

Office for Students – board proceedings and code of conduct

Guidance on the Office for Students' board proceedings

Introduction

1. This document sets out the arrangements and standards through which the Office for Students' (OfS) board will conduct its proceedings and carry out its business.

Meetings

2. Board meetings will normally be held at least four times a year. Board meetings are held in private with neither press nor public present.
3. Board meetings will normally be convened well in advance with a minimum of five clear working days' notice. Notice of a meeting shall be given to members in writing. Failure to receive notice of a board meeting will not invalidate that board meeting or any business transacted at that meeting.
4. If required, the chair may convene a special meeting of the board. This may be conducted in any manner which the chair considers appropriate, including by electronic means, in correspondence (including email) or by telephone or video conference, and all members participating shall count as part of the quorum.
5. A special meeting may also be convened in response to a written request to the chair from a minimum of three members specifying the business to be transacted and confirming why it cannot wait until the next ordinary meeting.

Quorum

6. The quorum for board meetings is half the current number of its members (*HERA 2017, schedule 1 (9 (2))*). Should the need arise, members may attend meetings by telephone or video link. Members attending by telephone or video link shall be considered to be present at the meeting. A board member is not counted towards the quorum for an item in respect of which they have a conflict of interest and is not entitled to take a decision.
7. Other attendees, e.g. the Department for Education (DfE) representative or OfS staff, who attend meetings will not form part of the quorum.
8. The names of all members present at a meeting of the board shall be recorded in the minutes of the meeting.
9. If the chair is unavailable to chair the meeting or has declared themselves to have a conflict of interest in relation to any matter, the deputy chair will chair the meeting. If both are unavailable, the members present shall appoint one of their number to take on the role as chair of the meeting.

Decision making

10. Board discussions take place in accordance with the Code of Conduct for members of the OfS. If a member has an interest then they should declare this and the details recorded in the minutes. The member shall leave the meeting for the item in question if they or the chair considers that their interest is so substantive that their continued presence would prejudice the proper conduct of the board's business.
11. Decisions by the board will normally be made by consensus. However, if an individual member has a reservation, then that reservation may, on request, be minuted. Failing consensus, decisions will be made by a vote. In the case of a tied vote, the chair has a casting vote.
12. The chair may determine if any item should be 'reserved business' and involve only board members to discuss this item in 'closed session'.

Minutes

13. The minutes of board meetings are drafted by an OfS officer ("the clerk") and are the formal record of the decisions made by the board at that meeting. The chair will agree the minutes before they are presented to the board for approval at the following meeting.
14. If it is necessary for the board to make any decisions between meetings then a formal electronic record of individual members' approval will be maintained by the clerk. This will be reported in the minutes of the next ordinary meeting of the board.
15. The board is committed to carrying out its work transparently. In doing so, its minutes will be published on the OfS website (subject to any necessary redactions and in line with any appropriate exemptions in the Freedom of Information Act 2000) once formally approved by the board.

Agenda and papers

16. The agenda and papers for board meetings will normally be issued seven days before the meeting. Members will be advised of any instances where a paper will be late. These will be issued as soon as possible before the meeting or tabled at the meeting.
17. The chair and chief executive may ask the clerk to redact or withhold a paper from any person or member if it contains information which, if disclosed, might harm or unfairly disadvantage providers, individuals (including members of staff), contractors or third parties. Confidential papers will be handled in any way necessary to keep the information contained in them secure.

Transparency

18. The OfS attaches considerable importance to being an appropriately open and transparent organisation. It will publish extensive information about what it does and how it operates – all of which is available on its website.
19. A full list of members' interests will also be published on the OfS website.

Code of conduct for members of the Office for Students

Introduction

1. The purpose of this code is to give guidance to board members on their responsibilities and the standards to which they are expected to operate. Relevant sections apply equally to committee members, senior managers and others who contribute to the Office for Students (OfS) at a governance level.
2. This document is published on the OfS website as part of its commitment to openness and accountability and to give confidence to the general public and other stakeholders as to the OfS governance standards.
3. This code is based on current best practice, including in the Civil Service Code, guidance from the Cabinet Office, HM Treasury and the Department for Education (DfE), the OfS's sponsor department.

Public Service Values

4. Board members must at all times:
 - fully adhere to the standards set out in 'The 7 Principles of Public Life'¹
 - ensure the safeguarding of public funds and the proper custody of assets which have been publicly funded, including ensuring the OfS uses resources efficiently, economically and effectively
 - comply with the principles of openness and transparency
 - comply with the procedures set by the board and the OfS regarding remuneration, allowances and expenses
 - adhere to the same governance standards we would expect of registered higher education providers.
5. Board members are encouraged to support the OfS values – ambition, openness, learning and diversity – and use these to guide them in their decision making.

