

OfS's approach to corporate governance from 1 April 2018

Issue

1. The approach to corporate governance required for the legal and effective operation of the OfS board from 1 April 2018.

Recommendations

2. The OfS board is invited to agree the overall approach, including the specific areas set out below.

Decisions

3. Decisions in relation to the approach are required at this meeting, in order that the approach can be finalised ready for 1 April 2018.

Further information

4. Available from Nolan Smith.

Background

5. The OfS Shadow board considered a paper and proposed approach to corporate governance on 29 November 2017, including a Scheme of Delegation. This applied to its initial period of operation, from 1 January to 31 March 2018 when it had limited business and decision making needs. The board agreed the approach to corporate governance (including a Scheme of Delegation) for its initial period of operation to 31 March 2018 by correspondence.
6. The approach to corporate governance from 1 April 2018 will be published on the OfS website and sets out the remit of the OfS, and how it intends to operate. This includes a suite of documents.
 - Legal and other requirements
 - Roles and responsibilities
 - Scheme of Delegation (Annex A)
 - Terms of reference for: the Risk and Audit Committee (Annex B), Remuneration and Nomination Committee (Annex C), Provider Risk Committee (Annex D) and the, Quality Assessment Committee (Annex E).

This is supplemented by the following documents:

- Guidance for conduct of board business
 - Code of Conduct for members
 - Guidance on gifts, hospitality and awards
 - Declaration of interests
 - Framework document between DfE and the OfS*
 - Accounting Officer Delegation letter*
 - Annual Ministerial guidance letter*
 - Policies in relation to Counter-Fraud, Anti-bribery, Whistleblowing, Public Interest Disclosure and Complaints.
7. DfE is responsible for providing the three documents with an asterisk. The Framework Document and Ministerial Guidance letter have been circulated separately.
 8. As there are no proposed changes to most documents we have not included them in this paper though they are available on the website:
(<https://www.officeforstudents.org.uk/media/1011/ofs-approach-to-corporate-governance-feb-2018.pdf>). This paper focusses on the Scheme of Delegation and terms of references for board committees.
 9. At Annex A is a proposed revised Scheme of Delegation to apply from 1 April 2018. The Scheme of Delegation sets out the circumstances in which the board delegates its decision making authority to the chief executive, director for fair access and participation, other OfS directors or to an OfS board committee. As the Scheme of Delegation only outlines the decisions that the board wants to delegate, it can be assumed that other decisions outside these specified delegations remain with the board.

10. It should be noted that the draft Scheme of Delegation and terms of reference for the Provider Risk Committee reflect the proposed 'framework for risk assessment during the registration process', which the board is also discussing at this meeting. Should the board wish to amend this process we will revise the Scheme of Delegation/Provider Risk Committee terms of reference and circulate an updated version for formal approval by correspondence.
11. Normally we would expect the Scheme of Delegation to be reviewed annually, although this doesn't preclude revisions during the year: for example, once the director of external relations is in post, we will reflect on how this area of activity is reflected in the OfS's governance arrangements. In the current version we are not asking the board to delegate any decisions relating to the decisions about the ongoing regulation of registered providers or the arrangements for deciding to award degree awarding powers or University Title in the new system. Both of these areas will be discussed at the next board meeting in May.

Discussion

Considerations in setting appropriate levels of delegation within the Scheme of Delegation

12. It is common for boards to delegate decisions to committees and to Executive members of its board. Under the HERA 2017 the OfS may delegate any of its functions to a member of the OfS, an employee of the OfS or an OfS Committee. However, the HERA 2017 sometimes is prescriptive about delegations (for example in stating that the Access and Participation functions of the OfS may only be delegated to the director for fair access and participation (DFAP). Where there is prescription, this is reflected in the draft Scheme of Delegation
13. Where there is no prescription in the HERA 2017 about responsibilities for taking decisions, the assumption is that the right level of delegation by the board is one that which maximises the efficiency and effectiveness of the OfS, while taking account of the impact of the decision, and is aligned with the skills, knowledge and maturity of those taking the decision. In many cases it is proposed that the OfS chief executive or the director for fair access and participation have delegated authority to take decisions while retaining responsibilities to escalate issues of major significance to the board; to advise the board in order that it can undertake its functions; and to report specific issues to the board.

Recommendation: for the board to approve the Scheme of Delegation at Annex A.

OfS board committees

14. Many boards recognise that not all business can be effectively carried out by the full board, and therefore they set up Committees to focus on specific areas. Under HERA 2017 the board must have a Quality Assessment Committee, and under government requirements it must have an Audit Committee and a Remuneration Committee. As

previously discussed by the board it was suggested that a Provider Risk Committee was established to support the oversight of our registration process.

15. In November 2017 the board agreed the terms of reference for two committees: the Risk and Audit Committee and the Remuneration and Nominations Committee. Some minor presentational changes are proposed to these to ensure they are consistent with the other committee terms of reference. Details of these committees and other proposed board committees are outlined below:

Committee	Purpose	Members
Risk and Audit Committee (RAC)	To support the board and the OfS accounting officer by advising on the comprehensiveness and reliability of the processes relating to corporate governance, risk management and internal control.	Kate Lander (chair) Gurpreet Dehal One other OfS non-executive board member Up to three independent members (+ time limited sub-committee in relation to closing HEFCE – all appointed).
Remuneration and Nomination Committee	To support the OfS board and accounting officer, in their responsibilities for the pay and performance management of senior management, and for the pay remit relating to OfS staff and the membership of any board committee. It also provides advice to the OfS chair on the nominations and appointments of independent members to any OfS committee.	chair: tbc Not less than three non-executive, ordinary members of the board one of whom will be appointed as chair of the Committee. The chair of the OfS board may be a member of the Committee but should not act as its chair.
Provider Risk Committee (PRC)	To oversee and make decisions in relation to the registration and regulation of individual English higher education providers.	Martin Coleman (chair) No less than two other non-executive members of the OfS board. Up to three independent members (including those drawn from other regulators with experience of making judgements in a regulatory context).
Quality Assessment Committee	To provide advice to the OfS board on the exercise of its functions under section 23 of the HERA (Assessing the quality of, and the standards applied to, higher education), and such other functions that the OfS may confer on it. The Designated Quality Body will perform the OfS's functions under section 23, the Quality Committee	chair: tbc No less than one other non-executive member of the OfS board. At least three independent members. Majority of committee must be non OfS members who have experience of providing higher

