



Draft minutes of the OfS Board meeting, 16 March 2020

Location: Finlaison House, London*

Timings: 13.30-17.00

- Present members:
- Sir Michael Barber (chair)
 - Martin Coleman (deputy chair)
 - Nicola Dandridge (chief executive)
 - Gurpreet Dehal
 - Elizabeth Fagan
 - Verity Hancock
 - Kathryn King
 - Kate Lander
 - Simon Levine
 - Martha Longdon
 - Chris Millward (Director for Fair Access and Participation)
 - David Palfreyman
 - Monisha Shah
 - Steve West
- Attendees:
- Ian Coates, Department for Education (DfE) representative
- Apologies:
- Katja Hall
- Officers:
- Ed Davison
 - Josh Fleming
 - Paul Huffer, Head of Legal
 - Susan Lapworth, Director of Competition and Registration
 - Paula McLeod, Corporate Governance Senior Adviser (clerk)
 - Richard Puttock, Director of Data, Foresight and Analysis
 - Conor Ryan, Director of External Relations
 - Nolan Smith, Director of Resources, Finance and Transformation
 - Ben Whitestone, Head of Governance

* Members attended in person in London or in the OfS Bristol office, others remotely via video conference or telephone

Chair's welcome

1. The chair welcomed members to the meeting and thanked them for accommodating the last minute switch to video and telephone conferencing.
2. The chair advised he had visited South Devon College and Plymouth University since the last board meeting.
3. He and the chief executive had met with Michelle Donelan, the Universities Minister, and would continue to meet with her every two weeks. He had also met with Gavin Williamson, who continues to be very interested in the work of the OfS. He had plans to meet with the Cabinet Secretary next week.
4. The chair noted that the announcement in the Budget regarding funding for research and small and specialist providers is significant for OfS and its work.
5. He noted that the successful outcome of the judicial review case taken out against OfS by Bloomsbury Institute is very significant and the judgement confirms the robust approach taken to registration and sets the OfS up to take forward its work on quality and student outcomes.
6. The board noted its general duties as set out on the agenda and the need to have regard to these as it considered papers and made decisions.

Approval of January minutes (paper 2.1)

7. The minutes of the meeting held on 28 January 2020 were approved with one minor amendment.

Chief executive's report (paper 3.1)

8. The chief executive presented her paper which provided an update on work undertaken and issues that have arisen since the date of the last board meeting on 28 January 2020. The following issues were highlighted:
 - a. Exempt from publication.
 - b. Following the successful judgement in the Bloomsbury Institute judicial review, a ruling on costs was also issued. This has also gone in favour of the OfS with Bloomsbury ordered to pay costs. The board put on record its thanks to all of those who have contributed to this case and, in particular, to the Provider Risk Committee, the Director of Competition and Registration and her team and the Head of Legal and his team.
9. The board noted the updates contained in the report.
10. Some amendments to the scheme of delegation set out in paragraph 34 of the paper required board approval. The Head of Legal advised these were:
 - a. An administrative update to the Prevent duty to reflect changes in the allocation of senior responsibilities.
 - b. Exempt from publication.
11. Exempt from publication.
12. The board:

- a. Approved the changes to the scheme of delegation proposed in Annex D of the paper relating to the Prevent duty.
 - b. Exempt from publication.
13. The chief executive updated the board on the OfS response to the coronavirus (COVID-19) epidemic. She noted there are currently three objectives guiding the OfS's immediate response to the pandemic:
 - a. To support central government's objectives, especially through information dissemination and enabling providers to respond effectively.
 - b. To protect students in terms of teaching, exams and assessment, and provider financial sustainability.
 - c. To minimise long run disruption to the system – reducing permanent damage to the system and laying the foundations for the sector to recover post pandemic.
14. To deliver these objectives the OfS will:
 - a. Give all providers clarity on the regulatory environment, minimising uncertainty through advice and clear communications, and enabling clear decision making.
 - b. Support providers, proactively adding value – this is the best way to help students during the outbreak given the decentralised nature of the system.
 - c. Focus on minimising regulatory burden, which may extend to burdens that in normal times we would see as necessary.
 - d. Work closely with other stakeholders throughout.
15. The three main areas of concern for OfS are:
 - a. Maintaining baseline teaching quality and standards.
 - b. Adequate exams and assessments, including the situation regarding 'A' levels and the implications on admissions.
 - c. Financial sustainability of providers.
16. The Director of Resources, Finance and Transformation updated further, noting that the DfE and UUK have set up a working group of which he is a member. Internally, business continuity arrangements are in place. A successful 'work from home' day had taken place the previous week to prepare staff for any longer-term home-working arrangements which may be required.
17. The DfE representative noted that responding coronavirus is now a departmental priority and staff are looking at short term issues such as admissions and student accommodation as well as considering other potential indirect effects on the sector. The OfS will support DfE's work, in particular, through reducing regulatory burden on the sector where appropriate.
18. The following points were raised in discussion:
 - a. There is concern amongst students over their accommodation arrangements, particularly over vacation periods, and their ability to travel. If they leave the UK, will there be visa restrictions allowing them to re-enter.
 - b. Guidance issued by the OfS will support providers in adopting a consistent approach. Advice from government encouraging the sector not to disrupt teaching will also be helpful. If the decision is made to close schools and other education providers, then this needs to be done in an orderly way.
 - c. OfS will need to prioritise its regulatory activities. It should review ongoing applications for registration on a case by case basis.
 - d. Although clarity from government is necessary, providers run as businesses and they need to be responsible for making their own commercial decisions.

