

## Chief Executive's Report

### Issue

1. To update on work undertaken and issues that have arisen since the last board meeting on 27 November 2019 to the extent that they are not covered in other board papers.

### Recommendations

2. The board is invited to:
  - a. Note the 2020-21 success criteria in Annex A
  - b. Note the decisions taken under delegated authority at Annex B
  - c. Note the report on strategic risks at Annex C
  - d. Agree to delegate authority for policy decisions relating to the TEF, as set out in paragraph 32
  - e. Note the updates contained in this report.

### Further information

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

## Summary of main activity

4. Since the last board meeting, a new government has been elected with a strong majority and mandate. The Conservative party manifesto largely signals business as usual so far as the OfS's work is concerned, though we await confirmation as to the identity of the Secretary of State and the Minister for Higher Education following what may be a February reshuffle. The Secretary of State's New Year Message noticeably focused on further education and not higher education, and recent interviews – including with the Chancellor of the Exchequer - have confirmed a policy focus on place and regions, as well as investing in further education. In terms of our departure from the EU, now that our departure is definite, we are reviewing our advice to students – both European and domestic - to ensure that we are providing such updates and information as we can.
5. On 10 January 2020 we were pleased to welcome the Minister for Higher Education, Chris Skidmore, to our Bristol office to meet with our staff. He thanked us for our work, particularly the initial registration process, and acknowledged our success in setting the organisation up as the new higher education regulator.
6. On 8 January 2020, the Secretary of State [wrote to us](#) setting out details of the teaching grant budget for the financial year 2020-21. The grant available totals £1,479 million which represents a reduction in funding of 0.5 per cent since 2019-2020 in cash terms. In addition, there are areas where we need to make additional provision – primarily to reflect increases in intakes to pre-registration medical degrees and the continuing effects of the transfer of funding responsibility for pre-registration courses in nursing, midwifery and allied health professions. This means the underlying cut in recurrent funding is greater – at around £70 million (5%) in cash terms, although this should be viewed alongside an increase in capital funding of £50 million.
7. We have issued a [consultation](#) to seek views on how we should implement the necessary savings in recurrent funding, having regard to the priorities set out by the Secretary of State. This comes ahead of a full review of the funding method from the 2021-22 financial year, on which we intend to consult. The board will be asked to make decisions on funding at its meeting in March, taking into account the responses to the consultation.
8. The high court hearing in the first judicial review claim against us, brought by Bloomsbury Institute in respect of a decision to refuse registration on quality grounds (condition B3), is due to take place during the week of 10 February 2020. Overall, the legal team and external counsel continue to advise that there are reasonable prospects of successfully defending this judicial review claim.
9. The other two judicial review claims that were previously reported to the board have now been withdrawn: Spurgeon's College and Barking and Dagenham College. In the case of Spurgeon's College, the withdrawal of the proceedings followed a successful new application for registration after a change in circumstances relating to the college's financial position. In the case of Barking, this followed a general

commitment for the OfS to consider any potential new application for registration in a reasonable time period and the college making a payment of £7,500 towards OfS's legal costs.

#### 10. Exempt from publication.

11. As a result of other decisions made to refuse registration of providers and correspondence from law firms, it is anticipated that there will be one or more other judicial review claims issued against the OfS in the near future.
12. The board may be interested to note two recent external publications, relevant to the OfS's work. The Higher Education Policy Institute (HEPI) published a [report](#) on 12 December 2019, 'Social mobility and elite universities' that used the OfS's targets to make projections about the current rate of progress and suggest measures that could be taken to meet those targets. The response of Chris Millward, Director of Fair Access, in an OfS blog can be read [here](#). In addition, King's College London published a [report](#) on freedom of expression in UK universities on 5 December 2020. The findings made clear that while a significant majority of students enjoy healthy debate and free exchange of ideas, we must continue to be vigilant in protecting and promoting free speech.
13. Over the course of the next few months, we will be starting work on the development of our next annual business plan (2020-21), the final annual plan in our current strategy. Following the discussion at the November board meeting, we have revised the 2020-21 success criteria in light of the board's comments. The criteria, included in Annex A, are now being used as the framing of the 2020-21 business plan.

