



## **Draft minutes of the OfS Board meeting, 13 July 2022**

**Location: by Teams**

**Timings: 13.30-17.00**

- Present members:
- James Wharton (chair)
  - John Blake (Director for Fair Access and Participation)
  - Martin Coleman
  - Elizabeth Fagan
  - Katja Hall
  - Verity Hancock
  - Rachel Houchen
  - Susan Lapworth (interim chief executive)
  - Simon Levine
  - Martha Longdon
  - Dayo Olukoshi
  - David Palfreyman
  - Michael Spence
- Attendees:
- Hannah Sheehan, Department for Education (DfE) representative
- Apologies:
- Kate Lander
  - Monisha Shah
- Officers:
- Jean Arnold, Director of Quality
  - Louisa Baker, Head of Governance
  - Matt Davey, Strategy Development and Implementation Manager (for agenda item 4.1)
  - Ed Davison, Competition and Registration Manager
  - Gary Downing, Strategic Business Manager
  - Josh Fleming, Head of Strategy and Evaluation
  - Paul Huffer, Head of Legal
  - Lynn Mace, Head of Human Resources and Organisational Development (for agenda items 6.1, 7.1 and 8.1)
  - 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
  - David Smy, Director of Monitoring and Intervention
  - Mike Spooner, Senior Adviser to the CEO and Chair

## Chair's welcome

1. In opening the meeting, the chair welcomed members and noted that Kate Lander and Monisha Shah had sent their apologies. He welcomed Hannah Sheehan from the DfE, Matt Davey, Strategy Development and Implementation Manager at the OfS who was joining for the discussion on key performance measures and Lynne Mace, Head of Human Resources and Organisational Development at the OfS, who would be giving a presentation on OfS people later in the meeting.
2. **Exempt from publication.** He noted that recruitment was underway to recruit a new student member to replace Martha Longdon when her term of office ends in December 2022. Interviews were now expected to take place in September/October.
3. In noting the recent ministerial changes at DfE, the chair reported that he had written to congratulate James Cleverly and Andrea Jenkins on their appointments as Secretary of State for Education and Minister for Skills, Further and Higher Education respectively.
4. The chair updated the board on his recent activities, including a meeting with Trudy Norris-Grey, Chair of UCAS, and his continuing work with the Specialist Provider Panel.
5. The board noted its general duties as set out on the agenda and the need to have regard to these and other relevant considerations as it considered papers and made decisions.

## Approval of May minutes (paper 2.1)

6. The minutes of the board meeting held on 26 May 2022 were approved.

## Interim chief executive's report (paper 3.1)

7. The interim 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 26 May 2022.
8. The following points were raised:
  - a. The report sets out the approach the OfS had taken in selecting providers for quality investigations and the decision to focus on business and management courses. Investigations have been opened at eight providers in relation to these courses using an approach that reflects the OfS's risk-based approach prioritisation.
  - b. In addition, the team was developing recommendations to open a further 2-3 investigations in relation to concerns about increases in degree classifications over time. The trends in available data indicate there is merit in looking into this matter in more detail.
  - c. It is important to remember that whenever the OfS opens an investigation it does so because it has identified potential concerns that require further scrutiny, and this should not be read as a signal that a provider has committed any wrongdoing.
  - d. **Exempt from publication.**
  - e. Work continues on our investigation into matters connected to freedom of speech and academic freedom at the University of Sussex. **Exempt from publication.**

- f. The OfS had welcomed the launch of an independent investigation into allegations of antisemitism at NUS. It will be important that robust action is taken in relation to any findings.
- g. The interim chief executive had recently published a blog setting out a range of issues relating to regulatory burden and the steps providers could take to minimise internal assurance and governance processes that are not required by the OfS. The OfS is considering extending its work in this area to engage directly with chairs of governing bodies and audit committees.

9. The board:

- a. Noted the updates contained in the report.
- b. Approved the request to delegate its authority to the chief executive or Director of Quality to make any change to the regulatory framework in respect of any revisions to the name of the rating scheme referenced in condition B6 in accordance with the paper that was included in the interim chief executive's report.

