

Office for Students - approach to Corporate Governance

Introduction

1. Effective governance underpins the management of well-run organisations and is the hallmark of any effective corporate entity, whether in the public, private or voluntary sector.
2. The approach to corporate governance adopted by the Office for Students (OfS) ensures it can maximise the impact of its work whilst still discharging its statutory duties.
3. This document sets out the standards to which the board and all employees of the OfS are expected to operate and, as part of the OfS's commitment to openness, transparency and accountability, is published on the OfS website.
4. The board must approve any substantive revisions to this and associated documents.
5. In addition to its on-going requirement to review its own operation and practices, the board has made a commitment to carry out an external review of its effectiveness within 2 years of operation. This will be in line with good practice.

Section 1 - Legal and other requirements

6. The OfS is a Non-Departmental Public Body established under the Higher Education and Research Act 2017¹, and sponsored by the Department for Education (DfE).
7. Under the terms of the Act, the board shall consist of the following members appointed by the Secretary of State – the chair, the chief executive officer, the director for fair access and participation, and at least seven and not more than twelve other ordinary members (*HER Act 2017, schedule 1 (2(1))*).
8. At least one of the ordinary members must have experience of representing or promoting the interests of individual students, or students generally, on higher education courses provided by higher education providers (*HER Act 2017, schedule 1 (2(3))*).

¹ https://www.legislation.gov.uk/ukpga/2017/29/pdfs/ukpga_20170029_en.pdf

9. In appointing the chair and the ordinary members, the Secretary of State must have regard to the desirability of appointing persons having experience across the wider higher education sector, including in the provision of higher education, employing graduates and promoting choice for consumers. (*HER Act 2017, schedule 1 (2(2))*).

10. Subject to the OfS board delegating access and participation functions², the director for fair access and participation (DFAP) is responsible for overseeing the performance of these functions and reporting performance on this to the board. The DFAP may also report on measures taken by OfS to comply with its general duty to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers. (*HER Act 2017, schedule 1 (3)*).

11. All board members have indemnity for personal liability described by the Treasury as follows:

“An individual Board Member who has acted honestly and in good faith will not have to meet out of their own personal resources any personal civil liability that is incurred in the execution or purported execution of their Board function, save where the person has acted recklessly.” (January 1999)

12. A member shall hold office as an ordinary member, chair, chief executive or director for fair access and participation in accordance with the terms of their appointment. On ceasing to be a member they may be eligible for reappointment by the Secretary of State (subject to any requirements of the Commissioner for Public Appointments). (*HER Act 2017, schedule 1 (4)*).

13. Board or committee decisions will not be invalidated by a board member vacancy or by a defect in the appointment of a member. (*HER Act 2017, Schedule 1(10)*)

14. A member may resign by giving notice in writing to the Secretary of State. It is anticipated that members will normally do so through the chair. (*HER Act 2017, schedule 1 (5(1))*).

15. The Secretary of State may remove a member if they have been absent from meetings for more than six months without the board's permission, or if they become unable or unfit to be a member. Membership will cease if the member becomes a Civil Servant. (*HER Act 2017, schedule 1 (5(2) and (3))*)

16. The OfS shall pay members an honorarium and allowances as determined by the Secretary of State. (*HER Act 2017, schedule 1 (6)*).

² As outlined in Schedule 1 s3 (3) of HER Act 2017.

17. A representative (the Assessor) of the Secretary of State can attend and speak at any board or committee meeting but not take part in their decisions (*HER Act 2017, schedule 1 (9(3))*).

18. The OfS shall give the Secretary of State or their representative copies of all papers and other documents provided to members or committees as requested by the Secretary of State. Board and Risk and Audit Committee papers will normally be routinely sent by the clerk to the board /Risk and Audit Committee to DfE officials acting on behalf of the Secretary of State. Other information will be provided on request (*HER Act 2017, schedule 1 (9(4))*).