- e. The impact of international student numbers will affect some providers more than others. This should be taken into account in our regulatory assessments.
- f. Acknowledging that some prioritisation of work is required, OfS will need to balance responding to coronavirus matters with keeping other essential activities going. This will have to be reflected in the business plan. In addition, OfS may need to re-position its current regulatory role and take more of a leadership role, demonstrating good practice and collaborating more than is normally the case with the sector.
- g. It will be helpful to understand the position of other stakeholders, including the SLC and the ESFA.

19. In conclusion, the board:

- a. Was supportive of the work the OfS is doing in response to coronavirus and in a very fast-moving situation.
- b. Exempt from publication.
- c. Asked the executive to provide regular updates.

In-year student data and Data Futures (paper 4.1)

20. Exempt from publication.

21. Exempt from publication

22. Exempt from publication.

Funding overview and budgets for academic years 2019-20 and 2020-21 (paper 5.1)

23. The Director of Research, Finance and Transformation introduced the paper setting out the financial implications of the government's strategic guidance letter to OfS in January 2020, noting that there have been two changes since the paper was written. He advised that:

- a. Nursing, midwifery and allied health subjects are currently treated the same as other subjects. The proposal is for an additional allocation of £4m to be added to nursing, midwifery and allied health to maintain its rate of funding.
- b. The GDP inflator needs to be updated following the Budget on 11 March 2020.

24. In noting these changes, he also asked the board to delegate authority to the chief executive to agree the details of the final allocations set out in Annexes A and B of the paper. The current intention is that future funding for small and specialist providers will come back to the board in May, though this will be subject to revision depending on the impact of coronavirus.

25. The board:

- a. Noted that financial allocations to providers may need to be reviewed in response to coronavirus but, with limited budgets available, the current funding settlement was not the place to do this. It would need to be discussed with DfE and revisited as part of any wider government financial decisions.
- b. Considered the responses received to 'Consultation on implementing savings in academic years 2019-20 and 2020-21, summarised in Annex C of the paper.
- c. Agreed that savings of £26 million required in academic year 2019-20 should be secured in the first instance from funds not yet committed and not by reducing 2019-20 grants to providers that have been announced, as set out in paragraphs 19 to 24.
- d. Agreed the recurrent budgets for academic year 2020-21 and capital budgets for financial year 2020-21 and the general approach to their distribution as set out in the paper.

- e. Agreed to delegate authority to the chief executive to agree the details of the final allocations set out in Annexes A and B of the paper

The Director of Resources, Finance and Transformation left the meeting at 15.30

Freedom of speech and academic freedom (paper 6.1)

26. The Director of Competition and Registration introduced a board discussion on freedom of speech and academic freedom. She advised that:
 - a. Registered providers are bound by legislation in these matters through the Education (No 2) Act 1986, the Prevent duty set out in the Counter-Terrorism and Security Act 2015, the Equality Act 2010, the Public Order Act 1986 and the Higher Education and Research Act 2017.
 - b. OfS has no direct powers in relation to students' unions. They are regulated as charities by the Charity Commission.
 - c. The challenge is untangling these legislative obligations and providing clarity, both at sector and provider level, on how they relate to each other. The OfS could usefully provide further guidance in this area, including by using case studies. It may also be necessary for the OfS to use its regulatory powers to intervene if regulatory requirements are not satisfied.
27. Following up on this introduction, the chair confirmed the OfS's position of working to support the widest possible definition of free speech within the law and within any future government legislation. Also trying to identify what "good" looks like and where it has worked well at provider level, including when a speaker may have been considered controversial but an event still goes ahead successfully. In addition, OfS should be clear how it would intervene in individual cases and which regulatory tools it would use.
28. In considering a scenario a registered provider might face when challenged on its approach to freedom of speech and academic freedom, the following points were made in discussion:
 - a. OfS guidance should be provided at sector level with a clear set of principles that apply to all providers.
 - b. Decisions on whether or not individual providers are in breach of regulatory requirements would be made, as is the case now, on the basis of the scheme of delegation.
 - c. If costs are influencing a provider's decision not to run an event, this may be significant or even determinative, but it is a second order issue.
 - d. If students' unions intend to run events on the premises of a registered provider there should be a protocol in place within that provider.
29. The board:
 - a. Agreed to revisit the discussion at a future meeting depending on the impact of coronavirus.
 - b. Agreed to keep DfE informed of any developments in this work.

