

Draft minutes of the OfS Board meeting, 29 January, 2018

Location: London School of Economics

Timings: 10.00-16.00

Present members	Sir Michael Barber – chair Martin Coleman – deputy chair Nicola Dandridge – chief executive Chris Millward – director for fair access and participation Ruth Carlson Gurpreet Dehal Elizabeth Fagan Katja Hall Kate Lander Simon Levine Carl Lygo David Palfreyman Monisha Shah Steve West
Observer	Philippa Lloyd (Department for Education)
Officers	Edward Davison – head of office: OfS chair and chief executive Mario Ferelli – HEFCE director of analytical services Josh Fleming – chief of staff to Sir Michael Barber Yvonne Hawkins – future OfS director of teaching excellence and student choice Susan Lapworth – future OfS director of competition and the register Nolan Smith – future OfS director of resources and transformation

Item 1 - Chair's welcome

1. The chair welcomed the board to its first meeting, and outlined two principles that in his view should underpin the development of the Office for Students (OfS):
 - i. Taking the student perspective, short, medium and long term in all its activity.
 - ii. Thinking of the role of the board as one of stewardship. The country has an outstanding higher education sector which is high performing and globally recognised, and the collective impact of the board's decisions should reflect this.
2. The chair gave an update on events following the legal establishment of the OfS and invited comments on the following areas:
 - The announcement of the board and the media coverage around it;
 - Subsequent positive media coverage of the OfS;
 - Early contact with the new universities minister;
 - Evidence to the Public Accounts Committee and the Joint Committee on Human Rights;
 - The appointment and first meeting of the OfS student panel and the commissioning of a piece of research on value for money from the student perspective;
 - Regular visits to higher education providers by the chair and chief executive, of which meeting students was a core part.

Contributions from the board included the need to maintain focus on priorities, to be proactive in the media including social media, and to embrace the whole sector including traditional universities and other higher education providers.

Item 2 – Regulatory framework

3. The chair emphasised the importance of the regulatory framework, and noted that although it might be revised in the future, this version would be the founding document.
4. The future OfS director of competition and the register, explained that the board's discussion of the draft regulatory framework represented the discharge of its duty under section 75(1) of the Higher Education and Research Act (HERA) to prepare and publish a regulatory framework. It was noted that the Secretary of State had not issued any directions under section 77, nor any guidance under section 2(3) to which the board must have regard. Guidance was, however, expected to be issued soon. The board agreed to consider this outside of board meeting, once the guidance had been published. Members were also reminded that the board must have due regard to its general duties in section 2 of HERA, and that each duty must be taken into account and weighed against each other as appropriate.
5. The first part of the discussion considered the responses to the regulatory framework consultation. Board members split into small groups to consider the consultation responses (paper 2.2). The groups then fed back to the entire board, after which further discussion took place and the following observations made and conclusions reached:
 - **Registered basic:** the board noted that the original purpose of this category was to encourage providers who might otherwise decide to remain outside of

the OfS's regulatory purview, to apply to join the register. The board noted the responses to the consultation expressing concerns about the category, and in particular that it might be wrongly construed as providing a higher level of regulation than was proposed. In the light of these concerns, the board decided that the registered basic category should be removed from the register. The board would in the future consider how best to encourage providers who decided not to register, to become registered, without running the risk of misleading students.

