

## Chief Executive's Report

### Issue

1. To provide an update on work undertaken and issues that have arisen since the date of the last board meeting on 26 March 2019, to the extent that they are not covered in other board papers.

### Recommendations

2. The board is invited to:
- a. Note the updates contained in the paper
  - b. Approve an amendment to the terms of reference for the Risk and Audit Committee in paragraph 31.
  - c. Note the decisions taken under delegated authority at Annex B
  - d. Note the report on strategic risks at Annex D.

### Board members' interests

3. The following members of the board are closely involved in providers that the OfS regulates and therefore have an interest in its powers and the way that these are used:
- a. David Palfreyman (University of Oxford)
  - b. Monisha Shah (Rose Bruford College of Theatre and Performance)
  - c. Professor Steve West (University of the West of England)
  - d. Verity Hancock (Leicester College)
  - e. Martha Longdon (Nottingham Trent University)

As this paper deals with regulatory approaches and not regulatory action in relation to specific providers we do not consider it necessary for these board members to recuse themselves from the discussion of this paper.

### Further information

4. Available from Nicola Dandridge ([nicola.dandridge@officeforstudents.org.uk](mailto:nicola.dandridge@officeforstudents.org.uk)).

## Summary

5. As reported to the board at its last meeting, as the majority of individual providers become registered, so the OfS's focus turns to effective monitoring of the conditions and concerns flagged during the registration process. Meantime, as will be reported more fully to the board in the report of the Provider Risk Committee (paper 5.1), some more complex registration applications are now at the stage of being considered by the committee, with 22 'minded to refuse registration' decisions now being considered carefully, and representations being heard. These cases, rightly, absorb considerable time and work, as decisions are made that prioritise the interest of students in the context of the OfS' general duties under the 2017 Act.

6. A considerable proportion of the conditions or other mitigations imposed as part of the registration process relate to access and participation. In relation to access and participation there is a statutory responsibility on the OfS to provide support and promote good practice. This aspect of the OfS's functions is a strategic priority, and the first 'Insight' event, which took place on 1 May 2019, focused on issues of social mobility and equality (paragraph 13 below). As described in paragraph 11 below, the Evidence & Impact Exchange (now 'TASO') is starting its work.

7. Work to develop systems and processes to support market exit continues, with the OfS now overseeing a number of providers who are implementing partial exits through for instance campus closures.

8. Internally, recruitment for the vacant roles continues. The organisation is now nearly at full staff complement.

9. Looking forward to the next two months, the OfS's full regulatory powers come into force on 1 August 2019. At that point, as set out in the 2017 legislation, the transitional arrangements that carry over the powers and responsibilities from the Further and Higher Education Act 1992 fall away.

## Strategic objective – participation

10. As reported to the OfS board at the last board meeting, the OfS is currently working with providers in relation to their submission of new access and participation plans. This is time-consuming but critically important work, with those providers with October admissions deadlines needing to submit their new plans by the end of this month.

11. The Evidence & Impact Exchange has now been renamed 'The Centre for Transforming Access & Student Outcomes' ('TASO') and is already starting its work. The OfS has issued a call for evidence to higher education providers on their behalf, which will enable them to review the current evidence base as a platform for their future work.

12. On 29 March 2019, the OfS launched new access and participation data dashboards. These dashboards provide relevant information to providers, describing their student intake, continuation rates, degree attainment and progression to further study or employment for different groups of students over the last five years. It will allow benchmarking and comparisons, with more detail than has previously been available in this format. We intend to develop the dashboards in the future so that they allow the presentation of the information in different formats that provide most use to providers, and greater transparency to students and the public, at both provider and sector level.

13. The OfS's first 'Insight' event took place on 1 May 2019, and focused on access and participation, our first strategic priority. The intention is that three further Insight events will take place over the course of the next year, each covering a strategic priority. The Insight event was a great success, with a strong range of speakers covering the use of contextual data, the BME attainment gap, and the experience of commuter students. It was fully booked with 170 delegates, and more than double that watching through a live stream on YouTube. There was significant and

positive discussion throughout the day on social media and our Tweets appeared on people's timelines over 86,000 times. We are particularly grateful to those OfS board members who joined and contributed to the event.

