anti-competitive behaviour, and deliver benefits for a broad range of students at sector level.

35. The following points were made in discussion:

- i. The board were in general agreement that a fund which encourages innovation was a good way for the OfS to add value to the sector as a whole.
- ii. The fund should be flexible and encourage creativity while accepting this adds an element of risk. There are lessons to be learnt from failure.
- iii. Thought will need to be given to the role and make up of expert panels to help the fund deliver innovation.
- iv. Collaboration and sharing of good practice will be important for the sector.
- v. There is best practice in how to run competitions of this nature successfully and this needed to be drawn on in designing this competition.

36. It was agreed that proposals for the Fund would be developed further, reflecting on the comments made by the board, and a revised paper brought to the July meeting along with a specification for the first call to the Fund.

Shaded sections exempt from publication

Conflicts of interest (paper 11.1)

37. The Director of resources, finance and transformation presented a paper seeking the board's views on how potential conflicts of interest might be managed, with a view to producing guidance and protocols to deal with future potential, actual or perceived conflicts.
38. The following points were raised in discussion:
- i. This was a particularly sensitive issue given the regulatory and funding decisions the OfS will be making and would need to be managed carefully.
 - ii. Guidance was needed on how and when to declare work outside of OfS that involved providers, some of which may be commercially sensitive and which may or may not come to fruition. More work on case studies would be helpful to enable members to work through potential scenarios.
 - iii. A system needs to be available which makes it easy for a board member to declare any potential conflicts of interests and, if appropriate, for that information to be held confidentially.
 - iv. The Committee on Standards in Public Life had done some work on ethics in regulators which could be useful in helping the board understand how it should approach conflicts of interest.
 - v. OfS staff may also need greater clarity on how to deal with potential conflicts, particularly in relation to gifts and hospitality. Civil Service guidance would be a useful reference point.
39. It was agreed to recirculate the existing guidance on conflicts of interest and guidance on gifts and hospitality which forms part of the OfS's approach to corporate governance. More specific guidance would be required before regulatory decisions are made.
40. A revised paper will come back to the July board.

Chief executive's report (paper 12.1)

41. The Chief executive presented her paper which provided an update on work undertaken and issues that have arisen since the date of the last board meeting on 26 March 2018. She highlighted the following issues:
- i. Exempt from publication.
 - ii. TEF year 2 announcements will be made next week.
 - iii. For 2018/19 the accounts direction to providers will include detail of how the pay of vice chancellors and senior staff should be reflected in accounts. A copy of the accounts direction document will be circulated to board members before it is published next month.
 - iv. Exempt from publication.

Shaded sections exempt from publication

42. The board:

- i. Noted the updates contained in the paper.
- ii. Agreed the amendments suggested to the OfS Scheme of Delegation and the terms of reference for the: Quality assessment committee, Provider risk committee and Risk and audit committee.
- iii. Exempt from publication.

Report of the Provider risk committee (paper 13.1)

43. The Chair of Provider risk committee updated the board on the outcomes of the meeting held on 8 May 2018. He advised that work is continuing on the initial registration process

44. The board received the report.

Report of the Risk and audit committee (paper 14.1)

45. The Chair of the Risk and audit committee updated the board on the outcomes of the meeting held on 30 April 2018. She commented that:

- i. The HEFCE accounts have now been published.
- ii. The committee met in closed session firstly to discuss the audit process with the NAO and then to consider future internal audit arrangements.
- iii. A process for recruiting independent members to the committee is currently underway.

46. The board received the report.

Any other business

47. The Director of resources, finance and transformation confirmed that transparency data would shortly be published on the OfS website. If there were any anomalies he would bring this to the attention of the board.

The chair thanked the board for their contributions to the discussions and to the Executive and officers for their work on the papers.

The meeting finished at 16.57.