

**Draft minutes of the OfS Board meeting, 6 December 2018**

**Location: Finlaison House, London**

**Timings: 13.30-16.30**

- Present members:
- Sir Michael Barber (chair)
  - Martin Coleman (deputy chair)
  - Nicola Dandridge (chief executive)
  - Gurpreet Dehal
  - Elizabeth Fagan
  - Katja Hall
  - Kate Lander
  - Simon Levine
  - Martha Longdon
  - Chris Millward (Director for Fair Access and Participation)
  - David Palfreyman
  - Monisha Shah
  - Steve West
- Observer:
- Ruth Carlson
  - Ian Coates, Department for Education representative
- Apologies:
- None
- Officers:
- Ed 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
  - Paul Huffer, Head of Legal
  - Susan Lapworth, Director of Competition and Registration
  - 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
  - Ben Whitestone, Head of Governance

**Chair's welcome**

1. In opening the meeting, the chair thanked Ruth Carlson for the great contribution she had made as a full and active member of the OfS board and as a member of the student panel, and he was pleased to note that she would be continuing her excellent work on the panel. In response, Ruth thanked the OfS board for everything they had achieved and reminded them, in carrying out its work, it was important not to underestimate the voice of an ordinary student.
2. The chair welcomed Ian Coates from the DfE and also Martha Longdon, the new student representative on the board, who was attending her first meeting.
3. The chair updated members on his recent conversation with the Permanent Secretary at the DfE regarding recognising and dealing with potential board members' conflicts of interest. The Permanent Secretary agreed it was right to have erred on the side of caution for the case that had recently come to the board and, if that specific case came back again, the same approach would be taken. In future, he confirmed it would be for the chair to determine on a case by case basis if any individual members or groups of members were conflicted whilst balancing the benefits members bring with their knowledge and experience.
4. He had also had discussions with the Permanent Secretary regarding the Review of Post-18 Education and Funding. The DfE representative confirmed that following the report from the review panel there would be a Government response, with a clearer picture emerging later in 2019. Implementation of recommendations would be dependent on the outcomes of the Spending Review.
5. The chair noted that Chris Skidmore had just been appointed as the new universities Minister and he was planning an early meeting with him. He and the chief executive had met with the Secretary of State to update him on the registration process and he would be speaking with him shortly regarding the proposed appointments to the OfS board.
6. The chair advised that the chief executive and fellow directors had been working hard to build good relationships with the Education and Skills Funding Agency (ESFA) in relation to further education colleges providing higher education. This would help facilitate the OfS's work in this part of the sector.
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 September minutes (paper 2.1)**

8. The minutes of the meeting held on 26 September 2018 were approved with some minor amendments.

9. The board noted the tabled correspondence from the DfE in response to the chair's letter on the issue of the Teachers' Pension Scheme discussed at the last meeting.

#### **Report from the Student Panel (oral)**

10. Martha Longdon reported on the outcomes of the student panel held on 4 December 2018. She advised that the panel had expressed a desire to work more closely with the board and to facilitate greater feedback between both groups. She would bring some proposals back to the board on how this might be actioned.

#### **Access and participation reforms (paper 4.1)**

11. The Director for Fair Access and Participation introduced the paper on a new outcomes-based approach to regulating access and participation. He noted that the proposals for change were on the basis of 4 strands:
  - i. Reforming access and participation plans, and with an approach that is more outcome and risk based across a longer period of time.
  - ii. Continuing investment in collaborative outreach but with reform so it better complements the OfS's regulatory role and provides more effective networks for schools and teachers.
  - iii. Stronger pressure on and support for providers for the use of evidence and evaluation.
  - iv. Establishing KPMs for the OfS which are intended to set the sector on a trajectory to secure equality of access over a generation and remove unexplained gaps in continuation and attainment during the next five year period for the access and participation plans.
  
12. In noting the board's support for the proposals, the following points were made in discussion:
  - i. The Director for Fair Access and Participation confirmed that responses to the OfS's consultation indicated there was widespread support for this new approach and that the shift from annual plans should enable providers to be more ambitious in their access and participation activity.
  - ii. The board was supportive of the move to a longer cycle, whilst noting the importance of tracking trajectories. It was also suggested that there should be a review date for the KPM relating to the elimination of the gap in entry to enable progress to be assessed.
  - iii. These changes would make providers across the sector recruit more equally so, as a result, there was likely to be some rebalancing of students between them. However, it was important to avoid any unintended consequences, such as increasing provision in any provider which may not be viable.

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- iv. Positive action will be required to address the gaps in access and participation for BAME students

13. The board:

- i. Noted the outcomes of the consultation on access and participation.
- ii. Advised on the proposed changes to the regulation of individual higher education providers through access and participation plans so that OfS's regulation is more outcomes-focused and risk-based.
- iii. Noted that the final regulatory guidance on reformed access and participation plans will be approved by the Director for Fair Access and Participation.
- iv. Agreed in principle to set aside £60 million per year in the 2019-20 and 2020-21 academic years to support collaboration between higher education providers and with schools and colleges through a reformed second phase of the National Collaborative Outreach Programme (NCOP).
- v. Noted the Evidence and Impact strategy that has been developed to underpin the OfS's access and participation work.
- vi. Advised on the key performance measures suggested for access and participation work.
- vii. Advised on how OfS should seek to influence and negotiate with providers on their access and participation plan targets.

