



## **Draft minutes of the OfS Board meeting, 22 September 2020**

**Location: by video or telephone conference**

**Timings: 13.30-17.00**

- Present members:
- Sir Michael Barber (chair)
  - Martin Coleman (deputy chair)
  - Nicola Dandridge (chief executive)
  - Gurpreet Dehal
  - Elizabeth Fagan
  - Katja Hall
  - 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:
- None
- Officers:
- Ed Davison
  - Josh Fleming
  - Paul Huffer, Head of Legal
  - Susan Lapworth, Director of Regulation
  - 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 and Finance
  - Ben Whitestone, Head of Governance

## Chair's welcome

1. The chair welcomed members to the meeting. No apologies had been received.
2. He thanked the executive for all their work in responding to such a relentless and demanding agenda. Among other matters, he advised that the scale of the issues the OfS were currently dealing with had fed through into the number of papers the board were being asked to consider at this meeting.
3. The chair updated the board on his meetings with the Secretary of State and Minister which covered a number of issues including university opening, and with the incoming Permanent Secretary at the DfE to discuss the OfS's wider agenda of work.
4. Exempt from publication
5. 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 July and August minutes (paper 2.1)

6. The minutes of the board meeting held on 2 July 2020 and the extraordinary board meeting held on 21 August 2020 were approved.

## Chief executive's report (paper 3.1)

7. The chief executive presented her paper which provided an update on work undertaken and issues that have arisen since the date of the last regular board meeting on 2 July 2020. The paper also sought advice on whether members wished to continue to be notified of registration refusals and the publication of routine decisions. She advised that:
  - a. Our approach to regulation during the coronavirus (COVID-19) pandemic, and for disadvantaged students in particular, may need to change as a result of local or national lockdowns. The conditions of registration remain in place and our approach will need to balance what is realistic to expect providers to do, against the need for them to protect the interests of students in delivering appropriate teaching and learning. The chair's work on digital teaching and learning will be relevant here, and the proposed definition of digital poverty would offer some guidance for providers offering digital provision only.
  - b. UCAS data to date shows an increase in student participation overall, and in particular an increase in participation by students from low participation backgrounds, though the gap in participation between advantaged and disadvantaged students has widened. Deferral numbers have not increased significantly over last year.
8. The board:
  - a. Noted the updates contained in the report.
  - b. Confirmed they wished to continue to be notified of registration refusals and publication of routine decisions.
  - c. Noted the report on the use of delegated authority between 20 June and 7 September 2020 at Annex C.

## Proposed new scheme of delegation (paper 4.1)

9. In introducing this paper setting out proposals for a new scheme of delegation for the OfS, the chair advised that the proposed scheme was designed to address the complexity of the previous version, and was modelled on that of the Competition and Markets Authority with input from members of the board. The planning event on 30 November will explore further the relationship between the board and the executive to ensure decision making processes arising from any new scheme of delegation are clear and robust.
10. The chief executive advised that the need for a new scheme of delegation that is coherent and future proof had already been identified. The new scheme, which delegates decision making to the executive unless matters are specifically reserved for the board, a committee or a specified individual, provides clarity and reduces risk without undermining the responsibility of the board as set out in the Higher Education and Research Act (HERA).
11. The Head of Legal provided advice on a number of relevant legal issues and explained that the board constitutes the OfS as a matter of law. The board members are legally the OfS and the proposed scheme of delegation does not affect the board's ability to make decisions.
12. In recognising that the board cannot take decisions on everything, the deputy chair confirmed that HERA does allow the board to delegate and that the proposed scheme of delegation was sensible in the circumstances.
13. The chair of the Risk and Audit Committee felt it was important to have a scheme of delegation that protected the OfS from legal risks and she was assured that the proposals reflected those operating successfully in another regulator.
14. The chair of the Quality Assessment Committee confirmed it was not unusual for an organisation to have such a scheme of delegation in place. The practical challenge will be in deciding when it might be appropriate to for the executive to escalate matters to the board for a decision or otherwise report matters to the board.
15. The chair of the Remuneration and Nominations Committee understood the need for change now. She reflected on whether this new scheme of delegation would enable board members to fulfil their governance responsibilities collectively and individually when circumstances might be different and suggested independent advice on this might be helpful on the approach to ensuring good governance.
16. The board expressed their support for the proposed scheme of delegation and in doing so the following points were made in discussion:
  - a. Work will be undertaken to consider whether any changes in governance arrangements might be appropriate as a result of the new scheme of delegation, by reflecting on themes such as the expectations for when it may be sensible for matters to be escalated or reported to the board. This will feed into discussions at the board planning event at the end of November and may result in the board giving guidance on governance arrangements.
  - b. The board noted that while only particular matters relating to risks are reserved to the board under the scheme of delegation, it would still expect to have discussions on matters relating to organisational risks and risk appetite (although that wouldn't affect the validity of delegation arrangements). This steer will therefore inform what is expected to be reported back to the board.
  - c. There was a role for the Risk and Audit Committee in ensuring the board is not being exposed inadvertently to questions over good governance.

