



## **Treatment of Heythrop College's Exchequer interest balance**

### **Issue**

1. The treatment of Heythrop College's outstanding Exchequer interest balance at its point of closure.
2. This is a matter reserved for the OfS board.

### **Recommendations**

3. The board is invited to agree that repayment of the Exchequer interest balance for Heythrop College should be sought, at (or just before) the point of the College's closure in January 2019.

### **Further information**

4. Available from Nolan Smith ([nolan.smith@officeforstudents.org.uk](mailto:nolan.smith@officeforstudents.org.uk); 0117 931 7376).

### **Member's interests**

5. None.

## Background

6. Heythrop College is in the final stages of an orderly and solvent closure, and will be dissolved following the final meeting of its governing body in early 2019 (we are awaiting confirmation of the exact date). The decision to close was taken because the Governors believed that the College was not viable with diminishing student numbers. The OfS made its last recurrent grant payment to the College in November 2018, in line with its previously stated intention to cease funding the College when it no longer had active students enrolled.
7. Guidance from HM Treasury sets out an expectation that public sector organisations providing funding to others to acquire or develop assets should take steps to make sure that public funds are used for the intended purpose<sup>1</sup>. This is usually done by setting conditions on grants. For the period up to 31 July 2019, OfS has adopted the approach that was set out in HEFCE's terms and conditions of funding, in relation to the treatment of the Exchequer interest that has built up in an HE institution through the provision of capital grants. Consistent with HM Treasury guidance, our terms and conditions of funding for higher education institutions provides for the clawing back of capital funds where either of the following triggering events occur:
  - a. If the institution becomes insolvent, including going into liquidation or administration, or if it dissolves or transfers its undertaking to some other body (for example, by the exercise of the Secretary of State's powers under the Education Reform Act 1988) or if it experiences any analogous event.
  - b. If the institution ceases to be designated as eligible for OfS funding, or chooses to withdraw from its funding relationship with the OfS<sup>2</sup>.
8. Our terms and conditions go on to say that if either of the triggering events occur, OfS will calculate, and share with the institution, the Exchequer interest balance, and can decide to seek repayment of this balance. OfS has the discretion to waive the requirement for repayment. In making that decision, we must consider the extent of any continuing public benefit arising from the use of previous OfS or HEFCE capital grants in the provision of education. It should be noted that circumstances never arose which required HEFCE to make a judgement on this, so there is no precedent.
9. The OfS scheme of delegation sets out that decisions on proposals to request or waive the Exchequer interest repayment following a trigger event should be taken by the OfS board.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/742189/Managing\\_Public\\_Money\\_\\_MPM\\_\\_with\\_annexes\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742189/Managing_Public_Money__MPM__with_annexes_2018.pdf). See annex 5.2 Protecting the Exchequer interest (clawback) pp.145-148

<sup>2</sup> [https://www.officeforstudents.org.uk/media/1286/ofs-rfip-b3\\_ofs-terms-and-conditions-of-ofs-funding-for-heis-to-31-july-2019.pdf](https://www.officeforstudents.org.uk/media/1286/ofs-rfip-b3_ofs-terms-and-conditions-of-ofs-funding-for-heis-to-31-july-2019.pdf), paragraphs 52-54

## Discussion

10. At the point of Heythrop College's closure, one of our triggers for repayment of Exchequer interest will have been met: the dissolution of the HE institution. We have been in discussion with Heythrop College about the treatment of their Exchequer interest balance at this point. We invited the College to make a case for any continuing public benefit from the historic capital investment, setting out the broad scope of the assets purchased by the capital grants which make up their EI balance, and how they intend those would be used in future. The College submission is attached at annex A.
11. As per the scheme of delegation, the OfS board needs to consider whether we seek the repayment of the Exchequer interest balance from Heythrop College, in anticipation of its dissolution, or whether there is a sufficient case that the expectation of repayment should be set aside. Our view is set out below.
12. Value of the Exchequer interest balance: projected forward to 31 January 2019, the Exchequer interest balance for Heythrop College is £290,722. The College has previously advised us that it intended to make provision in its accounts for the Exchequer interest to be repaid. If the recommendation in this paper is agreed we will request repayment of the Exchequer interest balance from the College before its closure.
13. Case for continuing public benefit: as set out above, our terms and conditions of funding provide that we may not require repayment of the Exchequer interest balance if we are satisfied that there is a continuing public benefit to the provision of education from their use, despite the institution ceasing to exist. In the context of continuing public benefit relating to the provision of education, we do not consider there to be a strong case in relation to the assets identified by Heythrop College, particularly as the College's site in Kensington Square is to be sold and demolished. The case submitted by the College focuses on the financial support provided by the Jesuits in Britain to the College to achieve an orderly closure, asserting that it is unusual for there to have been no requirement for public funding during the closure process. We are clear that there should be no expectation of public support to cover the costs of closing an HE provider, and that there is consequently no expectation that we should not seek the repayment of the Exchequer interest balance for Heythrop College.
14. Separately, we note that Heythrop's exit from the HE market is solvent and orderly. If the exit had been unplanned there may have been tensions between our request for the Exchequer interest balance to be repaid, and the availability of College funds to support students in the market exit process. However, there are no student interest issues to consider as all the College's students have now completed their awards or transferred to other providers in order to do so.

Recommendation: The board is invited to agree that repayment of the Exchequer interest balance for Heythrop College should be requested, at (or just before) the point of the College's closure in January 2019.

## Resource implications

15. Resource implications are low. If the board agrees with the recommendation, we will write to the College principal to inform them of the board's decision and seek repayment of the final EI balance. This will be processed by our finance team. The board will want to note that the sum repaid has to be returned to HM Treasury (via our sponsor department).

## Risk implications

16. If we do not invite Heythrop College to repay its Exchequer interest balance at the point of closure, we might be challenged on how we are ensuring the best use of public funds, as per Treasury guidance.

## Legal implications

17. Exempt from publication
18. Exempt from publication
19. Exempt from publication
20. Exempt from publication

## Communications and engagement

21. We do not see any need to communicate this decision publicly, however, we anticipate providing Heythrop College with a copy of this paper in due course, redacting the legal advice in paragraphs 18-21 and publishing a copy of the paper on our website (similarly redacted).

## Paper publication date

22. We would seek to publish this paper as soon as possible after the board meeting redacting the legal advice in paragraphs 18-21.