**Unconditional offers (paper 5.1)**

14. The Director for Fair Access and Participation introduced the paper considering the issue of unconditional offer making. He noted that although the Secretary of State had asked the OfS to investigate the issue, OfS itself had an interest in this from the perspective of its regulatory objectives and ensuring that the admissions system operates in the interests of students.

15. Data analysis conducted within OfS indicated:

- i. A dramatic increase in the volume of unconditional offers.
- ii. Students reporting that unconditional offers affect their choice when they are conditional on firm acceptance.
- iii. More unconditional offers are being made to students from low participation groups, but this is due to the providers making high numbers of such offers.
- iv. Some impact on A-level attainment.
- v. Differential impact on non-continuation between A-level and BTEC entrants.

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16. The following points were raised in discussion:

- i. Unconditional offers were only one aspect of concern within the admissions system. Predicted grades and published tariff points also warranted further investigation.
- ii. The board was particularly concerned about those unconditional offers being made with “conditions”, i.e. placing time limits on the offer and pressurising students to make decisions before they have had the opportunity to consider what might be available from other providers. It was suggested that OfS should particularly challenge this practice, involving the Competition and Markets Authority if necessary.
- iii. There are positive reasons for unconditional offers in some circumstances, for example in recognition of prior achievement or to address health and wellbeing concerns.
- iv. It would be helpful to establish clear criteria for the use of unconditional offers, noting that there was nothing within the law to prevent providers from issuing unconditional offers.
- v. More data analysis, extending throughout the student lifecycle, would be needed in order to determine the extent of any concerns sector-wide and in relation to particular providers.
- vi. Data on the International Baccalaureate should be taken into account when looking at entrance qualifications, recognising that numbers of students holding this qualification were likely to be small.
- vii. OfS will issue an insight brief on this topic, measured in tone, delivering messages that are factual and evidenced.

17. The board:

- i. Considered the analysis of the current position in relation to unconditional offer making.
- ii. Agreed that the OfS should take action in this area as a priority for the beginning of 2019. It agreed that it should specifically:
  - i. Publish the evidence and insights from our data analysis through an insight brief at the beginning of January 2019, which would also set out the actions the board intends to take.
  - ii. Identify the circumstances in which unconditional offers will and will not be in the best interests of students.
  - iii. Secure access to regulatory data that allows us to identify students who received unconditional offers, and to track their outcomes.
  - iv. Publicise our intention to use this within the monitoring of our regulatory conditions, taking action where needed.
  - v. Work with other information advice and guidance providers to signpost to students the factors they should consider before accepting an unconditional offer.

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- vi. Engage with government, UCAS and sector bodies on the development of a consultation into how effectively the admissions system is working in the interests of students and the options for improvements.

### **Promoting value for money in HE (paper 6.1)**

18. The Director for Teaching Excellence and Student Experience introduced the paper setting out the OfS's developing approach to defining and promoting value for money for current and future higher education students, taxpayers and the economy. She commented that:

- i. Although value for money is very personal and specific to individual students and will vary over time, the evidence shows that driving greater transparency and the quality of information they receive is a key factor. This would help students to have clearer and better informed expectations of what they should receive from their course and overall experience of higher education.
- ii. The OfS has the tools to act at provider and sector level and is already focussing on quality outcomes and social mobility. However, more could be done and it is expected this will be clearer once the registration process is complete. The OfS will also be able to draw on its horizon scanning work to see where value for money activity can be promoted.

19. The following points were raised in discussion:

- i. Transparency was key and helps understanding of what the issues are. Communication with students and encouraging engagement are also important.
- ii. There are marginal gains in value for money. It may be that not one thing will make a big difference but a lot of small changes could have a significant impact on improving this.
- iii. It might have been helpful to have had the 5 points raised explicitly at the student panel set out more clearly in the paper.
- iv. There was some value in using the Longitudinal Educational Outcomes (LEO) data in this work but it needed to be recognised that there is a social value piece which might be missed.
- v. Whilst recognising the OfS has a limited locus in this area, student accommodation costs should not be ignored as they do impact on access and participation.

20. The board:

- i. Considered and acknowledged that an appropriate balance has been proposed between a focus on inputs and outcomes in order to promote value for money.

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- ii. Noted the key performance measures (KPMs) that are under development to monitor progress.
- iii. Agreed the proposed actions the OfS can take to underpin a set of market conditions that will drive value for money at the sector level, and advised on priorities.