### **Update on Key Performance Measures (paper 4.1)**

10. The interim chief executive introduced her paper proposing a revised set of key performance measures (KPMs) for the OfS. She introduced the Head of Strategy and Evaluation, who advised that the proposals reduce the number of KPMs, retain a focus on outcomes, and are accompanied by a set of operational measures. Subject to the board's discussion, he advised the interim chief executive will sign off the KPMs. The intention is to publish the majority of these by the end of summer 2022.

11. The following points were made in discussion:

- a. The possible tension between KPMs 1 and 2 (looking at improvements in student outcomes) and KPM 3 (focused on the growth in first class degrees) was noted. However, it was considered acceptable to simultaneously pursue both improvements in student outcomes and curtail unwarranted grade inflation. These KPMs would report at sector level but more detailed information is routinely used within the OfS and can be provided to the board if required.
- b. A dashboard will use three measures to monitor different aspects of value for money for students and taxpayers (KPM 9), the final one will add a level of objectivity and is not based just on perceptions of value for money. The plan is to expand these measures over time and look to include measures that capture the interests of other stakeholders, including employers.
- c. The KPMs act together as a whole suite of measures. They should be presented and communicated as such and not as individual measures.

12. In concluding its discussions, the board:

- a. Thanked colleagues for the work that had gone into refining the KPMs.
- b. Noted that following the board meeting, the interim chief executive will make final decisions about the technical details of the KPMs, before they are published.

### **Market exit pathways framework (paper 5.1)**

13. The Director of Monitoring and Intervention gave a presentation to update the board on lessons learnt from the ALRA case. He also set out the OfS's approach to market exit risk.

14. In setting out the regulatory landscape in which the OfS operates, he noted that we should expect providers to enter and exit the sector as a normal part of the operation of the market. In cases of market exit, the OfS's role is to protect the interests of students, but it was noted it does not have the same statutory powers as operate within the FE sector which are considered effective but costly.
15. A review of the approach the OfS had taken in the ALRA case had been completed, and the director set out how this will inform the development of our approach for any future cases. The review had tested the level of scrutiny of financial viability and sustainability appropriate both for providers seeking registration and for registered providers exposed to financial risk. He also outlined plans to draw on existing information to identify indications that there may be increased risk in relation to a provider's management and governance arrangements. Where a market exit is possible but not yet certain, the OfS would continue to use its formal powers to ensure that planning for student protection is developed early, alongside work to attempt to avoid the exit. Finally, we will draw on work with the DfE and others to create guiding principles for such collaboration in the future.

16. Exempt from publication.

17. The following points were made in discussion:

- a. Exempt from publication.
- b. The notifications system provides a reporting route for individuals with concerns about the financial position of a provider. This could be better publicised to increase the likelihood that such risks are flagged to us by people inside a provider, such as staff.
- c. Given the current economic environment, there should be more stress testing of scenarios affecting financial viability and sustainability. This might identify other providers under pressure or the effect across the sector if a systemic risk is realised.
- d. Exempt from publication.
- e. Exempt from publication.
- f. Sector representative bodies could broker a system to offer financial support to students in the event of a market exit, as is the case in the package holiday or airline industry.
- g. The OfS should reinforce the responsibilities of governors, particularly in relation to financial matters, and make it clear that we will take action when we are concerned about material weaknesses in governance such that students' ability to complete their courses is at risk.

18. The board:

- a. Noted the content of the presentation.
- b. Thanked all those involved in the ALRA case, noting that their work had achieved a good outcome for students.
- c. Agreed to use time at future board meetings to discuss further our approach to monitoring market exit risk and responding where such risk is identified.

## **Equality statement and objectives in our regulatory role: report and next phase (paper 6.1)**

19. The Director for Fair Access and Participation introduced his paper summarising progress against the 2018-22 equality statement and objectives as these relate to the OfS's regulatory activities. He advised that:
- a. The OfS is currently reviewing its approach to equality matters as part of its work on new requirements for access and participation.
  - b. We expect to publish revised equality objectives in the autumn and to more effectively align these with wider work on equality of opportunity.
  - c. A single equality objective (as required by the Equality Act 2010) will be in place until the new statement and associated objectives are finalised.
20. The board:
- a. Noted the overview of progress against the 2018-22 equality statement set out in Annex A of the paper.
  - b. Noted the outline of the OfS's intended future approach.
  - c. Agreed the single new objective to be in place from July to Autumn 2022, pending development of new objectives alongside our new approach to access and participation plans.