Committee	Purpose	Members
	also has the function of giving to the OfS advice on the exercise by the designated body of those functions.	education on behalf of an English higher education provider, or being responsible for the provision of higher education by such a provider. For an interim period, it is proposed that three members are co-opted from the previous HEFCE QARSAC committee until a full recruitment exercise is undertaken.

Membership

16. The committee membership is made up of board members and independent members. Members of the board are invited to express an interest in being a member of any of the committees outlined above. To populate committees with independent members a formal selection process will commence in April.
17. In relation to the Quality Assessment Committee this formally needs to be constituted from April. We recommend that until we can complete a formal selection exercise for independent members that we co-opt three members of the previous HEFCE Quality committee (QARSAC).

Recommendation: the board is invited to agree the Terms of Reference of the board Committees at Annexes B-E.

Other governance arrangements

18. At this point in time we are not proposing the creation of any other board committees, though we will keep this under review as the OfS is fully launched. Alongside the formal four board committees the following governance arrangements are also in place:

Area	Arrangements
Student Panel	The Student Panel helps the Office for Students engage with students to shape and influence its work and the impact that it has on the higher education sector. It brings together a group of students from across the sector and is chaired by the student representative from the Office for Students' board. One of the roles that the Panel plays is working out how the OfS can ensure that its work properly involves students, including those whose backgrounds or circumstances may make it harder – for instance students with disabilities, mature students studying remotely, postgraduates, or international students.
Teaching Excellence and Student Outcomes Framework (TEF)	The DfE-run TEF Delivery Group and a Working Group have overseen the work of the TEF Project board (authorised to make operational decisions concerning the TEF Year Three and the subject-level pilots). However the governance arrangements are evolving to reflect a context in which OfS

	<p>is taking more of a lead in aspects of TEF development and to allow this greater delegated authority to function while providing confidence to DfE on OfS's commitment to the strategic project parameters and provide transparency on the decisions being taken. A decision is due in spring 2018 on the continuation of the TEF Project board. This is taking place in parallel with reformulation of the Terms of Reference of the DfE Delivery Group towards a more collaborative working position.</p>
UK Student Information Advisory Group	<p>The UK higher education funding bodies have a UK Student Information Advisory Group which combines the work of the HE Public Information Steering Group and the UK Performance Indicators Steering Group on student information and higher education indicators. It brings together a range of provider, student, employer, policy and technical expertise and advises the UK funding bodies on information and indicators about:</p> <ul style="list-style-type: none"> • access and participation • learning and teaching • the student experience and student outcomes in the UK.
UK Healthcare Education Advisory Committee	<p>The UK Healthcare Education Advisory Committee has responsibility for advising the UK funding councils on healthcare education matters. The funding bodies nominate members to the Committee and have officer observer representation to ensure a continued input to UK-wide perspectives on these areas including on work-force planning.</p>
UK-wide Standing Quality Committee for Quality Assessment	<p>The UK-wide standing committee for Quality Assessment provides sector-led oversight of those aspects of quality assessment arrangements that continue to be shared across the UK. It plays a key role in promoting quality, standards, and the student interest, through a co-regulatory approach by bringing together academic expertise and students with regulatory and other bodies. The four higher education funding bodies, Universities UK and GuildHE involved. The Committee also works with the Quality Assurance Agency for Higher Education (QAA) to develop the Quality Code as an important UK-wide reference point for quality and standards.</p>

Annex A – Scheme of Delegation from 1 April 2018

What is it?

1. The Office for students' (OfS) powers, duties and functions are set out in the Higher Education and Research Act (HERA) 2017. Within that legislative framework, this Scheme of Delegation sets out how the OfS makes decisions, either through the OfS board itself, through its committee structure, or through a structure of delegations through the chief executive to directors and to staff. It also sets out how material decisions taken under that delegated decision-making structure are reported back to the board.

Why is it important?

2. It is important because it outlines how decisions are taken and how staff are accountable for these decisions. It ensures that staff know what is expected of them, and if asked by external agencies (such as the National Audit Office) how a decision has been made, we can clearly demonstrate the process. Ensuring that there is clarity on decision making is an important aspect of appropriate use of public funds as set out in Managing Public Money¹.

Who has the authority to take decisions in OfS?

The board

3. Matters reserved to the OfS board are:
 - Consideration and approval of the 'Approach to Corporate Governance' including the Terms of Reference of its committees
 - Consideration and approval of the OfS's strategic objectives
 - Changes to the regulatory framework²
 - Approval of risk management arrangements and consideration of reports of the Risk and Audit Committee
4. However, it is not practical for the board to make every decision necessary to fulfil the OfS's role. It therefore delegates the authority to make certain decisions to the OfS chair, the chief executive, the director for fair access and participation, other directors and the board committees, taking into account the advice of the OfS's senior executive team or others as appropriate.
5. A member, officer or committee to whom a power, duty or function is delegated by the board may nominate or authorise an officer of the OfS to exercise that power, duty or

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

² Section 75 of HERA

function, provided that the nomination or authorisation is in writing and the officer directly reports to or is responsible to the member, officer or committee in question.