### Strategic objective – participation

14. The OfS is engaging with colleagues in the Department of Health and Social Care and Health Education England on the soon to be published NHS People Plan, so that we are able to contribute to the delivery of the NHS workforce objectives that will be set out in the plan. This is likely to involve further engagement and activity to promote recruitment to nursing, midwifery and allied health in support of Government targets, along with ongoing work to identify where improvement in retention may be required, aligning with regulatory objectives on student outcomes. We will continue to fund and evaluate strategic interventions that support the sustainability of strategically important but small and vulnerable health provision. The OfS anticipates that the NHS People Plan will call for a further expansion in the number of undergraduate medical places, which will require us to collaboratively develop a process to be delivered with partner organisations.
15. The OfS has previously announced that it will be conducting a review of the admissions system and had been due to launch the review late last year, until pre-election restrictions created delays. We will be publishing our detailed call for evidence in late February. This will open discussion on a range of issues at every stage of the admissions process and for all applicants and modes of study (full-time, part-time, postgraduate, international and domestic). It will in particular invite views

and evidence on whether admissions practices are working in the best interests of students. The call for evidence will kick off a three-month period of evidence gathering that will include stakeholder and student engagement, with evidence being analysed over the summer and recommendations coming to the board in September 2020.

16. We continue to engage with a number of providers who have high levels of unconditional offers and unexplained grade inflation. We are currently assessing the providers' explanations for their practices and will be determining whether their practices amount to a breach of regulatory conditions. If we do decide there may be a breach, we will need to invite representations from the providers concerned before reaching a final decision. Meantime, articles in [The Times](#) and on [Wonkhe](#) earlier this month related to the use of unconditional offers. My response to a justification by one provider of their use of conditional unconditional offers can be read in a letter to [The Times](#).
17. On the same issue, the End of Cycle report from UCAS on 17 December 2019 showed an increasing rate of conditional unconditional offers being made by providers (data that pre-dates the OfS's focus on this area). The report also reveals signs of caution from students in whether to accept such offers. The OfS was quoted in articles in The Guardian, Financial Times, Daily Telegraph and Daily Mail on this topic.
18. On 17 December 2019, Chris Millward was part of a discussion on the [Victoria Derbyshire Show on BBC 2](#) about the challenges facing estranged students.

### Strategic objective – experience

19. 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 continuing to consider representations submitted by those providers issued with 'minded to refuse registration' letters. We have also made more decisions to refuse registration, and in these cases, the provider has an opportunity to submit representations against our decision to publish information about the refusal.
20. We are still receiving new applications for registration; as at 13 January 2020 we have received 528 applications in total.

**Table 1: Registration decisions at 13 January**

Number on register	391
Number refused	13
Number minded to refuse	21
Decision made but not yet published on the register	0

<b>Total decisions made</b>	<b>425</b>
Assessment closed (due to merger or provider request)	24
<b>Sub-total of applications with decisions or otherwise closed</b>	<b>449</b>
Provider awaiting QSR or management and governance review	21
Assessment complete and awaiting decision	2
Application under assessment	26
<b>Total number of active assessments</b>	<b>49</b>
Application incomplete	30
<b>Total</b>	<b>528</b>

21. The OfS's new monitoring arrangements are now fully in place. 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. Formal communications do not generally require a response from providers, but other requirements involve the provider submitting responses which are then assessed. The accompanying new risk assessment may result in the removal, variation or addition of regulatory requirements.