Conduct of members

6. Board members should play a full and active role in the work of the OfS, fulfilling their duties and responsibilities responsibly and, at all time, act in good faith and in the best interests of the OfS.
7. Members should respect the principle of collective decision-making and corporate responsibility. Once the board has made a decision, members should support that decision.

¹ See www.gov.uk/government/publications/the-7-principles-of-public-life

8. In line with the values of the OfS, members should promote an inclusive and diverse culture and their actions should help create an environment where different perspectives and backgrounds are encouraged and valued.
9. Members should deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of their ability. They should not act in a way that unjustifiably favours or discriminates against particular individuals or interests.
10. Members should not harass, bully, act inappropriately or discriminate towards others at the OfS or those involved in its work.
11. Members must comply with any statutory or administrative requirements relating to their post, for example, through accessing any OfS systems for information sharing or for claiming expenses.
12. Members must not use, or attempt to use, the opportunity of public service or their association with the OfS, to promote their personal interests or those of any connected person, firm, business or other organisation.
13. Members must avoid any actions which could embarrass the OfS or risk the organisation being brought into disrepute, including through their political activities or use of social media.
14. The DfE must be informed of any bankruptcy, current police investigation, unspent criminal conviction or disqualification as a company director in advance of a member's appointment, or should any such instances occur during their appointment, including any convictions of a criminal offence or disqualification from being a company director.
15. If members have a concern about a possible breach of this code, or a concern about misconduct or wrongdoing in other areas of the OfS, then they have a responsibility to raise that with the OfS chair or with the Permanent Secretary at the DfE.

Conflicts of interest

16. Board members must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and private interests, financial or otherwise.
17. Board members must comply with the OfS rules on handling conflicts of interest, declaring any private financial or non-financial interests of their own, or of close family members, which may, or may be perceived to, conflict with your public duties. Any changes should be registered with the clerk immediately. Separate guidance is provided within this document on what interests should be registered and how these will be recorded. A full register of board members' interests is published on the OfS website.
18. Members are also expected to declare interests at the start of each meeting or during a meeting if it becomes apparent they should do so.
19. If a member wishes to take up additional employment or appointments then the chair must be informed in advance, giving them the opportunity to comment.

20. Board members and committee members should register with the clerk any personal or business interests which may conflict or be perceived to conflict with their OfS board responsibilities.
21. Further information and guidance on declaring interests and how these will be managed by the OfS is provided in Annex A.

Media and social media

22. Board members should normally speak with one voice in public on matters to do with the OfS. Appearances on television or radio, briefings to journalists, etc., should be undertaken with caution and following advice from the communications team at the OfS.
23. Members of the board should seek advice from the OfS communications team and Head of Governance in advance of any public engagement activity they wish to undertake in their capacity as an OfS board member. Committee members should also exercise discretion in any such activity and may approach the clerk to the committee for advice should they wish to do so.
24. Board members should be clear when they are speaking in a purely personal capacity or representing an organisation other than the OfS. Similarly, the writing of newspaper columns, blogs or contributions to social media (i.e. Twitter, Facebook, LinkedIn, etc.) should avoid comment on or details of sensitive or confidential OfS information.
25. If social media is used to communicate about work with the OfS then board members should be clear in what capacity they are acting and at all times respect confidentiality, financial, legal and personal information.
26. Members are also reminded of the permanency of social media content and that communications may need to be disclosed if subject to a request under the Freedom of Information Act 2000.²
27. There may be occasions when board members communicate with each other on matters relating to OfS business. This data may be subject to consideration as part of a request made under the Freedom of Information Act 2000. To ensure effective data searches can be undertaken in response to any such requests, members are requested to copy in a relevant OfS employee in all such correspondence.

Political activity

28. Board members should be, and be seen to be, politically impartial in their OfS role. They should not occupy paid party political posts or hold particularly sensitive or high profile unpaid roles in a political party. They should abstain from all controversial political activity and comply

² Further information is available in the Cabinet Office Social media guidance for civil servants: www.gov.uk/government/publications/social-media-guidance-for-civil-servants/social-media-guidance-for-civil-servants

with the principles set out in Cabinet Office rules on attendance at party conferences³ and on conduct during the period prior to elections and referendums, whether local or national⁴.

29. On matters directly related to the OfS, members should not make political statements or engage in any other political activity.
30. Subject to the above, members may engage in political activity but should, at all times, remain conscious of their responsibilities as a board member and exercise proper discretion.