6. Any functions which the board has delegated can be exercised or reassumed by it either generally or on a case by case basis.
7. Functions, matters, powers, authorisations, delegations, duties and responsibilities within this Scheme shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of anything specified

Urgent decisions between board meetings

8. Should scheduling issues preventing the board from meeting face-to-face, it can consider issues and take decisions via correspondence or a special meeting. If this is not possible, the board delegates authority to the chair and chief executive to take urgent decisions on any matter that could have been decided by the board between board meetings provided any such decisions are reported to the board at its next meeting.

The chair

9. The chair has particular responsibility for providing strategic leadership. The board may delegate decisions to the chair as circumstances dictate. The board delegates authority to the chair to appoint board members/independent members to OfS committees.
10. In respect of any matter where the chair of the board has a conflict of interest, the chair's authority will be exercised by the deputy chair of the board.
11. There may be instances where the chair is absent or unable to fulfil his functions, with or without prior notice. In these circumstances the chair's authority will be exercised by the deputy chair.

The chief executive

12. The chief executive is the accounting officer, which means she is the OfS staff member who ultimately takes responsibility for the proper and regular use of public funds and ensuring value for money.
13. It is not practical for the chief executive to make every day-to-day operational decision necessary for the smooth running of the OfS. Operational decision-making is therefore cascaded down through directors to senior managers and to others as necessary.
14. Where the chief executive has a conflict of interest, the chair or a member of the OfS's senior team will exercise her function.
15. There may be instances where the chief executive is absent or unable to fulfil her functions, with or without prior notice. In these circumstances the chief executive's

functions will be exercised by a director as acting chief executive. This will enable urgent decisions to be taken during such periods of absence.

16. The chief executive and directors are authorised to sign contracts and formal documents such as Memoranda of Agreement or funding documentation on behalf of OfS that have been approved by the appropriate body within the OfS in accordance with this scheme of delegation.

The director for fair access and participation (DFAP)

17. HERA makes provision for the OfS board to delegate responsibility to the DFAP for OfS's access and participation functions. The OfS board delegates the responsibilities set out in paragraph 3 of schedule 1 of HERA to the DFAP.
 - a. to issue guidance as to the matters to which the OfS will have regard in deciding whether to approve access and participation plans
 - b. decisions to approve or refuse access and participation plans
 - c. decisions to refuse to renew an access and participation plan
 - d. monitoring of access and participation plans (including access agreements agreed by the Director of Fair Access and penalties arising from this).
 - e. to issue guidance on good practice in preparing access and participation statement(s)
 - f. reporting to the board on access and participation and preparation of any reports relating to access and participation required by the Secretary of State
 - g. to identify and give advice to registered providers about good practice relating to the promotion of equality of opportunity.

Regulation of individual providers

[the section in italics below may change depending on the board's decisions relating to the paper on 'framework for risk assessment during the registration process']

Applications to register with the OfS

18. *The Registration Team will assess all applications for registration and make recommendations on the following matters:*
 - a. *whether the provider is eligible for registration (that is whether the provider is a provider of higher education in England);*
 - b. *whether the provider satisfies the initial conditions of registration;*
 - c. *the risk of a future breach of each of the ongoing conditions of registration;*
 - d. *actions (if any) that are necessary to mitigate areas of increased risk.*
19. *The OfS board delegates to the Provider Risk Committee (PRC), chief executive and director of competition & the register the following decisions relating to the initial registration of providers on the OfS Register including, where judged necessary, the application, amendment or imposition of one or more specific conditions of registration.*

20. *The director for competition and the register will, under delegated authority, consider and decide upon recommendations for providers where the recommendation is that:*

- a. the provider satisfies the initial conditions of registration; and*
- b. the risk category for each condition is no higher than yellow.*

The director for competition and the register may refer any case to the chief executive or to the PRC in which case the chief executive or PRC will make a decision in that case.

21. *The chief executive will, under delegated authority, consider and decide upon recommendations for providers where the recommendation is that:*

- a. the provider satisfies the initial conditions of registration; and*
- b. the risk category for each condition is no higher than amber; or*
- c. the risk category for only one condition is red unless that red condition is condition D (financial viability and sustainability) or E2 (management and governance).*

The chief executive may refer any case to the PRC in which case the PRC will make a decision in that case.

22. *The PRC will, under delegated authority, consider and decide upon recommendations for providers where the recommendation is that:*

- a. The provider is not eligible for registration; or*
- b. the provider does not satisfy the initial conditions of registration; or*
- c. the risk category for two or more conditions is red or the risk category for condition D (financial viability and sustainability) or E2 (management and governance) is red.*

The PRC may refer any case to the board in which case the board will make a decision in that case.

Quality and Standards

Assessing the quality of, and standards applied to higher education

23. Section 23 of HERA makes provision for the OfS to assess, or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by English higher education providers.

24. The board has established a Quality Assessment Committee as required by Section 24 of HERA. The board must approve the Committee's Terms of Reference, which must comply with Section 23 of HERA including giving advice to the board and chief executive on the exercise of the OfS's quality functions by the Designated Quality Body (DQB). Any decisions relating to the approach to be taken by the DQB are delegated to the chief executive.

University college and university title

OfS's advice on university college and university title applications under the old system

25. For applications received before or on 31 March 2019, approval of advice provided to the Secretary of State in respect of the creation of a university or the use of university or university college title is delegated to the chief executive.

Degree awarding powers

OfS's advice on degree awarding powers under the old system

26. For applications received before or on 31 March 2018, approval of advice provided to the Secretary of State in respect of the awarding of degree awarding powers (DAPs) is delegated to the chief executive.

Specific course designation

27. The OfS will provide an assessment to DfE on applications for specific course designation and monitoring of compliance with conditions of designation. The board delegates the task of providing this analysis to DfE to the chief executive.