14. The Insight event coincided with the publication of a brief on the use of contextual admissions. The brief makes calls for universities to take much greater account of the context in which exam results are achieved in order to recognise the potential of candidates from disadvantaged and other underrepresented backgrounds who could make a major contribution to their communities and to the wider economy and society.

### **Strategic objective – experience**

15. The Secretary of State for Education has delegated to the Office for Students a power, under the Teaching and Higher Education Act 1998, to designate courses for student support at providers that are not registered with the OfS. We have been working with colleagues at the DfE for some time on the arrangements for this delegation, which will be used for providers that are not registered with the OfS (for example because they do not meet the initial conditions of registration) that have existing students claiming student support in 2018-19. Under the transitional arrangements in place, after 31 July 2019 providers not registered with the OfS will no longer attract automatic student support for their courses. By designating these courses using this delegated power, students will be able to continue to receive student support for a period of 'teach out' of their programme. Providers in this situation will be asked to apply for this designation: it is not automatic. An application process for this purpose is currently being developed and will be in place for June 2019, together with a set of conditions that providers will be required to meet in order to receive the designation. Once designated for teach out, providers will be overseen by the OfS, reporting to the DfE.

16. Additionally, there are a small number of providers outside of England that are currently designated by DfE in 2018-19 for English-domiciled students that the OfS will be designating for the 19-20 academic year only, while the DfE secures alternative arrangements with the devolved administrations.

17. The first meeting of the newly re-constituted Student Panel took place on 2 May 2019, and considered the OfS's approach to market exit, and the OfS's emerging student engagement strategy. Details are set out in the report of the Student Panel to the board (paper 4.1).

18. On 11 April 2019, the OfS issued new guidance to providers who wish to use the title 'university college' or 'university' in their title as part of their name. See <https://www.officeforstudents.org.uk/news-blog-and-events/our-news-and-blog/new-guidance-on-university-title-applications/>

19. The OfS's investigation into leadership and governance at De Montfort University continues. An oral update will be provided to the board at the board meeting.

### **Strategic objective – outcomes**

#### **Update on registration**

20. We are continuing to make progress with initial registration: table 1 below sets out the current position. The Provider Risk Committee is meeting monthly to make registration decisions and is now considering representations submitted by those providers issued with 'minded to refuse registration' letters. We have also begun to review the outcomes and operation of the registration process in advance of publishing aggregate data about patterns of decisions and issuing updated guidance to providers later this year.

**Table 1: Registration decisions at 1 May**

<b>Registration status</b>	<b>Number</b>
Decisions made to register (since PRC on 29 April) Providers published on register	363
Applications where 'minded to refuse registration' letters were issued	22
Quality and standards, and/or management and governance review required before registration	14
Application under assessment	61
Application incomplete	6
Application withdrawn	4
<b>Total</b>	<b>470</b>

21. Many applications are received which are missing information at the point of submission. In a number of cases the applications remain incomplete despite repeated attempts to obtain the required information from the provider. As an assessment of whether the provider satisfies the relevant initial conditions of registration cannot be made on the basis of the available evidence, six providers have now been issued with a letter requiring them to produce the information within a short deadline. If the providers fail to submit the required information, they will be issued with an 'intention to refuse registration' letter.

22. We have already registered six new providers and we continue to receive applications from new providers, with around 50 of these at various stages of assessment. The timeline for assessment and decision for new providers is usually extended because a Quality and Standards Review is needed from the QAA before we are able to make a registration decision – five new providers are currently waiting for a QSR to take place, with the other conditions judged to be satisfied. It is worth noting that the quality of applications from new providers can be variable. Some applications are strong and credible, with evidence of well-developed business and academic plans; other providers appear at this stage to be less ready for the obligations of becoming a registered provider. Where there are weaknesses, these often relate to conditions A1, D and E1/E2.

**Update on monitoring and intervention**

23. The OfS's new monitoring arrangements will not be fully in place until 1 August 2019. However, from the date on which a provider is first registered it has an obligation to meet a number of new regulatory requirements. For many providers, the OfS has imposed requirements as part of the registration decision to mitigate areas of increased risk: these will be in the form of specific conditions, enhanced monitoring requirements or a formal communication. The board will receive a presentation during the meeting on 15 May that provides more information about post-registration mitigation.