Personal liability of board members

31. Any legal proceedings initiated by a third party are likely to be brought against the OfS, not individual members. In exceptional cases, proceedings (civil or criminal) may be brought against the chair or other individual board members. For example, a board member may be personally liable if he or she makes a fraudulent, reckless or negligent statement which results in loss to a third party. Board members or others involved in the governance of the OfS who misuse information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation.
32. However, individual board members (or others involved in the governance of the OfS) who act honestly, reasonably, in good faith and without negligence should not normally incur any liability in an individual capacity, provided they are acting in furtherance of their board or related governance functions.

Gifts and hospitality

33. Board and committee members must not accept any gifts or hospitality which might, or might reasonably appear to, compromise their personal judgement or integrity or place them under an improper obligation. Decisions on the acceptance of gifts and hospitality must stand up to public scrutiny and not bring the member's public office or the OfS into disrepute.
34. Board members and committee members are required to comply with relevant OfS guidance on the acceptance of entertainment, gifts, hospitality, fees and awards. The full guidance is available to members on the board portal, Diligent.
35. The offer and acceptance of any entertainment, gifts, hospitality, fees and awards received in the course of carrying out a member's duties will be recorded in the gift register. This will be available for public inspection on request.

Use of official information and data security

36. Board members must not misuse information gained in the course of their OfS role for personal gain or for political purpose.

³ Available at <https://www.gov.uk/government/publications/civil-servants-and-party-conferences-guidance>

⁴ Available at <https://www.gov.uk/government/publications/election-guidance-for-civil-servants>

37. Board members must not disclose any information which is confidential in nature or which is provided in confidence.
38. Board members are required to comply with the OfS's Acceptable Usage Policy. In addition, board members have a responsibility to respect the confidentiality of board papers or other information supplied to them in their role as members. This includes all information made available on the board portal, Diligent. Members should:
- ensure devices such as mobile phones or laptops used to receive or view OfS information, including via Diligent, are installed with up to date vulnerability protection (for example, virus protection and anti-spyware) and require some kind of user authentication to access them
 - not share papers or other information provided to them in their OfS role with anyone outside of the board, the relevant committee or the OfS⁵
 - only keep information for as long as necessary to carry out their role as a board member, including deleting any electronic data from personal computers and devices
 - not use data sticks as a storage system for any OfS information
 - promptly report any data loss or incident to the clerk.
39. Members are reminded that maintaining the confidentiality of OfS information continues to apply after they leave the board. At that point all OfS records should be promptly destroyed.
40. Members' access to OfS information via Diligent will be disabled upon leaving the board.

Prohibition on use of confidential information for personal advantage

41. In the course of carrying out their duties, board and committee members may become aware of unpublished price sensitive information relating to English higher education providers or associated organisations e.g. a group holding company, whether listed on a UK stock exchange or elsewhere. Where this occurs members must not themselves deal in any securities, or provide advice/procure other people to deal in such securities.
42. This prohibition on dealing does not extend to investment assets which are exclusively managed by an independent portfolio manager with full discretion over investment decisions, provided that there is no communication of unpublished and price sensitive information by the board or committee members to the independent portfolio manager.
43. These restrictions continue to apply once members have ceased being members of the OfS in relation to information received while they held office.

⁵ Members of the board or a committee will often have a personal assistant (or equivalent) who may need to have access to OfS papers occasionally. This is acceptable providing the staff concerned are bound by similar obligations concerning the confidentiality of information they have access to in their role.

Annex A: Declaration of interests: guidance for members of the Office for Students

1. All board members, committee members, and directors' interests should be declared and registered with the Office for Students (OfS). An interest, for this purpose, is something which a member is connected with which may draw the member into conflict with their role at the OfS. Conflicts of interest arise if an individual has or might have, or might be, perceived to have a 'personal' interest when making or influencing decisions on behalf of OfS. This includes relevant indirect interests through a partner, spouse or immediate family. Relevant interests in this context include:
 - remunerated or honorary positions and other connections with providers either on or likely to apply to be on the OfS Register) and/or organisations connected with such providers (e.g. advisory /representative groups)
 - ownership or part-ownership of, or employment by, businesses or consultancies likely or possibly seeking to do business with the OfS or with any of the providers or organisations it funds or regulates
 - executive and non-executive directorships of, shareholdings in, or employment by, public or private companies likely or possibly seeking to do business with the OfS or with any of the providers or organisations it funds or regulates
 - membership of societies or professional bodies with a relevant interest
 - in receipt of services (such as teaching) from a provider (either on or likely to apply to be on the OfS Register).
2. Interests are recorded and published on the OfS website.⁶ Members and directors are encouraged to advise the clerk at the OfS immediately of any changes. To ensure accuracy of the details, a survey of members' interests will be carried out by the OfS at least annually. Exceptionally, a member may register an interest which is itself exempt from publication but which would be made known to the clerk, chief executive and chair.
3. It is possible that a number of members and directors (or their families) have interests relating to higher education providers. As such, there will need to be a judgement if an interest is sufficiently material to mean that action should be taken.
4. Judgement on materiality will be based on the following measures:
 - the time consumed by the individual on the external interest, balanced against his/her responsibility to the OfS
 - public perception of the conflict and potential reputational impact
 - the nature/seniority of the role held at a provider, including whether the individual is being remunerated and the extent of that remuneration

