



Draft minutes of the OfS Board meeting, 21 May 2020

Location: by video or telephone conference

Timings: 13.30-17.00

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

Chair's welcome

1. The chair welcomed members to the meeting and noted that no apologies had been received.
2. The chair advised he has had a number of calls with the Secretary of State and has discussed possible measures to deal with issues of financial sustainability in the sector. There are also regular meetings with the Minister and with the Permanent Secretary at DfE.
3. He was also in touch with colleagues at the Treasury to discuss the financial impact of coronavirus (COVID-19) on the sector.
4. The chair noted that he and the chief executive had spoken at the Education Select Committee. They had updated the committee on the work OfS is undertaking to monitor the quality of digital teaching and learning, an issue on which he would be seeking the board's views later in the meeting. The committee had also considered what advice could be given to the sector to help providers phase out of the lockdown.
5. He commented that although the government's package of measures available to the sector in response to the coronavirus pandemic is not new money, it has enabled existing money to be paid earlier and given providers access to government loan schemes. Work is underway to establish the policy criteria for resource and support, run through DfE, that might be available to support individual providers faced with exceptional financial difficulties. Decisions may need to be made on a case by case basis and with clear conditions applied. A joint ministerial committee looking at what can be done in relation to research funding has also been established.
6. 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 and April minutes (paper 2.1)

7. The minutes of the board meeting held on 16 March 2020 and the exceptional board meeting held on 9 April 2020 were approved in principle subject to some final amendments being agreed with the chair.

Chief executive's report (paper 3.1)

8. The 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 16 March 2020. The following issues were highlighted:
 - a. As a result of coronavirus, we suspended most of our current regulatory interventions. This included responding to the outcomes of any quality and standards reviews conducted by the QAA (the DQB), or commissioning new reviews. We are still actively engaging with the QAA on a range of matters and it was noted that the risk register would be updated to better reflect the current position.
 - b. There was no confirmed date for the Independent Review of the TEF and the government response to be published. This will be considered within the wider environment arising from coronavirus.
 - c. Any intervention to support the expansion of nursing training would be conducted in autumn 2020, with the aim of supporting admissions through to 2025. Providers

seeking support would need to demonstrate the innovative approaches needed to secure growth, taking into account the circumstances for delivery over this time.

9. The Head of Legal updated the board on changes proposed to the scheme of delegation set out in Annex B of the paper and explained that these were all intended to be clarificatory in nature.
10. The board:
 - a. Noted the updates contained in the report.
 - b. Agreed with the rationale for making clarificatory changes and approved the changes to the scheme of delegation proposed in Annex B of the paper.
 - c. Agreed that there should be a full review of the scheme of delegation at the September 2020 board meeting.

Coronavirus (COVID-19) response (paper 4.1)

11. The chair put on record his thanks to the chief executive and her team for their remarkable management of the implications for the higher education sector of the coronavirus crisis and for all the work that has been done by OfS staff in difficult circumstances.
12. The chief executive updated the board on our regulatory response to coronavirus since the date of the last board meeting on 9 April 2020. She noted that this covers 5 areas:
 - a. Admissions and the proposed new condition of registration.
 - b. Government support package.
 - c. Finance and government loan schemes
 - d. Student protection.
 - e. Transition arrangements.
13. In relation to the proposed new condition of registration, currently subject to consultation, she advised that:
 - a. The proposal is for the condition to be time-limited.
 - b. The board will be asked to provide views on the consultation responses and possible policy responses to these, with the final decision relating to the proposed condition to be made by the chair, deputy chair, chief executive and director of competition and registration (or by as many of them have capacity in the event of ill-health).
14. In relation to the government package set out in paragraph 15 of the paper she advised that:
 - a. There are two initiatives in place – a restructuring regime and a joint ministerial working group on research.
 - b. Reprofitting of payments from the Student Loans Company means that providers can expect to receive the first two payments (50% of the total) in October 2020.
15. In relation to finance and government loan schemes the Director of Resources, Finance and Transformation advised:
 - a. Our approach to monitoring the financial position of the providers is being continuously refined based on modelling and ongoing discussions with providers. Although all providers are experiencing significant financial pressures, there is less concern over the short-term position with many providers accessing support through government schemes or banks. The longer-term position remains more uncertain.