24. Each registered provider is also required to report specified reportable events to the OfS. Table 2 sets out those received up to 1 May 2019. Each of these reports will be assessed and a

new risk assessment carried out for the provider. This may result in additional regulatory action and, in some cases, the issues may be significant.

**Table 2: Reportable events submitted to the OfS at 1 May 2019**

Category of reportable event	Number
Accountable officer change	45
Amendments to governing documents	12
Campus/department/subject or provider closure	14
Chair of governing body	50
Change of circumstances	6
Change of ownership/control	6
Change relevant to financial viability and sustainability	17
Governing body changes	41
Legal or court action	9
Merger	12
Opening new campus	13
Other	8
Partnership arrangement changes	57
Quality	1
Register change	20
Course closure	1
De-registration (voluntary)	1
Change of registration category	2
Regulatory investigation/sanction by another regulator	10
Student protection plan change	2
Suspected of actual fraud or financial irregularity	17

### Strategic objective – value for money

25. On 4 April 2019, the OfS's report on 'Financial sustainability of higher education providers' was published. (<https://www.officeforstudents.org.uk/publications/financial-sustainability-of-higher-education-providers-in-england/>). It provided an overview of the financial sustainability of the sector overall and for groups of providers registered with the OfS. The report found that the sector as a whole was in reasonable financial health, but with significant variation between providers with a number under financial pressure. The report also flagged overambitious student recruitment forecasts, a trend that was particularly apparent when individual forecasts were aggregated up to sector level: overall, the sector forecast a 10 per cent growth in student numbers over the next four years (equivalent to an increase of 171,000 full-time students); including an overall predicted increase of approximately 78,000 full-time UK and EU undergraduates. This was despite a projected decline in the UK population of 18-year-olds of five per cent over the same period. To ensure providers were aware of the aggregated forecasts, we wrote to the chairs of each registered providers advising them of our concerns about the recruitment forecasts, and asked them to share the report with the governing bodies. The report was covered by The Telegraph, Times, Guardian and Daily Mail to ensure maximum awareness.

### Strategic objective – efficient and effective regulator

26. The parliamentary debate (<https://hansard.parliament.uk/commons/2019-05-01/debates/7221d944-d8d1-4fd1-a6bd-78a354eedf07/GeneralCommittees>) on Regulations introducing new arrangements for registered providers to pay for the majority of the OfS's fees,

took place on 1 May 2019. The debate took place because the opposition had ‘prayed against’ the government’s proposals. Several MPs spoke in the debate, primarily expressing concern at the proportion of the OfS’s costs being passed over to providers, leading to higher costs than had originally been anticipated, with the largest providers paying an annual fee of £186,600. The Minister for Universities, Science, Research and Innovation, spoke to the Regulations, noting that it was standard practice for regulators to be funded by those they regulate, referencing the benefits of effective regulation, and noting that some of the OfS’s costs will continue to be borne by the Department. The Regulations were passed by 9 votes to 8.

27. The OfS’s business plan for financial year 2019-2020 was published on 29 April 2019, in both web and pdf formats. Internally, the plan is being operationalised at the directorate and team level through planning sessions and objective setting.

28. In April, the Director’s group agreed an OfS equality, diversity and inclusion strategy for the organisation. This focuses on our role as an employer and sits alongside our external equality & diversity objectives. The new OfS strategy sets out our immediate priorities with the aim of embedding them across the organisation and all roles. Each priority is sponsored by a director who will be individually accountable for measurable progress against that priority, while the directors’ group are collectively responsible for the delivery of the whole strategy. This strategy is the culmination of work, which included consultation with the Student Panel and a wide range of OfS staff. Full details will be discussed with the board in July 2019, including a review of staff profile data.

29. The Directors’ Group has agreed the development of the organisation’s ‘transformation programme’ for 2019/20, to be overseen by an internal programme board chaired by Nolan Smith (Director, Resources, Finance and Transformation). The programme will take forward existing work (values and behaviours, equality and diversity, and knowledge and information sharing) as well as developing a number of new projects including a new learning and development programme, and making the best use of our office space.