- **Quality:** the board agreed to maintain the broad policy approach set out in the consultation, emphasising the importance of an outcomes focused approach. The board also agreed that outcomes should not be understood as referring only to income and employability and that a broader definition should be adopted.
- **Objectives:** the board agreed that no significant changes were necessary to the OfS's objectives in light of the consultation responses.
- **Validation:** the board noted that the OfS could be a validator of last resort, and agreed that it should be willing to ask for and use this power. Because this would create a conflict of interest for the OfS as both regulator and validator, as highlighted in many consultation responses, the OfS should explicitly acknowledge this conflict and put in place proper mechanisms to mitigate it. It was also noted that the OfS would only seek its own validation powers as a last resort, and the OfS had other levers available to improve the validation system before it would wish to become a validator itself.
- **Student representation:** the board noted the many consultation responses that expressed concern that the proposals did not require providers to engage with students. It was agreed that a new public interest governance principle should be introduced that would address this concern.
- **Student contracts:** the board discussed the concerns raised in consultation responses about the potential for overlap and poor coordination with the Competition and Markets Authority (CMA). However, it concluded that these concerns were likely to be misplaced given the strong relationship already forming and the CMA's track record of working with other regulators. However, the board considered that the language in the consultation document was unhelpful in conflating contract and consumer law, and agreed the wording should be revised. There followed a discussion on what more needed to be done on student contracts, and it was agreed that more work was needed on whether a standardised contract would be helpful to students and, if so, what this might look like.
- **Risk-based approach:** the board noted the differing views expressed in the consultation responses. It was agreed that conditions of registration should apply to all providers, but that the monitoring of compliance with these conditions would be lighter for providers considered to be not at increased risk of a future breach of a condition. It was also noted that 5% of providers would be reviewed under the proposals for random sampling each year. The board disagreed with responses that argued that the bar for entry was too low for new providers. It was agreed that the tone of the regulatory framework was appropriate in making clear that the OfS should expect market exit and be prepared to deal with it to protect students, but should not actively promote it.

- **TEF:** the board considered the consultation responses in relation to the TEF. It was agreed that the TEF should be compulsory for registered providers. However, it questioned whether 500 FTE students was the right cut-off point for participation. It was agreed that this figure should be reviewed.
6. The board then considered the latest draft of the regulatory framework. The proposals were broadly agreed, subject to a number of points that would be taken on board in the final drafting of the framework, including the following points:
- **University College Title:** there was discussion as to whether the proposals were correctly pitched to ensure that the process was effective without being burdensome or unduly slow. Concerns were expressed that the current proposals could create a barrier to entry. It was agreed to consider this further and ensure that the balance was appropriate.
 - **The vision for the OfS:** it was proposed that a clearer statement of the OfS's vision should be reflected in the chair's foreword and the media and communications that would support the launch of the regulatory framework. It was also agreed that there should be an early statement of OfS's values that underpin the framework.
 - **Short termism:** the board agreed that the document should be clearly focused on the long term, rather than on short term political issues. It should also clearly express the OfS's role as an independent regulator.
 - **Sector level regulation:** the board agreed that whilst the list of tools were correct, the document needed to avoid the impression of a tick box approach to compliance. It was suggested that innovation should be more visible.
 - **Principle based regulation:** the board agreed that the document should make it explicit that it described a principles-based approach to regulation, as a result of which much of the content would necessarily be general.
 - **Sanctions:** the board agreed that the document should explicitly state that the use of sanctions will be subject to a formal governance process.
 - **Access and participation plans:** it was proposed that further consideration be given to whether, in future, a condition on access and participation plans could be extended to all providers on the register.
7. Having considered and responded to the analysis of the consultation responses, the draft regulatory framework, and the equality impact assessment, the board agreed to delegate authority to the chair, the deputy chair, and the chief executive to:
- Approve for publication the document that sets out the OfS's narrative response to the regulatory framework consultation on the basis of the board's discussion;
 - Approve the drafting changes to the regulatory framework necessary to address the issues raised during the board's discussion;
 - Approve the drafting changes to the equality impact assessment on the basis of the board's discussion.
8. In the final section of this agenda item, the board considered paper 2.4 on the designation of two bodies. The board agreed to recommend to the Secretary of State that:
- There was only one body suitable to be designated to perform the quality and standards assessment functions and that the Quality Assurance Agency therefore be designated to carry out the assessment functions.

- There was only one body suitable to be designated to perform the information duties and that the Higher Education Statistics Agency therefore be designated to carry out the information duties.
9. It was agreed that the designation process should allow for an appropriate and new relationship between OfS and the designated bodies, and that this would be different to the relationship they had previously had with HEFCE. The board also noted that only one organisation had applied for each role and that no others had been suggested during the consultation process. The board would have preferred a more competitive process for these roles.