- b. There have been delays in providers being able to access the Covid-19 Corporate Finance Facility (CCFF) administered by the Bank of England but discussions are underway within government to manage this.
16. In relation to student protection during the pandemic the chief executive advised:
 - a. We have set out to providers our current expectations on teaching and learning provision and this is subject to ongoing monitoring.
 - b. We are providing advice to students on the OfS website and through signposting to other sources of information.
 - c. We are liaising closely with providers regarding their arrangements for teaching and assessment, making sure they understand our expectations.
 - d. We are receiving notifications from students and third parties and following up where appropriate.
 - e. Although outreach activities with schools have ceased, we have issued further advice through Uni Connect on alternative modes of delivery to reach those thinking of higher education.
17. In addition, the Director of Competition and Registration advised that the existing model of engagement with providers was switched at the start of the coronavirus outbreak. This involved having one to one contact with Accountable Officers to better understand the financial impacts on their institution. We are now looking to increase our contact and engage with a wider range of senior staff, specifically to consider learning and teaching issues and to test whether these arrangements are sufficient for students, particularly those we have identified as vulnerable.
18. The Director for Fair Access and Participation noted that:
 - a. The outbreak is having a differential impact on students; evidence suggests that the most disadvantaged students fall behind when they are away from schools and similar patterns might be expected in HE.
 - b. Our guidance to providers has made it clear that we have particular expectations for those students deemed to be the most vulnerable, including those who may have difficulty accessing remote learning for any reason. As the Director of Competition and Registration has advised, we will be monitoring providers on this and look at ways to pick up any specific insights from students.
 - c. In relation to access and participation plans since the start of the coronavirus pandemic, the focus has been on securing financial commitments to the most vulnerable students, including by enabling funds to be moved towards hardship from other activities, together with working with outreach partnerships to ensure that online outreach is based on rigorous and tested approaches.
 - d. We have been publishing briefings on support for different groups of students most affected by the outbreak, but our focus will from next month shift towards working with providers to get their access and participation plans back on track and fulfilling the original commitments.
19. The following points were raised in discussion:
 - a. There was agreement that the OfS should explore what more should be done to gain a clearer understanding of what is happening across teaching and learning in the sector now, especially for vulnerable students, and that it was important to keep a clear focus on access and participation targets for the coming years.
 - b. There are questions about what acceptable (and unacceptable) quality of teaching and learning looks like in the context of the impact of coronavirus and how this might be tailored to work for the wider student population. This was important to inform student decision making. Under current regulatory arrangements, all

- providers are expected to maintain a baseline level of quality and there are likely to be regulatory consequences where this is not met.
- c. Teaching needs to extend beyond assessments and final exams to employability characteristics and other sorts of skills.
 - d. Given the pause in teaching for most A-level students, it was important that providers take action to ensure these students can get back into learning quickly at the start of their higher education courses.
 - e. Switching to digital learning brings challenges for providers, particularly for those teaching laboratory and performance based courses. In addition, the student community was diverse and not all students find it easy to engage in online learning.
 - f. The level of digital poverty being experienced by some students should not be underestimated.
 - g. The absence of being part of a physical campus or student community and the support offered by this community also needs to be taken into account as part of the overall student experience.
20. The Chair emphasised that given the priority the Board attached to both the student perspective and access and participation, the quality of teaching and learning, especially for disadvantaged students, had to be a high priority for OfS.
21. In concluding the student protection element of the discussion, the chief executive advised that:
- a. She will consider what more can be delivered which will add value and will bring this back to the board in July.
 - b. Student protection and consumer guidance is due to be published shortly. This will make explicit that providers need to be clear about their offer so that students know what they are signing up to.
22. In relation to the work being done to plan for transition arrangements back to the 'new normal' this autumn, the chief executive advised that:
- a. Internally and in regulatory terms we are looking at what the new normal will be post-coronavirus, including when and how we might return to a more normal pattern of regulatory decision making in a changed external environment.
 - b. We will consider any implications of the pandemic on auditors expressing their opinions on providers as a going concern, and work of external audit, when providers finalise their annual accounts later in the year.
23. In conclusion, the board agreed that it will meet for a special meeting in early June 2020 and, as part of that agenda, it would wish to discuss the themes emerging from the consultation.
24. It also agreed, including as an exception to any matters which are normally reserved to the full board under the published scheme of delegation, the following delegations to the chair, deputy chair, chief executive and director of competition and registration (or by as many of them have capacity in the event of ill-health):
- a. Consider responses made to the consultation on the proposed condition of registration, and other relevant factors.
 - b. In the light of the discussion at the special board meeting, decide whether to impose a new condition of registration and make associated changes to the regulatory framework, and if so, the date on which these should take effect.

- c. Make any drafting changes to the proposed condition and regulatory framework guidance as is considered appropriate as a result of consultation responses and other relevant considerations.
 - d. Agree a summary of consultation responses to be published.
 - e. Agree the equality impact assessment to be published alongside the outcomes of the consultation.
25. The board also noted the summary of the responses to coronavirus of higher education systems around the world.

Annual report to the board from the Risk and Audit Committee 2019/20 (paper 5.1)

26. The chair of the Risk and Audit Committee introduced the Risk and Audit Committee's annual report and formal opinion to the board and to the chief executive as Accounting Officer on the effectiveness of the OfS's control systems. She noted that:
- a. The backward-looking nature of the report means that it does not take account of the effects of coronavirus in any significant way this year.
 - b. The appointment of a new internal audit team has brought a fresh perspective. Their work has shown that OfS has established a strong control environment and where recommendations have been made, these have been taken on board by management.
 - c. The expected clean NAO audit opinion reflects well on the OfS and the team involved in this work.
27. Other board members of the committee endorsed these comments noting that significant progress has been made on risk management during this reporting period and on implementing internal audit recommendations, for example, on improving cyber security arrangements at OfS.
28. The board received the annual report of the Risk and Audit Committee for 2019/20 and its formal opinion on the effectiveness of the OfS's control systems.