#### **Student protection and market exit (paper 7.1)**

- 21. Exempt from publication.
- 22. Exempt from publication.
- 23. Exempt from publication.
- 24. Exempt from publication.
- 25. Exempt from publication.

#### **Treatment of Heythrop College's Exchequer interest balance (paper 8.1)**

- 26. The Director of Resources, Finance and Transformation introduced the paper with a proposal for the treatment of Heythrop College's outstanding Exchequer interest balance.
- 27. The board agreed that repayment of this should be sought, at (or just before) the point of the College's closure in January 2019.

#### **Analysis of the review of board effectiveness at OfS (paper 9.1)**

- 28. The deputy chair introduced the paper on the outcomes of the recent survey carried out to seek the views of members on the effectiveness of the OfS board. He commented that:
  - i. The OfS board was developing a positive change in culture but there was still more work to do and some of the responses recognised that this is still a board in the early stages of evolution.
  - ii. The board carries a high level of responsibility and it should test itself accordingly.
  - iii. Where the response to the survey was 'neither agree nor disagree' it should not be assumed this is positive.
- 29. Taking into account the survey outcomes, he suggested the following as areas for improvement or development:
  - i. The number and length of meetings may not be sufficient for the range and level of work the board is engaging in.
  - ii. The chief executive's report should be at the start of the meeting.
  - iii. There should be a substantive paper on organisational performance at least twice a year looking at progress with KPIs.

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- iv. Board papers should be shorter with the operative part in no more than 4 pages. Further information could be provided in annexes.
- v. At least one meeting a year should be held in Bristol. This would give the board the opportunity to engage with staff and with wider stakeholders.
- vi. There should be one meeting a year without the executives present and also one a year without the chair.

30. The following points were raised in discussion:

- i. Papers needed to be clearer about the decisions being sought from the board, recognising that there was not always the time for open-ended discussions.
- ii. Discursive papers could be better dealt with through presentations.
- iii. Where no discussion is required, papers could be provided for the board 'to note'.
- iv. Longer or more meetings could create an opportunity for the board to get to know one another better.

31. The chair:

- i. Asked the executive to take these points away and bring some proposals back to him and the deputy chair.
- ii. Thanked the executive for all they had done in helping to create the OfS.

### **Chief executive's report (paper 10.1)**

32. 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 September 2018. She highlighted the following issues:

- i. The pace of decision making in the registration process has been slower than anticipated as a result of the complexities of HERA.
- ii. The British Board of Deputies has asked the OfS to adopt the International Holocaust Remembrance Alliance definition of antisemitism. With support and advice from members of the board, the proposal was to separate out the OfS's policy response from its regulatory response, given the importance of promoting the widest definition of free speech.
- iii. There has been no significant reduction in headcount at OfS compared to HEFCE/OFFA. The figures in the paper did not take into account the numbers of staff that transferred to Research England.
- iv. The organisational restructure is largely complete and she thanked the executive for making this happen. Some vacancies have been created as a result which are being recruited to externally.
- v. She would report back on the outcomes of the recent business continuity exercise at the Risk and Audit Committee meeting next week.



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33. The board:

- i. Noted the updates contained in the paper.
- ii. Discussed and agreed the definition of antisemitism as set out in the paper.
- iii. Approved the suggested amendment to the terms of reference for the Risk and Audit Committee.
- iv. Approved the proposed changes to the scheme of delegation.
- v. Noted the actions taken under delegated authority.

**Period 7 Finance report (paper 11.1)**

34. The Director of Resources, Finance and Transformation introduced the paper providing the board with an update on the OfS's financial position for the seven month period ended 31 October 2018 and forecast expenditure for the full financial year.

35. The board noted the year to date and forecast position on OfS's administration costs and on programme expenditure.

**Report from the Quality Assessment Committee (paper 12.1)**

36. The chair of the Quality Assessment Committee gave an oral update on the outcomes of the meeting held on 8 October 2018. He reported that:

- i. Work was underway to develop an effective working relationship with the QAA. This includes inviting QAA officers to QAC meetings to discuss topics of shared concern. The first such engagement would focus in the composition and operation of the QAA's pool of reviewers.
- ii. Officers are also discussing a range of operational and delivery issues with the QAA.
- iii. As the designated quality body, the work of the QAA needs to be aligned with the approach of the OfS's regulatory approach.

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

**Chair's note**

38. Before leaving the meeting at 16.15, the chair noted the next meeting of the board would be on 28 January 2019. He also advised he would be visiting staff in Bristol on 18 December.

**Report from the Provider Risk Committee (paper 13.1)**

39. Exempt from publication.

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

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**Report from the Risk and Audit Committee (paper 14.1)**

41. The chair of the Risk and Audit Committee had given an oral update on the outcomes of the meeting held on 19 September 2018 at the last board meeting. She noted that at its meeting next week, the Committee would be considering internal audit procurement and finalising the OfS's approach to risk.
  
42. The board received the written report from the Risk and Audit Committee without discussion.

The meeting concluded at 16.25.