Teaching Excellence Framework and Student Outcomes Framework

28. Under the HERA 2017 Section 25 OfS may make arrangements for a scheme to give ratings. The OfS has adopted the Teaching Excellence Framework and Student Outcomes Framework (TEF) as the scheme.
29. The OfS board delegates to the chief executive the authority to take decisions necessary to manage and implement the TEF such as decisions about: eligibility; the use of data and data amendments; and the appointment of assessors and members of the TEF Panel. The TEF Panel chair is appointed by the OfS board. TEF assessors and TEF Panel members are appointed by the OfS chief executive for their standing with higher education providers and students. The role of assessors is to assess individual applications while the TEF Panel has the role of taking independent decisions on the final judgement of a provider's rating.

Terms and conditions of OfS funding

30. The board delegates to the chief executive the authority to approve the OfS terms and conditions of OfS funding. The board delegates to the chief executive authority to agree any specific terms and conditions of funding with individual providers.
31. The board also delegates to the chief executive responsibility for monitoring progress against conditions of funding and taking action where there are instances of non-compliance.
32. Under the Terms and Conditions of Funding a provider may be considered to be 'at higher risk' or 'not at higher risk'. At any point in the year the chief executive can agree a change to a provider's risk categorisation or may requiring increased engagement

with the provider under “focused dialogue” to take place. Any changes in risk category are reported to the board.

Applications for an approval of borrowing beyond a financial commitment threshold

33. Under its Terms and Conditions of OfS funding we require providers to:

“...get prior written approval from us to increase its financial commitments threshold, before it agrees to any new financial commitment meeting either of the following criteria:

- a. Where it is assessed by us as being “at higher risk.”
- b. Where it is in “focused dialogue” with OfS.”

34. The board delegates to the chief executive the power to make a decision on any applications from providers taking advice from the board where she feels necessary.

Accounts Direction

35. Approval of the Accounts Direction may be undertaken by the chief executive.

The Prevent Duty

36. Under the Counter-Terrorism and Security Act 2015 OfS has delegated responsibility from the Secretary of State for monitoring compliance with the Prevent duty in the higher education sector in England, and for advising the Secretary of State on levels of compliance. In practice, this means the OfS gathers evidence from providers and makes an assessment of this evidence as to whether they are demonstrating due regard. Where a provider cannot show sufficient evidence of compliance with the duty OfS will work with them to agree any changes needed. If we conclude that the provider’s response has been inadequate in any area of this monitoring framework, and it does not agree to take further action, we will consider whether to the Department for Education (DfE) to consider whether further formal action is needed. Decisions about whether the provider is not demonstrating due regard to the duty, and so should be referred to the DfE, are taken by the chief executive and reported to the board.

OfS Financial Management

37. All staff are required to operate under the financial management principles described above and set out in [Managing Public Money](#). Guidance is provided to staff in guidance for budget holders and managers, the Staff Guide, and the Procurement Guide. These detail the authority limits, thresholds and procedures to be followed. The most effective controls over expenditure are those that operate at the point that expenditure is committed. Budget holders and budget managers, therefore, need to be able to track commitments, and not just what has been paid against their budgets.

38. The power to commit the OfS to expenditure is assigned to specific individuals. Other staff are not normally permitted to order goods or services. Guidance is supplemented by Government’s spending controls which apply to some categories of spend such as

that on advertising, marketing and communications; digital and technology, consultancy, and property and facilities management.

Programme budgets

39. Programme budgets are agreed by the OfS board, normally on an academic year basis (with the exception of capital funding). The programme budget refers to the grant paid to the OfS that is available for distribution to providers of higher education and other organisations in order to achieve the OfS's strategic objectives. The OfS board will agree funding principles.
40. The board delegates to the chief executive the authority to agree the specific allocations to providers or to funded organisations from within these programme budgets and following any agreed funding principles.
41. The board delegates to the chief executive the ability to make changes to individual funding allocations or virements between budgets.
42. Other decisions in relation to programme funds have been delegated to the chief executive as follows:
 - a. Decisions on the recovery of grant. This will include: acceptance or rejection of appeals against holdback where student numbers have not been delivered or where recruitment has exceeded levels permitted e.g. for medical and dental intake targets recoveries from the outcomes of data audits or data reconciliations; or where providers have not delivered the activities for which the grant funding was provided, or used the full allocation of funding in delivering those activities.
 - b. Decisions on medical and dental intake student number allocations. Regarding medical and dental intake allocations, the chief executive will take advice from the Department of Health and Social Care, Health Education England and the DfE to ensure that the supply of medical students meets the needs of the NHS, and is aligned with the support available for clinical placements and foundation training places.
43. Without prejudice to her general power to delegate conferred above, the chief executive may delegate to the appropriate director the responsibility for management of programme budgets that relates to their strategic responsibilities. Each director will be provided with a delegation to manage a specified amount of the OfS's resources in accordance with authorisation limits set by the board or a lower limit set by the chief executive. The director as budget holder is responsible for ensuring it is effectively managed and delivers value for money, and these responsibilities cannot be delegated further.
44. A director may be assisted in the day-to-day management of budgets under their control by a budget manager. These arrangements must be documented and must be

within defined parameters. This arrangement does not absolve the director from their responsibility for the budget.

45. The director must ensure that all budget managers within their responsibility:
- have a clear view of their budget management objectives and the means to assess and measure outputs or performance in relation to those objectives;
 - have the information (particularly about costs), training and access to the expert advice which they need to exercise their responsibilities effectively.

Payment of monies

46. Budget holders or budget managers cannot commit expenditure where this will exceed the remaining uncommitted funds for any particular budget line. Where this is the case authority needs to be sought from the chief executive or board to increase the budget, with a clear rationale for the increase, and subject to funds being available. Budget holders need to agree these cases with the OfS finance team before they are submitted to the chief executive or board.
47. The director of resources, finance and transformation will have authority for agreeing the profile of payments between academic and/or financial years for all programme budgets. This includes variations to payment or repayment profiles for individual providers as may be appropriate for their circumstances; suspension of payment to providers, pending those providers meeting any particular conditions or criteria that the OfS may wish to specify for them; and cancellation of payments where those conditions are not met within a reasonable timeframe.
48. The OfS's finance team is authorised to make payments once the allocations are agreed by the chief executive or through the relevant delegation.