**Table 2: mitigations imposed on providers at the point of registration, to 16 September 2019**

Providers with specific condition	25
Providers with enhanced monitoring	261
Providers with formal communication	306
Total providers with mitigation	375
Providers with no mitigations applied	13

22. In October 2019 we published a suite of regulatory guidance setting out our expectations of registered providers in relation to their obligations under the regulatory framework. The guidance describes in detail our approach to monitoring and intervention and reportable events. The launch of the provider guidance was accompanied by a series of regional events throughout October and November as well as a separate briefing event for sector groups.
23. We are planning to bring a paper back to the March board, unpacking a proposed approach to student consumer protection (including student contracts). This will reflect comments made by the board at the November 2019 meeting, as well as further discussion with experts including the Office of the Independent Adjudicator. The March paper will set out a proposed timeline for work from now until a new set of requirements becomes binding on providers. The Secretary of State asked in his most recent guidance for a report on student contracts by February, but we have discussed with him and he is content to receive this after the next board meeting.
24. Following a delay due to the pre-election period, we have now published our [consultation](#) on harassment and sexual misconduct in higher education. The consultation sets out proposals for the OfS's regulation of harassment and sexual misconduct affecting students in OfS registered higher education providers. The focus of the consultation is a statement of expectations for the processes, policies and systems which we expect all providers to have in place to prevent and address harassment and sexual misconduct. It also proposes an approach to assessing compliance with existing ongoing conditions of registration. This statement of expectations builds on existing work and evidence within the sector, including significant reports by the NUS (Hidden Marks), Universities UK (Changing the Culture) and the Equality and Human Rights Commission 2019 enquiry into racial harassment in higher education, as well as Advance HE's independent evaluation into the OfS's programme of Catalyst-funded projects on harassment, hate crime and sexual misconduct.
25. Through the consultation process, we will seek to understand how these proposals may impact on students and providers. We will actively seek engagement through the consultation process with those individuals and groups that represent the viewpoints of those with protected characteristics. We have a detailed communications plan and will run a number of engagement events across the country during the consultation period, including two specifically focused on providers and representative organisations as well as an online webinar, and three events with students and students' unions.
26. The consultation will run from 9 January until 27 March 2020. We will analyse responses to the consultation in spring 2020 and plan to present our response and proposed policy position to the board for review in May. We seek to publish our response alongside our policy position in summer 2020.
27. On 18 December, we published information about the [fee limits](#) that individual universities and colleges can charge new students starting courses in 2020-21. This

supports our duty under section 11 of the Higher Education and Research Act 2017. We also published in December 2019 our Regulatory Advice 17, [guidance](#) on the variation and revocation of degree awarding powers.

28. Exempt from publication.

29. Exempt from publication.

30. Exempt from publication.

31. Exempt from publication.

32. Exempt from publication.

33. Exempt from publication.

### **Strategic objective – outcomes**

34. We have now received bids for our challenge funding competitions on AI and data science conversion courses, and to explore the impact of student involvement in knowledge exchange (the latter jointly with Research England). These bids are now being assessed with outcomes to be announced in spring 2020.

### **Strategic objective – efficient and effective**

35. The OfS's first [annual review](#) was published in December. This was a significant moment for the OfS, and the review presented a comprehensive picture of our work. Much of the media coverage focused on the importance of applicants having access to good quality information about higher education. The review was covered in [The Guardian](#), [The Times](#), [Daily Telegraph](#), [The Independent](#), [Daily Mail](#), [Financial Times](#) and [BBC News](#) and I was interviewed by a number of broadcasters, including ITV News. The report has been read over 4,200 times on our website, and our tweets on the review generated over 30,000 impressions. Further details are available in our communications review at Annex E.

36. We are progressing our work on regulatory burden, with two strands of work in development. We are currently scoping a project to investigate the administrative burdens on providers associated with compliance with our registration conditions. It is intended that this work will allow us to identify areas of regulation where burdens are disproportionate and track changes to burdens over time.