- d. It was important to consider when and how the OfS seek the views of students to inform its decision making, and, although advisory, whether any further formal delegation arrangements might be needed for the Student Panel in the future.
- e. There needed to be clarity on internal governance arrangements for how different staff would take procurement and other financial decisions.

17. The board:

- a. Confirmed that, as a result of the discussions at the meeting, legal advice, and relevant papers which had been circulated in advance, it had a clear and comprehensive understanding of the effect of, and rationale for, the proposed new scheme of delegation, including in the way in which decisions on important matters of policy could be taken by different staff and the Provider Risk Committee.
- b. Approved the proposed new scheme of delegation set out in Annex 2 of the paper without amendment and that this scheme of delegation would take effect on and from 22 September 2020.

18. In approving the new scheme of delegation the board also decided to:

- a. Withdraw the current published scheme of delegation on 22 September 2020.
- b. Retain any other delegations until relevant work being undertaken on the basis of those arrangements is completed, and take a decision at a future meeting on whether to withdraw any of those delegation arrangements.
- c. Replace the published terms of reference for existing committees with revised rules of procedure on and from 22 September 2020, noting that informal guidance may be published to provide a public-facing information about each committee.

### **Student Panel review (paper 5.1)**

19. The chair of the Student Panel presented her paper on the review undertaken of the OfS Student Panel and recruitment to the panel for the 2020-21 academic year. She advised that:

- a. The number of applications to join the panel (890 in this recruitment round) indicates that awareness of the panel is increasing.
- b. The panel has been successful in improving its diversity although it had brought to the fore the need to do more to accommodate the needs of disabled students.
- c. Experience gained in this recruitment round could usefully inform future board, committee and staff recruitment and assist the OfS in achieving its EDI targets.

20. The following points were raised in discussion:

- a. The panel reflected an important way for the diverse voices of students to be heard.
- b. Every opportunity should be taken to utilise the energy and ideas of the panel, including engaging them at an early stage in the OfS's work and before it comes to the board. In turn, as a key stakeholder, there needed to be a formal feedback loop from the board to the panel.
- c. The panel should develop a mechanism for identifying priorities and initiating work.
- d. Given the contribution made by the panel, it was important that this was reflected in board papers and in the overall work of the OfS. More should be done to improve identifying and reporting on the substantial impact the panel was having.

21. The board were fully supportive of the recommendations for enhancement of the panel set out in the paper, including for mentoring and reverse mentoring, and thanked the chair of the panel for her continued contribution in ensuring its effectiveness.