Decisions on the repayment of Exchequer Interest

49. As a public sector organisation providing capital funds to providers to acquire or develop assets, OfS is required to take steps to protect the Exchequer Interest by making sure that these funds are used for the intended purposes for which the grant was made. Our terms and conditions of OfS grant set out our processes for monitoring Exchequer Interest, and the steps we would take if we needed to reclaim funding. The OfS has the right, but not the obligation, to request repayment of Exchequer Interest from providers where a 'trigger event' occurs, as set out in the terms and conditions of OfS grant. OfS also has the discretion to waive the requirement for repayment. Decisions on proposals to request or waive the Exchequer Interest repayment following a trigger event should be taken by the OfS board.

Administration budgets

50. Administration budgets relate to the costs of the OfS's operation, such as staff salaries and premises. The board delegates to the chief executive the authority to agree administration budgets in discussion with directors. Without prejudice to her general

power to delegate conferred above the chief executive may delegate to the appropriate director (or senior member of staff) the responsibility as budget holder for managing administration funds that relates to their strategic responsibilities. The director may be assisted by a budget manager in the day-to-day management of the budget. This arrangement does not absolve the director (or senior member of staff) from their responsibility for the budget.

Approval of payments

51. Where invoices are against a contract or purchase order that has been approved in accordance with the requirements set out above, these can be approved by the budget holder or the budget manager having been satisfied that the invoice is in accordance with the contract or purchase order, and that the goods or services have been received.
52. The following limits apply for payments (subject to budget availability):
- | | |
|---|------------------------|
| up to £9,999 | budget manager |
| £10,000 to remaining uncommitted budget | budget holder/director |

Write-off of debts

53. The write-off of debts will need to be compliant with any guidance from our sponsor department. The board delegates responsibility to the chief executive to take decisions in line with departmental guidance.

Communication management

54. The chief executive is responsible for the identification of major communication issues or publications which should be considered by the board. In such cases the board approves in principle the communication of any matters of major public, political or reputational significance but delegates the finalisation and publication of key plans, reports or statements to the OfS chief executive.

Staffing and remuneration decisions

55. The board delegates to the chief executive the authority to determine the numbers of posts and how the OfS is organised to deliver its aims and objectives. This will include any changes to the formal organisational structure which may result in increases or decrease in the number and nature of posts.
56. The OfS's pay policy which determines pay levels, pay bands and annual pay settlements is decided by the chief executive, in discussion with the directors. The OfS is required to submit to the DfE an annual pay remit, based on Treasury pay guidance that has to be approved by the Secretary of State and the sponsor department. The approved remit then sets the parameters for negotiations with any recognised trade union. The Remuneration and Nominations Committee (a committee of the OfS board) will review the aims of the annual pay remit, delegating the details to the chief executive.

57. The Remuneration and Nominations Committee carries out an annual review of remuneration of the chief executive and the DFAP, making recommendations to the DfE on these matters. The committee also has a role in agreeing the terms and conditions of employment of other OfS directors and carrying out an annual review of their remuneration, making decisions about changes to basic pay and levels of performance related pay, involving DfE where required.

OfS's internal policies and procedures

58. The board delegates its authority for the approval of OfS internal policies and procedures to the chief executive. However, the chief executive can seek board approval for a policy, and the board can request to approve a policy, should it wish to do so.

Business continuity

59. In the event of an emergency that causes a major disruption to business or prevents access to the OfS's Bristol or London office, the agreed business disruption actions will be implemented. The Crisis Management Group is empowered by the chief executive to take the necessary actions.

Use of the OfS Seal

60. The use of the Seal to 'seal' a deed or other formal document requires approval by both the chair and chief executive.

OfS internal information management and security practices

61. The board delegates the responsibility for the appointment of the role of OfS Senior Information Risk Officer (SIRO) to the chief executive. The SIRO has delegated responsibility for approving policies that relate to OfS's internal information management and security practices.

Data Protection Officer (DPO)

62. The role of the OfS' Data Protection Officer (DPO) is defined predominantly in Articles 37-39 and associated articles of Regulation (EU) 2016/679 ["EU General Data Protection Regulation" or "GDPR"]. From 25 May 2018 it is a legal requirement that the DPO does not receive any instructions from OfS regarding the exercise of the tasks of the DPO listed in Article 39. The DPO is required to act independently in their role and must directly report to the highest management level, the chief executive and/or chair, and co-operate with the Supervisory Authority. The DPO may take legal advice to assist them in carrying out their statutory duty and must be provided with the resources necessary to carry out those tasks. The board delegates the appointment of the DPO to the chief executive

Making decisions on use of data

63. The board delegates to the chief executive the responsibility to determine the most appropriate processes to consider how data is obtained, assessed and used, including

judgements about the acceptability of data which are used in its functions. The chief executive should take advice from the data asset owner within the OfS.

64. The data provided to us by or in connection with provider students and other organisations is assessed and may be used to inform the publication of data by us or on our behalf for a variety of purposes. In publishing data, there is a need at times, for the OfS to make judgements about the acceptability of data, and a decision may be taken not to publish data in some circumstances. The board delegates to the chief executive the responsibility to make these judgements.

Annex B

Office for Students Risk and Audit Committee: terms of reference

Purpose

1. The board of the Office for Students (OfS) has established a Risk and Audit Committee (RAC) as a committee of the board to support it and the OfS Accounting Officer by advising on the comprehensiveness and reliability of the processes relating to corporate governance, risk management and internal control.
2. This remit does not extend to the matters of risk, control and governance at the English higher education providers regulated by the OfS.
3. Except where explicitly delegated otherwise, the RAC acts only in an advisory capacity and has no executive or decision making powers.