OfS annual report and accounts 2019/20 (paper 6.1)

29. The Director of Resources, Finance and Transformation introduced the OfS's annual report and accounts for 2019/20 following final audit by the National Audit Office (NAO), noting that these are due to be given a clean audit opinion. He confirmed that the accounts had been considered and endorsed by the Risk and Audit Committee and the remuneration report similarly by the Remuneration and Nominations Committee. Following sign off by the chief executive, he expected that the accounts would be laid in Parliament in the first week of June 2020.
30. The board:
- a. Reviewed the annual report and accounts for 2019/20, suggesting a minor amendment to the annual report.
 - b. Noted that the NAO are of the opinion that the financial statements show a true and fair view, and have been properly prepared in accordance with the Government Financial Reporting Manual (FReM) 2019-20.
 - c. Approved the accounts and authorised the chief executive and Accounting Officer of the OfS to finalise and sign the OfS's annual report and accounts for 2019/20 on behalf of the board.

Report from the Provider Risk Committee including periodic “focus on” the committee (paper 7.1)

31. The board received the report on the on the outcomes of the Provider Risk Committee's (PRC) most recent meetings held on 30 March and 4 May 2020.
32. The chair of the PRC spoke in more detail about some of the broader themes arising from the work of the PRC. He advised the board that:
 - a. At the outset of the coronavirus pandemic, a decision was made to the effect that, subject to consideration of exceptional circumstances, new applications to register will be suspended due to the challenges of reaching a reliable assessment for condition D and the amount of work and scrutiny involved not being possible to carry out at this time in the context of other OfS priorities. An approach to new and ongoing assessments has been agreed.
 - b. Work to consider applications already in the registration process is coming to an end with decisions still to be made on a number of cases where concerns over their ability to meet the conditions have been identified.
 - c. Moving forward, the focus of the committee will be on monitoring and enforcement, but coronavirus will affect this work as an increasing number of providers are now likely to be in a challenging financial position. There will be a need to ensure we can rely on providers informing us about progress in managing their own financial position.
 - d. In relation to the use of its regulatory powers, OfS is considering whether it should consult on an revised regulatory approach to ensure that a provider at increased risk of market exit could be required to undertake detailed planning to ensure any exit was orderly.
33. In considering the current position of the sector as a result of coronavirus, and uncertainties about costs, student numbers and international students, there was an increased risk of providers exiting the sector. OfS's role will be to ensure this is done in an orderly way with all students protected. The scale of this would be challenging to manage if significant numbers of providers were in this situation.
34. OfS will need to work with DfE on the department's policy for potential government intervention or financial support that is being developed and to be clear about the roles of each organisation. The DfE was likely to be responsible for making decisions on financial support or allocating funding for restructuring. OfS would focus on performing its existing regulatory functions, in particular, in relation to condition D.
35. It was noted that the size of a provider may not be the deciding factor for any government intervention. Its strategic importance covering a number of factors, including geographical importance and the provision on offer, would be likely to be relevant. OfS will need to ensure that whatever the outcome the interests of all students were protected.
36. On behalf of the board, the chair thanked the PRC for all the work it has done to date.

Oral report from the Risk and Audit Committee

37. The chair of the Risk and Audit Committee updated the board on the outcomes of its most recent meeting held on 15 May 2020. She advised that:
 - a. The committee considered the OfS annual report and accounts for 2019/20 audited by the NAO. No issues had been raised by them either before or at the meeting.

- b. The risk report had been discussed but due to the fast-moving nature of the coronavirus situation, the committee felt that more needed to be done to ensure the key risks were kept under regular consideration. They asked to see updated information in advance of their next meeting in September.
- c. The committee recommended that the board should have a full discussion of its key strategic risks and its risk appetite as soon as possible to help support the executive with its decision making during the coronavirus pandemic.

38. The board:

- a. Agreed to hold a discussion on risk at the July meeting.
- b. Received the oral report from the Risk and Audit Committee.

39. Before the chief executive, directors and officers left the meeting, the chair thanked them for all the work they had done during these very challenging weeks and noted that this was hugely appreciated by both himself and the board.

The chief executive, directors and officers left the meeting at 16.07.

Oral report from the Remuneration and Nominations Committee

- 40. The chair of the Remuneration and Nominations Committee updated the board on the outcomes of its most recent meeting held on 19 May 2020.
- 41. A confidential minute of these discussions was taken.

Closing remarks

- 42. In closing the meeting, the chair thanked the board for their contributions and for operating in a strong and cohesive manner.
- 43. The next formal scheduled meeting of the board will be on 2 July 2020, with an additional meeting planned for early June.
- 44. The meeting closed at 16.37.

Outstanding actions arising from current and previous board meetings:

Status update

Exempt from publication.