### **Consultation on our approach to regulating quality and standards (paper 6.1)**

22. The Director of Regulation introduced a draft consultation document setting out preliminary policy proposals about the quality and standards requirements we set for higher education providers, and our approach to ensuring these requirements are satisfied. The consultation also contained preliminary proposals to raise minimum baseline regulatory requirements. This reflects points previously made by ministers in guidance issued under section 2(3) of HERA.
23. She advised that:
- a. The consultation aims to set out how and why we regulate quality and standards in the context where our regulatory objectives place quality and access and participation are at the core of the OfS's work.
  - b. There are good policy reasons for reflecting on learning from assessing quality in connection with applications for registration and proposing more stringent obligations for providers.
  - c. This consultation shifts the focus towards the providers now registered and the quality and standards of their courses.
24. The following points were raised in discussion:
- a. At individual provider level there were often variations in quality between different subject areas and it would be important for any new approach to allow us to regulate at this level, and well as at the level of the whole provider.
  - b. Public confidence in our regulation of quality was critical to standing of the regulated higher education system and needed to be clearly and succinctly articulated in the document in a way that was understandable to all stakeholders, including students.
  - c. Effective regulation of baseline quality and standards requirements was necessary to support access and participation regulation which aimed to close the gaps in outcomes from students from underrepresented groups.
  - d. The Teaching Excellence and Student Outcomes Framework (TEF) was the mechanism that the OfS used to incentivise excellence above the baseline regulated through the B conditions. It would be important to ensure coherence between the B conditions and the future development of the TEF.
  - e. The Quality Assessment Committee had discussed the proposals at its recent meeting and had been supportive of the approach being proposed.
25. In responding to the points raised, the director advised:
- a. The proposals would allow the OfS to directly regulate 'pockets' of weak performance within a larger provider, for example, at subject level or for different levels of study.
  - b. We will continue to work with the designated quality body to ensure that it understands and is able to deliver our requirements.
  - c. The presentational points made by members would be addressed and fed into the final version of the consultation document.
26. Following discussion, the board agreed that it was appropriate for the chief executive to sign-off the final consultation document for publication. The board noted that the chief executive was authorised to take such decisions under the new scheme of delegation which had been approved earlier in the meeting.

## **Reducing burden and bureaucracy (paper 7.1)**

27. The chief executive introduced her paper setting out proposals for reducing regulatory burden on providers to the minimum necessary to deliver our regulatory objectives and in line with commitments made in the regulatory framework. The paper also reflects discussions that have since taken place with the DfE about its proposals to reduce bureaucracy, reflected in the terms of the Higher Education Minister's statutory guidance letter of 14 September 2020, to which the board must have regard under section 2(3) of HERA. She was seeking the views of the board on the proposals and, specifically, that the implementation of random sampling of providers (as set out in paragraph 10 (ii) of the paper) should be deprioritised.

28. The following points were raised in discussion:

- a. The paper aligns with the recent DfE announcement and statutory guidance letter.
- b. The OfS needed to be clear where it does not consider regulatory burden could be reduced effectively or where reducing burden would be likely to have unhelpful consequences.
- c. Actions taken to reduce burden, for example by consulting on alternative approaches, should not be considered in themselves burdensome.
- d. Random sampling did not necessarily need to place significant burden on providers and, as set out in the regulatory framework, was a good way of testing the effectiveness of the OfS's monitoring approach. To implement random sampling effectively would require further substantial policy work that was not considered a priority during the current or next business planning period. Any future implementation would need to be informed by our experience of operating routine monitoring arrangements and the extent to which this is able to identify risk.

29. The board:

- a. Confirmed they were content with the proposals for reducing regulatory burden as set out in the paper.
- b. Agreed that work should not be initiated in the current or next business planning period to implement random sampling.

### **Options for the future of the NSS (paper 8.1)**

30. The Director of External Relations introduced his paper setting out the context and rationale for a 2-stage review of the NSS, noting that this review had been requested by the Minister and the Secretary of State as part of the DfE's drive to reduce regulatory burden on providers and as set out in statutory guidance issued under section 2(3) of HERA on 14 September 2020.