Responsibilities

4. The RAC will advise the OfS board and Accounting Officer on:
 - The processes for the assessment and management of OfS's current and future risks
 - The robustness of the OfS's systems for identifying and monitoring internal control processes
 - The appointment of the OfS's Internal Audit provider and Head of Internal Audit, and the planned activity and results of this service
 - The OfS's accounting policies and annual financial statements, including both the interim accounts and final audited accounts, the completion report and OfS response, and the Governance Statement
 - The strategy, remuneration and work of the National Audit Office (NAO) for the audit work undertaken on the annual accounts
 - The adequacy and timeliness of management response to issues identified by both internal and external audit, and any relevant reports from the NAO, Government, the OfS's Sponsor Department or other third parties
 - The adequacy of controls and processes relating to Health & Safety, counter-fraud, bribery and whistleblowing within the OfS
 - Processes and assurances relating to arrangements for information security and cyber security within the OfS
 - The 2017-18 annual report and accounts for HEFCE following its planned closure at end of March 2018.
 - Any other matter upon which the board has asked for assurance or advice.

Authority

5. The RAC is authorised by the OfS board to:

- Seek any information it needs from any employee of the OfS and any others with whom it has an accountability relationship
- Seek information from the internal auditors and the NAO (in their capacity as external auditors). The Head of Internal Audit and the NAO will have confidential access to the chair of the RAC
- Procure specialist ad-hoc advice (including legal advice) at the expense of the OfS up to £10k per annum or as agreed by the board.

Membership

6. The members of the RAC, including its chair, are appointed by the OfS board. Members will have a mix of skills and experience to provide a range of expertise to cover the activities of the OfS, including at least one member with relevant qualifications and experience in accounting and finance.
7. Members are normally appointed for a period of three years. Re-appointment for up to three further years is subject to satisfactory appraisal by the RAC chair and approval by the board.
8. The chair of the RAC must be:
 - A non-executive member of the OfS board but not its chair to ensure the independence of the RAC
 - Independent of providers on the OfS register.
9. The RAC will consist of:
 - No less than three non-executive members of the OfS board (including the RAC chair)
 - Up to three independent members.
10. The validity of any proceedings of the Committee shall not be affected by a vacancy among the members or by any defect in the appointment of a member. The quorum necessary for the transaction of the business of the Committee shall be three members, including at least one member of the OfS board.
11. The RAC may co-opt additional members for a period not exceeding a year to provide specialist skills, knowledge and experience.
12. A register of declared interests for all members of the RAC will be published on the OfS website. If it is deemed that a member has an actual or perceived conflict of interest then any relevant paper(s) may be withheld or the member asked to leave the meeting for the duration of the discussion at the discretion of the chair. If the conflict is significant or likely to be long-term, then the member may be asked to step down from the RAC.

13. All members of the RAC are legally indemnified against negligence by the Department for Education.

Meetings

- The RAC will normally meet at least three times a year. The chair of the RAC may convene additional meetings as they deem necessary
- In the absence of the RAC chair, the meeting will be chaired by another member that is also a member of the OfS board
- While only members have a right to attend, meetings of the RAC will normally be attended by the Accounting Officer, the director of resources, finance and transformation, the clerk to the Committee, the head of internal audit and a representative of the NAO in their capacity as external auditors
- The RAC may also require any other officials of the OfS to attend to assist it with its discussions on any matter
- The RAC may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters
- Individually, the Accounting Officer, executive directors, the clerk to the Committee, the head of internal audit and the NAO may, through the chair, request to meet with RAC members to discuss a confidential matter.

Reporting

- The RAC will formally report in writing to the OfS board after each meeting. This will be complemented, where necessary, by an oral report from the RAC chair at the board meeting.
- RAC meetings shall be minuted and draft minutes circulated to members as soon as possible after the meeting.
- The RAC will provide the OfS board and the Accounting Officer with an annual report, timed to support finalisation of the annual report and accounts (including the governance statement) summarising its conclusions from the work it has done during the year.
- The terms of reference for the RAC will be reviewed on an annual basis. The OfS board will be asked to approve any changes to the terms of reference.
- The RAC's main duties shall be described in the OfS's annual report and accounts.

Other

14. The RAC may set up a sub-committee to provide advice on any of the above issues. The membership and terms of reference of any sub-committee shall be agreed by the RAC chair.
15. The RAC will review its own effectiveness annually and report outcomes to the OfS board.

Annex C

Office for Students Remuneration & Nominations Committee: terms of reference

Purpose

1. The Office for Students (OfS) has established a Remuneration & Nominations Committee to support the OfS board and Accounting Officer, in their responsibilities for the pay and performance management of senior management and for the pay remit relating to OfS staff. It also provides advice to the OfS chair on the nominations and appointments of independent members to any OfS Committee.

Responsibilities

2. The responsibilities of the Committee shall be:
 - a. To make recommendations to the OfS board on the terms and conditions of employment of the chief executive, noting that some aspects of the terms and conditions will then need to be referred to the Department for Education (DfE) for approval. Unless there are exceptional circumstances, the board delegates consideration and approval of these recommendations to the chair of the board.
 - b. To support the OfS chair in setting objectives with the chief executive and monitoring the chief executive's performance.
 - c. To carry out an annual review of the remuneration of the chief executive and the director for fair access and participation (DFAP) including making recommendations to DfE about proposed changes to basic pay and levels of performance related pay within the context of the terms and conditions agreed by the board.
 - d. To agree the terms and conditions of employment of other OfS directors.
 - e. To support the OfS chief executive in monitoring the directors' performance.
 - f. To carry out an annual review of the remuneration of directors, and to make decisions about changes to basic pay and levels of performance related pay involving DfE as required.
 - g. To review the aims of the annual pay remits, which seek authority from DfE for the nature and scale of pay awards to OfS staff, delegating the details to the chief executive. To set and review the ongoing appropriateness and relevance of the approach to remuneration.
 - h. To review the remuneration report that forms part of the OfS' Annual Report and Accounts which must include details of the remuneration of all board members, chief executive, DFAP and directors.
 - i. To support the OfS chair, chief executive and DfE in the consideration of succession planning requirements at board and executive level.
 - j. Provide advice to the OfS chair on the appointment of suitable independent members to any OfS board committee, and seeking to ensure that recruitment is open, fair and promotes equality of opportunity.