Item 3 – OfS strategy

10. The chief executive outlined progress made since the November shadow board meeting with the development of the OfS strategy in terms of ensuring:
- Closer alignment with the regulatory framework;
 - More granular detail on how the OfS will deliver its objectives.
- The chief executive explained that an annual business plan would flow from the strategy and that this would be shared with the board at its March meeting. Further work would be carried out on developing performance indicators before the March board meeting.
11. Comments and suggestions on the draft strategy were put forward which will be reflected in the final version of the document.

Item 4 – OfS approach to risk

12. The chair of the OfS risk and audit committee (RAC), introduced paper 10.1, emphasising that it focussed on risks that the OfS faces, not the risks within the sector. The latter would be addressed by the provider risk committee.
13. The chair of the RAC stated that the RAC would include some board members and independent members, and board members were encouraged to consider whether they wished to join the committee.
14. The board were asked for their views on the paper and gave broad agreement with the suggested approach and categories of risk.

Item 5 – Social mobility

15. The director of fair access and participation introduced paper 4.1, emphasising the focus on reducing gaps (such as in access, attainment, and progression) between disadvantaged and other students, the shift from inputs to outcomes, and the shift from access alone to participation, success, and progression.
16. The board were supportive of the approach set out in the paper. They felt there was a need, and a real appetite in the sector, for ambition in this area. The board also acknowledged that it was important to achieve some quick results, and to initially focus on a small number of interventions that were likely to have the most impact. At the same time, it was agreed that progress in this area would be long term, and involved actors outside the higher education sector. Many of the issues were cross cutting and would require co-ordinated efforts to make sustained change.

Item 6 – Vice-chancellors’ pay

17. The chair noted that some board members were currently or formerly employed by higher education providers. The chair also made clear that these were not seen as conflicts of interests as the discussion was not about their individual compensation.
18. The chief executive introduced paper 5.1, noting the need to have regard to the need to protect institutional autonomy as particularly relevant, as well as the reputational risk to the sector of a populist backlash in light of recent media coverage on this subject. The recently proposed CUC code was also discussed and commended, though the chief executive emphasised that implementation would be the critical challenge.
19. The board agreed that the OfS has a role to play in regulating senior staff remuneration – excessive pay poses a reputational risk for the sector and the OfS itself, and may also indicate a failure of governance. It also agreed that the proposed CUC code was a welcome attempt at self-regulation by the sector, though it was still unclear whether it would be sufficient to address concerns about excessive pay. The board discussed the various approaches that the OfS might take, and it was agreed that the OfS should use transparency as its primary regulatory tool – requiring the publication of information about levels of pay and the reasons for this – and should not seek to make judgements about whether public justifications for pay were or were not satisfactory.
20. It was also noted that at a provider level, vice-chancellors and senior staff should be able to justify their pay to their students.

Item 7 – Funding

21. The incoming director of teaching excellence and student choice gave a presentation on higher education finance and funding, and the OfS’s role during the transition period up to August 2019. There was an offer to new board members for further briefing on request.
22. In light of the presentation, the board agreed to the recommendations set out in paper 6.1.

Item 8 – Market exit

23. The paper was introduced by the incoming director of teaching excellence and student choice, noting that this was a discursive paper for the board to consider and offer views on.
24. The chief executive emphasised that the OfS has identified provider failure as a major risk. In relation to alternative providers in 2018/19, it was an area of shared responsibility with the Department for Education.

Item 9 – Teaching Excellent and Student Outcomes Framework

25. The board agreed that the OfS will:
 - Adopt the TEF as the scheme to be used under section 25 of HERA;
 - Appoint Professor Chris Husbands as chair of the TEF panel for a further three years.

The board agreed that the TEF has had a profound effect on teaching across the sector and that the appointment of Professor Husbands would help to maintain and build confidence in the process as it continues to develop.

Item 10 – Chief Executive’s Report

26. The chief executive gave an oral update on her written report, noting:
 - Recent communications activity, including the launch of the OfS Twitter account;
 - The opportunity for board members to visit providers;
 - The first student panel meeting (24 January 2018).

27. The student voice representative gave an oral update from the student panel meeting, stating that it was a positive first engagement which focused on the logistics and governance of the panel, as well as touching on mental health and how the experience of students has changed over time.

28. The board requested an informal meeting with the student panel, and agreed the importance of student wellbeing and tackling mental health issues.

The meeting ended at 16.00