Conditional unconditional offers (paper 7.1)

30. The Director of Competition and Registration introduced the paper inviting the board to consider next steps on conditional unconditional offers. She noted that:
 - a. Exempt from publication.

31. Exempt from publication.

Draft business plan 2020-2021 (paper 8.1)

32. The chief executive and the Head of Strategy Oversight and Implementation introduced the current draft of the business plan for April 2020 to April 2021. They noted that:
- a. The plan will need to change in response to coronavirus but the work done to date does provide a useful benchmark.
 - b. It was clear more work needs to be done than there are the resources available. Activity will need to be re-prioritised with some elements delayed.
33. The board noted:
- a. The contents of the draft plan.
 - b. The resources requirements of the current plan, and the implications for taking on new work over the next 12 months.
 - c. The focus of the plan on the previously identified success criteria.
 - d. The potential for disruption to the plan as a result of coronavirus.

'Focus on' the Risk and Audit Committee and report from the February meeting (paper 9.1)

34. The board received a paper on the work of the Risk and Audit Committee and the outcomes of its most recent meeting held on 25 February 2020.
35. In addition, the chair of the Risk and Audit Committee provided a more detailed explanation on the role of the committee and its work, using the opportunity to re-confirm that this was what the board required it to continue doing. She noted that at its recent meeting the committee:
- a. Had a thorough discussion around the Data Futures project, including the financial and value for money implications. Its discussions centred on understanding the process by which any decisions are made rather than on the decision itself.
 - b. Recognised that as it only met 4 times a year a lot of its work was backward looking but that it did also offer recommendations on how to manage future processes.
 - c. Noted that independent members are less engaged with the OfS and its work than those on the board who are also members of the committee.
 - d. Undertook the first of its planned "deep dives" on aspects of the risk register. This covered 'legal' risks and the additional detail provided by the Head of Legal helped the committee to understand why these had been rated as 'high'. It also raised the question whether the risks the committee are considering are being assessed against an appropriate risk appetite, noting that risk appetite is set by the board.
36. The board:
- a. Commended the committee on the good job it is doing and on the valuable contribution of its members, particularly the independent members.
 - b. Confirmed the importance of the committee continuing its robust focus on process, recognising the risk of legal challenge over OfS decisions.
 - c. Agreed to have more regular focussed engagement with the committee and its work, including reviewing risk appetite levels.
 - d. Received the report from the Risk and Audit Committee.

Student Panel update (paper 10.1)

37. The chair of the Student Panel updated the board on the work of the panel since the last board meeting. She noted that:
- a. The student engagement strategy was launched in February.

- b. A review of the panel is underway, and she encouraged board members to engage with this and provide their feedback.

38. The board received the report from the Student Panel.

Elizabeth Fagan left the meeting at 16.44

Report from the Provider Risk Committee (paper 11.1)

- 39. The board received a paper on the work of the Provider Risk Committee (PRC) and the outcomes of its most recent meeting held on 20 January 2020.
- 40. The chair of the committee advised that following the judgement in the judicial review case the PRC will need to review what this means for its future work.
- 41. The board received the report of the Provider Risk Committee.

Report from the Quality Assessment Committee (paper 12.1)

- 42. The board received a paper on the work of the Quality Assessment Committee and the outcomes of its most recent meeting held on 13 February 2020.
- 43. The chair of the committee advised that:
 - a. The QAC had considered the performance of the DQB which had been discussed by the board earlier in this meeting.
 - b. The OfS had already signalled its intention to review its approach to assessing student outcomes with an expectation that it would consult on raising the current baselines.

44. Exempt from publication.

45. The board received the report of the Quality Assessment Committee.

Report from the Horizon Scanning Panel (paper 13.1)

- 46. The board received a paper on the work of the Horizon Scanning Panel and the outcomes of its most recent meeting held on 24 February 2020, the outcomes of which had been reported orally to the board at its last meeting.
- 47. The board received the written report of the Horizon Scanning Panel.

Oral report from the Remuneration and Nominations Committee (paper 14.1)

- 48. The board received a paper on the work of the Remuneration and Nominations Committee and the outcomes of its most recent meeting held on 13 February 2020, the outcomes of which had been reported orally to the board at its last meeting.
- 49. The board received the written report of the Remuneration and Nominations Committee.

Closing remarks

50. Exempt from publication.

51. In closing the meeting, the chair thanked the board for participating in the meeting and rising to the technological challenges. He also thanked the executive for their work in preparing for the meeting and their continuing work in difficult times

52. The next meeting of the board will be on 21 May 2020.

53. The meeting closed at 16.56

Outstanding actions arising from current and previous board meetings:

Status update

Exempt from publication.