3. The Committee will take account of remuneration and appointments policy and advice provided by the HM Treasury, the Cabinet Office and DfE in carrying out its work.

Authority

4. The Committee is authorised by the OfS board to:
 - a. Seek any information it needs from any employee of the OfS and any others with in order to perform its duties
 - b. Procure specialist ad-hoc advice (including legal advice) at the expense of the OfS up to £10k per annum or as agreed by the board.

Membership

5. The Committee shall be appointed by the OfS board. It shall consist of not less than three non-executive, ordinary members of the board one of whom will be appointed as chair of the Committee. The chair of the OfS board may be a member of the Committee but should not act as its chair.
6. Appointments to the Committee shall be for a period of up to three years, which may be extended for up to a further three-year period, providing the board member still meets the criteria for membership of the committee.
7. Any two members of the Committee will comprise a quorum for decision making.
8. All members of the Remuneration & Nominations Committee are legally indemnified against negligence by the Department for Education.

Meetings

- The Committee will normally meet at least once a year. The chair of the Committee may convene additional meetings as they deem necessary
- In the absence of the chair, the meeting will be chaired by another member that is also a member of the OfS board
- While only members have a right to attend meetings, the Committee may also require any other officials of the OfS to attend to assist it with its discussions on any matter
- The Committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters
- The Committee may invite the chief executive to attend any parts of its meetings other than those directly affecting their personal remuneration or performance assessment.

Reporting

- The Committee will formally report in writing to the OfS board after each meeting.
- Committee meetings shall be minuted and draft minutes circulated to members as soon as possible after the meeting.

- The Committee's activities will be reported in the OfS annual report and account including disclosure of all senior staff remuneration as required by HM Treasury's Financial Reporting Manual (FReM)
- Committee papers and minutes are available to the National Audit Office on a need to know basis and to any OfS board member by agreement with the chair of the board (and subject to compliance with data protection rules). They will otherwise remain confidential.

Other

9. The Committee shall, from time to time, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the OfS board for approval.

Annex D

Office for Students Provider Risk Committee: terms of reference

Purpose

1. The board of the Office for Students (OfS) has established a Provider Risk Committee (PRC) as a committee of the board to oversee and make decisions in relation to the registration and regulation of individual English higher education providers.
2. The PRC has decision-making powers in relation to the initial registration of individual providers. It also acts in an advisory capacity to the board.

Responsibilities/Authority

[the section in italics below may change depending on the board's decisions relating to the paper on 'framework for risk assessment during the registration process']

3. *The Registration Team will assess all applications for registration and make recommendations on the following matters:*
 - (a) whether the provider is eligible for registration (that is whether the provider is a provider of higher education in England);*
 - (b) whether the provider satisfies the initial conditions of registration;*
 - (c) the risk of a future breach of each of the ongoing conditions of registration;*
 - (d) actions (if any) that are necessary to mitigate areas of increased risk.*
4. *The OfS board delegates to the Provider Risk Committee (PRC), chief executive and director of competition & the register the following decisions relating to the initial registration of providers on the OfS Register including, where judged necessary, the application, amendment or imposition of one or more specific conditions of registration.*
5. *The director for competition and the register will, under delegated authority, consider and decide upon recommendations for providers where the recommendation is that:*
 - (a) the provider satisfies the initial conditions of registration; and*
 - (b) the risk category for each condition is no higher than yellow.*

The director for competition and the register may refer any case to the chief executive or to the PRC in which case the chief executive or PRC will make a decision in that case.
6. *The chief executive will, under delegated authority, consider and decide upon recommendations for providers where the recommendation is that:*
 - (a) the provider satisfies the initial conditions of registration; and*
 - (b) the risk category for each condition is no higher than amber; or*

(c) the risk category for only one condition is red unless that red condition is condition D (financial viability and sustainability) or E2 (management and governance).

The chief executive may refer any case to the PRC in which case the PRC will make a decision in that case.

7. *The PRC will, under delegated authority, consider and decide upon recommendations for providers where the recommendation is that:*

(a) The provider is not eligible for registration; or

(b) the provider does not satisfy the initial conditions of registration; or

(c) the risk category for two or more conditions is red or the risk category for condition D (financial viability and sustainability) or E2 (management and governance) is red.

The PRC, or the Chair of the PRC, may refer any case to the board in which case the board will make a decision in that case.

8. *The PRC can also review a sample of decisions made by the director for competition and the register, and/or the chief executive, to ensure that the risk assessment framework is being applied consistently and identify if there are lessons to be learned from the way that the framework is being applied. This is not intended to constitute a review of the decision reached for an individual provider.*

9. *If we intend to refuse an application to register a provider (a Provisional Decision not to register), we must notify the governing body of the provider of our intention. The governing body may then make representations. The PRC will make the Provisional Decision and then consider any representations before reaching a final decision about registration of the provider.*

Membership

10. The members of the PRC, including its chair, are appointed by the OfS board. Members will have a mix of skills and experience to provide a range of expertise to cover the activities of the OfS.
11. Members are normally appointed for a period of three years. Re-appointment for up to three further years is subject to satisfactory appraisal by the PRC chair and approval by the board.
12. The chair of the PRC must be a non-executive member of the OfS board but not its chair to ensure the independence of the PRC.
13. The PRC will consist of:
 - No less than three non-executive members of the OfS board (including the PRC chair).
 - Up to three independent members.