⁶ Available at: www.officeforstudents.org.uk/about/who-we-are/our-board-and-committees/

- the extent of the actual or perceived connection with OfS policy (current and in development) or OfS regulatory decisions.

5. Although not exhaustive, the table below provides a framework for the actions that should be considered when actual or perceived conflicts are known. The action taken will need to be proportionate to the situation and dependent on the position the member holds and the degree of influence over the decision making process.

Examples of interests	Level of materiality	Minimum mitigations/actions	Possible additional actions
<ul style="list-style-type: none"> • Acute or pervasive interests e.g. significant interests with a number of higher education providers (or applying to be on) the OfS Register 	Very high	<ul style="list-style-type: none"> • Register interests • Discuss with Chair about whether the conflict is too great and therefore the member should resign from their current OfS role or relinquish their conflicting role 	<ul style="list-style-type: none"> • Excluded from voting on decisions relating to the regulatory framework, TEF and any other area where the OfS is making/running decision making processes on individual providers
<ul style="list-style-type: none"> • Employed in a senior Executive position by a higher education provider on (or applying to be on) the OfS Register • Holding a significant non-Executive role at a provider (e.g. Chair) 	High	<ul style="list-style-type: none"> • Register interest • Excluded from seeing papers relating to provider • Unable to be a member of the Provider Risk Committee (PRC) 	<ul style="list-style-type: none"> • Excluded from discussions and decisions relating directly to individual providers • Excluded from voting on decisions relating to the regulatory framework, TEF and any other area where the OfS is making/running decision making processes on individual providers
<ul style="list-style-type: none"> • Employed (other than in a senior Executive role) by a higher education provider on (or applying to be on) the OfS Register • Holding a non-Executive position at a higher education provider that does not fall under the 'high' category 	Medium	<ul style="list-style-type: none"> • Register interest 	<ul style="list-style-type: none"> • Excluded from discussions and decisions relating directly to the individual provider where an interest exists (or where there is significant direct competition with that provider)

<ul style="list-style-type: none"> Where the member is 'involved with' a higher education provider e.g. a significant shareholder in a company that has a major contractual relationship with a higher education provider Where there is potential direct competition between a provider and the provider where a known interest exists 			<ul style="list-style-type: none"> Excluded from seeing papers relating to provider Consider whether can be a PRC member depending on level of interest and need to balance experience on PRC. If on PRC must be excluded from discussions and decisions relating directly to the individual provider.
<ul style="list-style-type: none"> Immediate family member⁷ currently studies or works at a higher education provider Unpaid visiting professor at higher education providers Received honorary award from a higher education provider 	Low	<ul style="list-style-type: none"> Register interest 	<ul style="list-style-type: none"> Excluded from decisions relating directly to the individual provider Excluded from seeing papers relating to provider
<ul style="list-style-type: none"> Meetings with higher education providers on OfS business Involved in a non-OfS meeting which includes higher education providers 	Very low	<ul style="list-style-type: none"> For OfS meetings - ensure OfS aware of meeting and record any outcomes For non-OfS meetings no action required 	<ul style="list-style-type: none"> Ask Head of Governance for advice

6. The final judgement on materiality and any actions to be taken rests with the chair of the board on advice from the Head of Governance (and others as appropriate). Where the chair is the person whose interest is being considered then the deputy chair will make the final judgement.

7. Further information of the OfS approach to managing potential conflicts of interest is available at <https://www.officeforstudents.org.uk/media/a81acad9-e547-45e6-a812-4141aa16c98e/bd-2019-may-71-guidance-for-managing-potential-conflicts-of-interests.pdf>

⁷ Spouse/partner, parents, siblings, children