31. He advised that:

- a. A review group, which will also include members of the student panel, is being recruited.
- b. Phase 2 will consider more specific issues such as survey questions.
- c. Following each phase, the outcomes will be brought to the board for discussion.
- d. Although the view of ministers was that the NSS should not go ahead in the same way in future years, work was already too advanced to make substantial changes to the NSS in 2021 and this was ultimately a matter for the OfS to decide. Having regard to the statutory guidance letter from the Minister and the need to make evidence-based decisions, the Director of External Relations expressed the view that any potential changes should be considered following the review in 2021-22. However, it would be possible to reduce regulatory burden on providers by removing the requirement for providers to promote the survey in spring 2021 – this reflected the approach taken in 2020 when the normal arrangements for promotion

of the survey were not possible because of the pandemic. A decision about publication of the results of the 2021 NSS should also wait until after the review, to ensure that the 2021 outcomes aligned with the direction of travel of the review.

32. In responding to the director, the chair stressed the importance of the NSS and the information it provides, and he had advised the Minister and the Secretary of State that this was the case. It was particularly important to hear the views of students in 2021 in what will have been an inevitably challenging year.
33. The following points were raised in discussion:
- a. The Ministerial letter offers guidance on the future of the NSS. The OfS needs to have regard to such guidance but must come to its own decisions.
  - b. The NSS currently has a role to play in the OfS's quality agenda which needs to be taken into account in considering its future, or the future of any alternative.
  - c. The NSS is an important vehicle for hearing students' voices. There was currently no clear alternative to the NSS.
  - d. It was important to be objective and not pre-judge the outcomes of the review. The purpose of the review is to test the evidence in relation to regulatory burden or unhelpfully distorting behaviours. Any decisions on the future of the NSS will be evidence-based.
  - e. Student input into all aspects of the review will be essential.
  - f. Phase 2 offers a good opportunity to review the questions asked in the survey.
34. The board:
- a. Noted the terms of reference for the first phase of the review.
  - b. Discussed the issues raised in the paper and agreed to the two-phase approach to the review proposed in the paper.
  - c. Agreed that the 2021 NSS should go ahead with the approach and changes proposed in paragraphs 40-43 of the paper.

### **Data Futures (paper 9.1)**

35. The Director of Data, Foresight and Analysis introduced his paper seeking approval from the board to fund the Data Futures programme until 31 March 2021 and to set aside budget in future years to support delivery of HESA Data Futures.
36. He advised that:
- a. The programme has been making good progress. Any pause or delay would impact on the delivery of a new data system and is likely to increase costs overall.
  - b. Governance of the programme board is much improved with better oversight and more clarity on costs.
  - c. OfS has effective working relationships with HESA and Jisc and continues to offer a high level of challenge.
  - d. Following discussion at the Risk and Audit Committee meeting, the level of decision making within the programme will be more clearly defined.
37. The following points were raised in discussion:
- a. Although progress had been made, it would be sensible to check in on programme delivery before committing to future funding. The board should have the opportunity to do this in March 2021.
  - b. Any decision should be taken in the context of the OfS's wider funding decisions.
  - c. In reviewing a request for funding beyond March 2021, it should be clear what has been spent against budget and what has been delivered.



38. The board:

- a. Noted the progress of the programme since March 2020.
- b. Noted the work on reviewing the burden on providers from in-year collection as part of Data Futures.
- c. Noted the importance of the data model and technology refresh for HESA.
- d. Agreed funding of £2,582,117 until 31 March 2021.
- e. Agreed a conditional budget of £7,227,720 (including contingency of £1,121,528) to fund HESA and Jisc from April 2021 to March 2024 subject to confirming satisfactory delivery of the programme to March 2021.

### **Development of the OfS's approach to funding (paper 10.1)**

39. The Director of Resources and Finance introduced his paper updating the board on the OfS's development of its approach to funding and setting out a timetable for implementation.

40. He advised that:

- a. A consultation exercise will be required to consider the distribution of the £20m funding provided by the government for additional students in 2020-21. This will be issued shortly.
- b. Another consultation will consider world-leading and small and specialist providers, and we will work with Research England on this.
- c. Other reviews will need to consider the student premium and Uni Connect.
- d. Consultations will have regard to any statutory guidance from ministers.
- e. Any funding is subject to the outcome of the spending review.
- f. Funding decisions for 2021-22 will come to the board in March 2021.