Regulatory framework

19. The OfS must prepare and publish a regulatory framework giving a statement on how it intends to perform its functions and providing guidance on the general ongoing registration conditions. The OfS must have regard to this framework when exercising its functions. In addition the OfS must establish and maintain a register of English higher education providers (*HER Act 2017, s75 and s3*).

OfS committees

20. The board is required to establish a Quality Assessment Committee from April 2018 to provide it with advice on the discharge of its function to assess, or make arrangements for the assessment of, the quality of, and the standards applied to higher education provided by institutions (*HER Act 2017, s24*).

21. The board may establish other committees for any purpose, and any committee may in turn establish sub-committees. The membership, terms of reference, lifespan, powers and reporting lines of such committees can be fixed by the board, who will keep under review the structure and scope of these committees. The OfS shall pay committee members any allowances as determined by the Secretary of State (*HER Act 2017, schedule 1 (8)*).

22. The board has established the following committees:

- i. Risk and Audit Committee
- ii. Remuneration and Nominations Committee.
- iii. Provider Risk Committee
- iv. Quality Assessment Committee

Other requirements

23. The OfS and United Kingdom Research and Innovation (UKRI) may cooperate with each other in exercising any of their functions, including in the sharing of information, or if required to do so by the Secretary of State (*HER Act 2017, s112*).
24. In addition, OfS may exercise its functions jointly with another relevant authority where it will be more efficient and effective in carrying out their functions (*HER Act 2017, s113*).
25. The board may authorise an OfS member, an authorised employee of the OfS or an OfS committee to carry out any of its functions. The exception to this is a function relating to the OfS's access and participation functions which may only be delegated to the Director for Fair Access and Participation (*HER Act 2017, schedule 1 (11)*). The current Scheme of Delegation is set out in Section 3 of this document.
26. Subject to the above provisions, the board can regulate its own procedures and those of any of its committees (*HER Act 2017, schedule 1 (9)*). The procedures by which the board conducts its business are set out in Section 2 of this document and in separate guidance.

Section 2 - Roles and responsibilities

The chair

27. Communications between the board and the Secretary of State will normally be through the chair (while day-to-day contact between the OfS and DfE is the responsibility of the chief executive). Nevertheless, individual board members have the right of access to Ministers on any other matter which s/he believes raises important issues relating to their duties as a board member or in respect of their appointment. In such cases, the member should normally inform the chair in advance of their intention to do so.
28. The chair has prime responsibility for providing effective strategic leadership on:
- a. Leading and developing the overall strategic direction of the board.
 - b. Representing the views of the board to the general public, users of services and to the Secretary of State and, where appropriate, relevant Ministers.
 - c. Ensuring that the board, in reaching decisions, takes proper account of guidance and instructions from the Secretary of State, relevant Ministers and DfE.
 - d. Ensuring that the board meets at regular intervals and that minutes of meetings accurately record both the board's decisions and, where appropriate, the views of individual board members.
 - e. Ensuring that the board and its members operate in line with the OfS's 'Approach to Corporate Governance'.
 - f. Advising the DfE on the membership needs of the board.
 - g. Arranging for the appropriate induction and support of board.

- h. Appraising the performance of members and ensuring the effectiveness of the board is kept under regular review.
- i. Approve appointments to any OfS committee on advice, where appropriate, from the Remuneration and Nominations Committee.

29. If appointed and in the absence of the chair, the deputy chair can assume responsibility for the functions listed above. If a member wishes to raise any issues in respect of the chair, this should be done through the deputy chair. The deputy chair will also play a role in appraising the performance of the chair on behalf of the board.

The chief executive

30. The chief executive has prime responsibility for:
- a. Ensuring complete and accurate advice to the board in order that it can undertake its functions.
 - b. Formulating and recommending strategies to the board for discussion and decision.
 - c. Implementing board decisions.
 - d. Representing the OfS with government departments, select committees, higher education providers and other stakeholders.
 - e. Requiring high standards of propriety of staff, and the efficient, effective and sustainable use of other resources throughout the OfS.
 - f. Approving the operating plan and budgets to implement the board's strategic plan.
 - g. Accounting for the OfS's performance and expenditure.