37. This work on regulatory burden complements ongoing work to implement a consistent approach to regulatory impact assessments. This process will enable the OfS to evaluate the impact of proposed changes to regulatory policy on the sector and enable transparency around the expected benefits that will be realised as a result. We hope that guidance and templates will be introduced for testing this spring.

38. The OfS's internal Digital, Data and Technology Programme has now concluded, delivering a range of new technologies to support our work. We are continuing to

prioritize developments that will ensure we maximise the efficiency and effectiveness benefits offered by the new technologies.

39. An ambitious programme of learning and development is now being rolled out across the organisation to ensure staff have the skills and knowledge required to deliver the OfS strategy. A digital platform, Workday Learning, was launched on 19 January 2020 to support the programme.
40. The decision not to replace the Director of Teaching Excellence and Student Experience (TESE) role following Yvonne Hawkin's departure in December has reduced senior director headcount but increased the responsibilities of existing directors. The new structure does however represent a more strategic structure that better supports the OfS's objectives. From 1 January 2020, work previously undertaken in TESE has transitioned as follows:
  - Market exit, Prevent and freedom of speech have been incorporated into Competition and Registration
  - Teaching funding, including funding and student numbers relating to health have been incorporate into Resources, Finance and Transformation
  - The Directorate of Fair Access and Participation now incorporates the Teaching Excellence and Student Outcomes Framework (TEF), the handling of health policy and activity relating to student welfare and safeguarding.
41. As part of our work on equality, diversity and inclusion, the OfS recently commissioned an independent equal pay audit. The results show that, where it is possible to measure, staff with protected characteristics as defined by the Equality Act 2010 are being treated equally. However there are areas for us to work on, in particular the gender pay gap. The full report has been shared with the Remuneration and Nominations Committee.
42. We were constrained from much of our communications work during parts of November and December, with the pre-election restrictions on communications in place. During this period, we used social media very sparingly, and did not provide statements to the media. We now have 11,500 followers on Twitter. There were 141,000 unique page views to the website in December, with 634,000 unique page views between October and December.
43. Our January 2020 risk and assurance report is included at Annex C.

#### **Paper publication date**

44. This paper will be published as soon as possible after the board meeting, with any relevant sections and annexes redacted as appropriate.

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

**16 November 2019 – 17 January 2020**

### **Funding allocations**

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.
2. Spurgeon's College was added to the OfS register on 27 November 2019 in the Approved (fee cap) category. It is now eligible for OfS funding. On 2 December 2019, the chief executive agreed recurrent funding of £22,902 to Spurgeon's College for academic year 2019-20.
3. Ealing, Hammersmith and West London College was added to the OfS register on 6 December 2019 in the Approved (fee cap) category. It is now eligible for OfS funding. On 11 December 2019, the chief executive agreed recurrent funding of £11,237 to Ealing, Hammersmith and West London College for academic year 2019-20.
4. Croydon College was added to the OfS register on 6 December 2019 in the Approved (fee cap) category. It is now eligible for OfS funding. On 11 December 2019, the chief executive agreed recurrent funding of £127,183 to Croydon College for academic year 2019-20 and £15,398 teaching capital funding for financial year 2019-20.

## **Annex D – Board forward look**

### **16 March**

Proposals on future funding method  
Report from the Provider Risk Committee  
Report from the Remuneration and Nominations Committee  
Report from the Quality Assessment Committee  
Report from the Risk and Audit Committee  
Report from the Horizon Scanning Panel  
Written report from the Student Panel  
Finance report  
Student welfare and safeguarding – update on OfS role (TBC)  
Follow up on student contracts  
Validation arrangements  
TEF  
Amendments to the regulatory framework  
Innovation framework

### **21 May**

Report from the Provider Risk Committee  
Report from the Quality Assessment Committee  
Annual report to the board from the Risk and Audit Committee  
OfS annual report and accounts 2019-20  
Finance report

### **2 July**

Report from the Risk and Audit Committee  
Report from the Horizon Scanning Panel  
Finance report