41. The board noted:

- a. The current proposals and broad priorities for the funding review within each of the three themes of course, student and provider.
- b. The proposed timescale for the review (implementation from 2022-23 for the main elements of the review of teaching funding and earlier for the review of specialist funding and Uni Connect).
- c. That under the new scheme of delegation, the chief executive has authority to agree the detail, process and timetable for the consultations.
- d. The summary at Annex A of the position of OfS funding as part of its regulatory role and the analysis at Annex B of rates of resource (grant plus fees) for higher education.
- e. Received the paper.

### **Finance report (paper 11.1)**

42. Director of Resources and Finance introduced his paper updating the board as to the financial position of the OfS's Programme and Administration budgets for the five month period ended 31 August 2020 along with forecast expenditure for the full financial year (to 31 March 2021). He advised that:

- a. The Programme budget was in line with expectations and he was expecting to break even on the Administration budget at the end of the financial year.
- b. Work was underway to consider how OfS can deliver the future 10 per cent efficiency savings it has committed to.

43. The board noted:

- a. The year-to-date and forecast positions on Administration costs.



- b. The year-to-date and forecast positions on Programme expenditure

### **Report from the Quality Assessment Committee including periodic “focus on” the committee (12.1)**

4.1 The chair of the Quality Assessment Committee updated the board on the outcomes of its most recent meeting held on 8 September 2020. He advised that:

- a. The committee had considered issues relating to grade inflation and other quality matters as well the discussing the proposals for consultation on the OfS’s approach to quality and standards.
- b. The performance of the QAA as the designated quality body had also been discussed. The committee’s view was that the QAA appeared to have taken on board the OfS’s feedback about its performance and QAA officers had confirmed that they understood the OfS’s requirements. The QAC would revisit these issues when further progress had been made in implementing review activity.

44. The chair of the board noted that he had written to the QAA chair setting out the expectation that it would need to make a 10 per cent efficiency saving in line with the commitment made by OfS.

45. The board received the report from the Quality Assessment Committee and noted that there would be an opportunity to “focus on” the committee at a future meeting.

### **Oral report from the Provider Risk Committee (13.1)**

46. The board received the report on the on the outcomes of the Provider Risk Committee’s most recent meetings held on 22 June and 14 September 2020. The chair of the committee recognised that current legal challenges had been demanding on OfS resource which was having an impact on workloads.

47. The board received the report from the Provider Risk Committee.

### **Report from the Risk and Audit Committee (paper 14.1)**

48. The board received the report on the outcomes of the Risk and Audit Committee’s most recent meeting held on 8 September 2020. The chair of the committee advised that:

- a. There continued to be good levels of assurance from both internal and external audit.
- b. A recent review showed the committee was operating effectively but that there was work to do to keep the independent members informed and up to date on the OfS and its work.
- c. OfS’s risks have changed over the last few months so there needed to be a clear view from the board on its risk appetite.

49. The board received the report from the Risk and Audit Committee.

### **Oral report from the Remuneration and Nominations Committee**

50. The chair of the Remuneration and Nominations Committee noted that a meeting had taken place on 16 September 2020. She would report orally and in writing at the next board meeting in December.

*In declaring an interest in the following paper, Verity Hancock, David Palfreyman, Monisha Shah and Professor Steve West left the room at 16.49.*

### **Consequences of the Court of Appeal's judgment (paper 16.1)**

- 51. Exempt from publication
- 52. Exempt from publication
- 53. Exempt from publication

### **Closing remarks**

- 54. In closing the meeting, the chair thanked the board for their thoughtful input and discussion of a very demanding agenda. He also thanked the executive for their contribution and their work in producing the papers.
- 55. The next formal scheduled meeting of the board will be on 1 December 2020.
- 56. The meeting closed at 17.07.

**Outstanding actions arising from current and previous board meetings:**

**Status update**

Exempt from publication