## **Equality at the OfS (paper 7.1) and OfS people report**

21. The Director of Resources and Finance introduced his paper updating the board on progress against the OfS's internally focused equality objectives.
22. The paper also included a broader update on OfS employees, and the Head of Human Resources and Organisational Development supplemented this with a detailed presentation to the board. She advised that:
- a. Headcount over the last four years remains stable as does the profile across pay bands. A fifth of staff have less than two years' service.
  - b. Exempt from publication.
  - c. Work is underway to consider how the OfS presents itself as an employer of choice and it is expected that this will support our recruitment activity. Continued focus on the OfS's values and culture can also feed into this.
  - d. Absence caused by the pandemic had been the main reason for sickness absence in the year to 31 March 2022. Exempt from publication.
  - e. We have changed the categories in which we collect staff equality data to ensure our approach is consistent with the Equality Act 2010 and is more consistent with approaches used in the Civil Service.
  - f. The gender pay gap has fallen over the last three years. The OfS continues to be proactive in seeking opportunities to further reduce the gap, including through the way pay awards are implemented and in changes to parental and adoption leave.
  - g. Priorities for the coming year are:
    - i. Continued focus on monitoring recruitment and retention activity.
    - ii. Further significant investment in learning and development opportunities for staff, including the introduction of a learning programme focused on higher-level skills in regulation for a wider range of staff.
    - iii. Reviewing our approach to hybrid working.

- iv. Introducing a new job evaluation system that better reflects the OfS's role as a regulator.

23. The board:

- a. Noted the paper.
- b. Thanked the Head of Human Resources and Organisational Development for her presentation.

### **Finance report (paper 9.1)**

24. The Director of Resources and Finance introduced his paper updating the board on the financial position of the OfS for the three-month period ended 30 June 2022 and forecast expenditure for the full financial year (to 31 March 2023). Exempt from publication.

25. The board received the report.

### **Student panel update (paper 10.1)**

26. The chair of the student panel presented her report to the board on its most recent meeting held on 22 June 2022. She advised that:

- a. There had been a useful discussion about the use of essay mills.
- b. The recruitment campaign for new panellists had generated a significant number of applications. These were now being assessed to ensure a diverse candidate pool.
- c. An additional meeting was planned outside of the normal cycle to take place before some current panellists come to the end of their terms.

27. The board:

- a. Received the report from the student panel.
- b. Commended those involved in running such a successful recruitment campaign.
- c. Noted the minutes from previous panel meetings which have been approved by the panel and will be published on the OfS website in due course.

### **Oral report from the Provider Risk Committee**

28. The chair of the Provider Risk Committee presented his report to the board on its most recent meeting held on 4 July 2022. The committee had discussed:

- a. Exempt from publication.
- b. Exempt from publication.
- c. Exempt from publication.

29. The committee had also received an excellent presentation on the legal framework for freedom of speech and, in particular the way this interacts with aspects of the Equality Act 2010. He encouraged members to attend this session when it is delivered for the board.

30. The board received the oral report from the Provider Risk Committee.

### **Report from the Risk and Audit Committee (paper 12.1)**

31. The board noted the written report of the Risk and Audit Committee meeting held on 18 May 2022, the outcomes of which had been reported at its last meeting.

## **Closing remarks**

32. The chair thanked members for their attendance and contributions, and he confirmed his intention for the board to revisit issues relating to market exit at future meetings.

33. He reminded members that the next meeting of the board will be held on 30 September 2022, and it was agreed that this will be held in person in the London office.

*The interim chief executive, the directors and other attendees left the meeting at 15.25.*

## **Report from the Remuneration and Nominations Committee**

34. The board noted the written report of the Remuneration and Nominations Committee meeting held on 20 May 2022, the outcomes of which had been reported at its last meeting.

The meeting closed at 15.30.