31. The chief executive will normally also be appointed as the accounting officer for OfS and in carrying out this role will have personal responsibility for ensuring that resources authorised by Parliament in respect of the OfS are used for the purposes intended by Parliament.

The director for fair access and participation

32. The director for fair access and participation is a member of the board and has prime responsibility for:
- a. Overseeing the performance of the OfS's access and participation functions.
 - b. Reporting to the board on the performance of these functions.

Corporate responsibilities of board members

33. Board members have corporate responsibility for ensuring that the OfS complies with any statutory or administrative requirements for the use of public funds and discharges its duties as set out in the Higher Education and Research Act 2017. Other important responsibilities of board members include:

- a. Ultimate responsibility for ensuring that the OfS operates within the limits of its statutory authority at all times; within the limits of its delegated authority agreed with DfE; and in accordance with any other conditions relating to the use of public funds, and ensuring effective arrangements to discharge this responsibility through the chair and the chief executive.
- b. Approving the overall strategic direction of the OfS within the legislative, policy and resources framework agreed with the Secretary of State.
- c. Ensuring that high standards of corporate governance are observed at all times by the board and its committees.
- d. Overseeing the delivery of planned results by monitoring performance against agreed strategic objectives and targets.
- e. Ensuring that, in reaching decisions, the board has taken into account any guidance or instruction issued by the DfE.
- f. Ensuring that the OfS meets its wider statutory obligations, for example on equality, Prevent, health and safety as well as on its principal regulator role under the Charities Act 2011.
- g. Ensuring that there are satisfactory arrangements in place for the board to receive assurance about the OfS's corporate governance, internal control and risk management, including through the Audit Committee and the committee designated as the OfS's quality assessment committee.
- h. Evaluating the effectiveness of the board and its committees.
- i. Advising ministers on their higher education policies.
- j. Monitoring the performance of the chief executive and other senior staff and will establish a Remuneration Committee to carry out this work on its behalf.

Responsibilities of individual board and committee members

34. Individual board and committee members should also be aware of their wider responsibilities as members. Board and committee members must:

- a. Undertake on appointment to comply at all times with the Code of Conduct and with rules relating to the use of public funds.
- b. Act in good faith and in the best interests of the OfS.
- c. Not misuse information gained in the course of their public service for personal gain or for political purposes, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations (including, where appropriate, any HE provider regulated by the OfS with which they have a connection).
- d. Comply with the board's guidance on the acceptance of gifts and hospitality.
- e. Comply with the board's guidance on 'Declaration of Interest'.
- f. Respect the confidentiality of board papers and other information obtained in the course of their OfS activities.

35. Under the terms of appointment set out in Schedule 1, Section 5 (2) of the Higher Education and Research (HER) Act 2017, the Secretary of State is empowered to remove a board member from office if he or she is frequently absent from board meetings or is unable or unfit to discharge the functions of a board member.

The OfS as an employer

36. The OfS board should ensure that:
- a. The OfS complies with all relevant employment legislation
 - b. Suitably qualified staff are employed and these staff have access to expert advice and suitable training opportunities to enable them to exercise their responsibilities effectively
 - c. Rules for recruiting and managing staff provide for appointment and advancement on merit, on the basis of equal opportunity for all applicants and staff.
 - d. The OfS adopts management practices which use resources in the most efficient and economical manner.
 - e. The OfS operates within restrictions and/or conditions set by central government
 - f. An employee code of conduct is in place. This will cover arrangements to enable staff to raise concerns about propriety with a nominated official.

Professional advice

37. Board members (or others involved in the governance of the OfS) may wish to seek professional advice in the furtherance of their duties. Normally they should consult the OfS's professional advisers. However, if they consider it necessary to take independent advice, they will be entitled to do so at the OfS's expense on condition that the chair or chief executive is consulted beforehand, and subject to a limit of £10,000 in any one instance. Expenditure in excess of this sum may only be incurred with the prior approval of the board.