30. At the time of writing, the OfS has 9,285 followers on Twitter – with a consistent increase of several hundred followers a month. Website traffic remains constant, with an average of 215,000 page views a month so far this year. The most popular section of the site is advice and guidance (with 37 per cent of total traffic), followed by data and analysis (17 per cent), publications (13 per cent) and news and blog (9 per cent). A summary of OfS print coverage is available at Annex A.

31. When it was originally established in early 2018, the OfS Risk and Audit Committee was given a one-off responsibility to advise the OfS board and accounting officer on “...the 2017-18 annual report and accounts for HEFCE following its planned closure at the end of March 2018.” As this requirement has now passed, the board is therefore invited to approve the recommendation that this point is removed from the list of responsibilities included in the RAC terms of reference.

## Annex B - Report on use of delegated decision making

14 March to 30 April 2019

### Funding allocations for 2019-20

1. Under the scheme of delegation, the board delegates to the chief executive the ability to make changes to individual funding allocations, virements between budgets and decisions on the recovery of grant.

#### Formula capital funding

2. On 27 March 2019, the chief executive agreed initial formula capital allocations for providers for financial year 2019-20. £88M of the £90M total has been allocated to those that were on the Approved (fee cap) part of the register on 19 March. The balance of £2M is set aside for allocation later in the year, including to other providers that join the Approved (fee cap) part of the register by the end of financial year 2019-20.
3. Details of the allocations to individual providers are available at <https://www.officeforstudents.org.uk/publications/formula-capital-funding-for-2019-20/>

#### Recurrent funding

4. On 16 April 2019, the chief executive agreed the approach to allocating recurrent grant in May 2019 to providers registered in the Approved (fee cap) category on 15 April. Specifically these approvals were:
  - a. To set the scaling factor for high-cost subject funding for 2019-20 at 1.025.
  - b. To set the May 2019 allocation total for the premium to support successful student outcomes for full-time undergraduates at £158.5 million (£140 million for the main allocation and £18.5 million for the supplement), thereby making provision of £6.5 million for allocation later.
  - c. To set the May 2019 allocation total for the premium to support successful student outcomes for part-time undergraduates at £70.5 million, thereby making provision of £1.1 million for allocation later.
  - d. To set the May 2019 allocation total for the disabled students' premium at £39.5 million, thereby making provision of £0.5 million for allocation later.
  - e. To set the May 2019 allocation total for the targeted allocation for students attending courses in London at £68 million, thereby making provision of £3 million for allocation later.
5. These approvals resulted in a total of £14 million of recurrent grant being set aside for distribution after May 2019, including to other providers that join the Approved (fee cap) part of the register by the end of the academic year 2019-20. We believe this overall amount of money to be set aside to be a reasonable estimate of future requirements. For future grant announcements, money can be vired from one element of recurrent grant to another if we find we have under-estimated one element.
6. On 29 April 2019, the chief executive agreed the initial allocations of recurrent grants for academic year 2019-20 to 304 providers that were registered in the Approved (fee cap)

category by 15 April 2019. These allocations reflected the board's decisions on funding taken at its meeting on 26 March 2019 and the further decisions taken by the chief executive on 16 April 2019 described above.

7. At the time of writing, the initial recurrent grant allocations for 2019-20 were due to be announced under embargo to providers on 8 May 2019 and published on 9 May (see: [www.officeforstudents.org.uk/advice-and-guidance/funding-for-providers/annual-funding/](http://www.officeforstudents.org.uk/advice-and-guidance/funding-for-providers/annual-funding/)).



## **Annex C – Future board business**

### **July 2019**

CEO update  
Update to the scheme of delegation  
Update on TEF  
E&D report against objectives  
External information sharing policy  
NSS contract  
Public sector equality data  
OfS people report  
Use of funding as a regulatory tool / implications of Augar  
Report from the May Risk and Audit Committee

### **September 2019**

CEO report  
Q1 Finance report  
Report from the September Risk and Audit Committee  
Next stage of IAG strategy  
Student welfare and safeguarding – update on OfS's role  
Student panel / board engagement

### **November 2019**

CEO report  
Q1 Finance report  
Report on Innovation Challenge Fund  
Validation arrangements  
Student contracts  
Review of OfS strategy  
OfS student engagement strategy  
Intervention strategy