14. The validity of any proceedings of the Committee shall not be affected by a vacancy among the members or by any defect in the appointment of a member. The quorum necessary for the transaction of the business of the Committee shall be two members, including at least one member of the OfS board.
15. The PRC may co-opt additional members for a period not exceeding a year to provide specialist skills, knowledge and experience.
16. A register of declared interests for all members of the PRC will be published on the OfS website. If it is deemed that a member has an actual or perceived conflict of interest then any relevant paper(s) may be withheld or the member asked to leave the meeting for the duration of the discussion at the discretion of the chair. If the conflict of interests is considered to be significant or likely to be long-term, then the member may be asked to step down from the PRC.
17. All members of the PRC are legally indemnified against negligence by the Department for Education.

Meetings

- The PRC will normally meet at least four times a year. The chair of the PRC may convene additional meetings as they deem necessary, especially during the first year of operation.
- Meetings may be held by correspondence and/or via video or teleconferencing. In the absence of the PRC chair, the meeting will be chaired by another member that is also a member of the OfS board.
- While only members have a right to attend, meetings of the PRC will normally be attended by the director of competition and the register, the secretary to the Committee.
- The PRC may also require any other officials of the OfS to attend to assist it with its discussions on any matter.

Reporting

- The PRC will formally report in writing to the OfS board after each meeting. This will be complemented, where necessary, by an oral report from the PRC chair at the board meeting.
- PRC meetings shall be minuted and draft minutes circulated to members as soon as possible after the meeting.
- The PRC will provide the OfS board with an annual report, timed to support finalisation of the annual report and accounts (including the governance statement) summarising its conclusions from the work it has done during the year.
- The terms of reference for the PRC will be reviewed on an annual basis. The OfS board will be asked to approve any changes to the terms of reference.
- The PRC's main duties shall be described in the OfS's annual report and accounts.

Other

18. The PRC may set up a sub-committee to provide advice on any of the above issues. The membership and terms of reference of any sub-committee shall be agreed by the PRC chair.
19. The PRC will review its own effectiveness annually and report outcomes to the OfS board.

Annex E

Office for Students Quality Assessment Committee: terms of reference

Purpose

1. The Office for Students (OfS) has established a Quality Assessment Committee as required under Section 24(1) of the Higher Education and Research Act (HERA) 2017. The QAC provides advice to the OfS on the exercise of its functions under section 23 of the Higher Education and Research Act (HERA) 2017 and such other functions that the OfS may confer on it
2. While a body is designated under Schedule 4 to perform the OfS's functions under section 23, the QAC also has the role of giving advice to the OfS on the exercise by the designated body of those functions.

Responsibilities

3. The OfS Quality Assessment Committee (QAC) will support the OfS in shaping its approach to its quality and standards functions. It will provide advice on:
 - a. the approach to be taken, under Section 23 of HERA, to assessing the quality of, and the standards applied to, the higher education of registered providers and those providers seeking registration
 - b. the approach to be taken to securing the advice required under section 46 of HERA regarding the quality of, and the standards applied to, higher education of providers for which the OfS is considering granting, varying or revoking authorisation for degree awarding powers
 - c. the way in which the designated quality body has exercised the functions under section 27 and Schedule 4, including:
 - the arrangements for holding the body to account for the performance of the assessment functions
 - considering the annual report by the designated body
 - preparation of the triennial report by the OfS.

Membership

4. The Committee shall be appointed by the OfS board. The chair of QAC must be a non-executive member of the OfS board. QAC shall consist of no less than five members and include:
 - Two non-executive members of the OfS board (including the QAC chair).
 - A majority of individuals who appear to the OfS to have experience of providing higher education on behalf of an English higher education provider or being responsible for the provision of higher education by such a provider.
 - A majority of individuals who are not members of the OfS board.

5. In appointing members the OfS must have regard to the desirability of their being currently engaged at the time of their appointment in the provision of higher education or in being responsible for such provision.
6. Members are normally appointed for a period of three years. Re-appointment for up to three further years is subject to satisfactory appraisal by the QAC chair and approval by the board.
7. A register of declared interests for all members of the QAC will be published on the OfS website. If it is deemed that a member has an actual or perceived conflict of interest then any relevant paper(s) may be withheld or the member asked to leave the meeting for the duration of the discussion at the discretion of the chair. If the conflict of interests is significant or likely to be long-term, then the member may be asked to step down from the committee.
8. Any three members of the committee, including at least one member of the OfS board, will comprise a quorum for decision making.
9. All members of the QAC are legally indemnified against negligence by the Department for Education.

Meetings

- The QAC will normally meet at least four times a year. The chair of the QAC may convene additional meetings as they deem necessary, especially during the first year of operation.
- Meetings may be held by correspondence and/or via video or teleconferencing.
- In the absence of the QAC chair, the meeting will be chaired by another member who is also a member of the OfS board.
- While only members have a right to attend, meetings of the QAC will normally be attended by the director of competition and the register and the secretary to the Committee.
- The QAC may also require any other officials of the OfS to attend to assist it with its discussions on any matter.

Reporting

- The QAC will formally report in writing to the OfS board after each meeting. This will be complemented, where necessary, by an oral report from the QAC chair at the board meeting.
- QAC meetings shall be minuted and draft minutes circulated to members as soon as possible after the meeting.
- The QAC will provide the OfS board with an annual report summarising its conclusions from the work it has done during the year.
- The terms of reference for the QAC will be reviewed on an annual basis. The OfS board will be asked to approve any changes to the terms of reference.

Other

10. The QAC may set up a sub-committee to provide advice on any of the above issues. The membership and terms of reference of any sub-committee shall be agreed by the QAC chair.
11. The QAC will review its own effectiveness annually and report outcomes to the OfS board.