

## Role of the OfS board

### Purpose

Board's primary role in relation to this paper:

- A. Set strategy
- B. Set risk appetite
- C. Oversee performance
- D. Understand context

1. At its meeting in March 2023 members discussed the annual effectiveness review carried out in relation to the operation of the board. One of the points made during discussion was that the way the board performs its role had necessarily changed as the OfS had moved out of its start-up phase and into a second strategy period that envisaged more active regulation.
2. This paper provides a framework to prompt discussion about how the board should operate at this stage of the OfS's life. We would anticipate using such a framework to structure the board's business and discussions, and future evaluation of its effectiveness. We have used it for the agenda and papers for today's meeting to demonstrate how it would work in practice.

### Recommendations

3. The board is asked to consider and discuss the proposed framework and commentary.

### Further information

4. Available from Susan Lapworth

### Discussion

5. HERA defines 'the OfS' as consisting of the members of the board. In that sense the role of the board is fixed by legislation and the board is responsible for the performance of the OfS's statutory functions. However, the way the board performs its role in 2023 is quite different from how it did so in 2018. In the early years of the OfS's life the board focused on agreeing and implementing its regulatory approach, creating a new organisation from scratch and putting in place the governance machinery necessary for it to work effectively. In 2023, the regulatory framework is established with all its major components implemented. The organisation is up and running. We have a strategy that sets focused priorities and we are beginning to get into our regulatory stride as we extend our investigatory and enforcement work.

6. In this changed context, it is appropriate to revisit how the board operates. To support that discussion we are suggesting a simple framework setting out four elements of the board's role:
  - A. Set strategy
  - B. Set risk appetite
  - C. Oversee performance
  - D. Understand context.
7. Figure 1 below sets out these four elements, together with examples of how the board has performed each of them recently. The sections that follow then take each element in turn and provide a brief commentary.

**Figure 1: Four elements of the board's role**

<p><b>A Set strategy:</b> agree strategy on advice from executive</p> <ul style="list-style-type: none"> <li>• OfS <u>strategy 2022-2025</u> agreed by board in March 2022</li> <li>• Intervention strategy for 2022-24 agreed by board in September 2022</li> </ul>
<p><b>B Set risk appetite:</b> agree risk tolerance and appetite</p> <ul style="list-style-type: none"> <li>• Approach to risk management agreed by board in January 2018, and refined in November 2020</li> <li>• Strategic risks, appetite and tolerance reviewed by board annually: most recently in May 2022</li> <li>• Chief executive reports to each board meeting on risk</li> <li>• RAC reports to the board after each meeting</li> </ul>
<p><b>C Oversee performance:</b> hold executive to account for performance and provide challenge</p> <ul style="list-style-type: none"> <li>• OfS <u>KPMs</u> and <u>OMs</u> agreed by board in July 2022</li> <li>• Chief executive reports to each board meeting in relation to strategy goals</li> <li>• Committees oversee performance and report to each board meeting: PRC, QAC, RemNom</li> <li>• Board papers on relevant matters, eg performance of DQB; progress of quality investigations; approach to potential mis-use of SLC funds etc.</li> <li>• Report to each board meeting on OfS finances</li> <li>• Annual report on OfS people</li> </ul>
<p><b>D Understand context:</b> consider changes in operating environment and stakeholder perspectives</p> <ul style="list-style-type: none"> <li>• Chair and chief executive report on external engagement at each board meeting</li> <li>• Student panel reports to the board after each meeting</li> <li>• Board members join visits to providers</li> <li>• Board horizon scans for next strategy period</li> </ul>

## A Set strategy

8. The board agrees the OfS's strategy on the basis of advice from the executive. It agreed the current strategy in 2022, having discussed its development five times in meetings and planning days during the previous year. The strategy runs to 2025 and we would expect the board's engagement in the development of a new strategy to begin in summer 2024 and so to feature more significantly on agendas from that point. We would therefore expect this element of the board's role to be reflected on agendas on a cyclical basis, rather than being a feature of each meeting. This reflects the need to follow a strategy once it is set, and then to frame discussions of other business.
9. Last year, we developed an intervention strategy to ensure we approach our regulatory case work in a strategic and planned way. The strategy provides a framework and process to guide

choices about our investigatory work, with the current plan running to 2024. We would expect to seek the board's views when we develop the next intervention strategy, as described in paper 7.1 of the 30 September 2022 meeting.

## **B Set risk appetite**

10. The OfS's framework and processes for risk management are well-established, with the Risk and Audit Committee routinely providing assurance to the board on these issues and updates provided at each board meeting through the chief executive's report.
11. The board therefore discusses matters relating to risk frequently. **Exempt from publication.**

## **C Oversee performance**

12. The board routinely engages with the OfS's performance, with the chief executive's report providing a mechanism for this discussion at each meeting. In addition, the board receives regular updates on organisational performance, for example on the OfS's financial position and through an annual people report. It relies on the work and reports of its committees in other areas, for example:
  - a. The Quality Assessment Committee has reported extensively on the performance of the assessment functions, particularly the role of the Quality Assurance Agency for Higher Education (QAA).
  - b. The Provider Risk Committee (PRC) has reported on progress with registration cases and our approach to enforcement activity.
  - c. The Risk and Audit Committee has been closely engaged in the delivery of the Data Futures programme.
13. There can be particular challenges in sharing information with the board about some regulatory issues because of the conflict of interests that arise for some board members because of their roles in the sector – this is part of the reason for the PRC being tasked with decisions on complex regulatory cases.
14. Our view is that the board has appropriate opportunities to oversee the OfS's performance, including in its planning days. However, the pattern of formal business may feel fragmented, with scrutiny and challenge happening in relation to particular issues and more limited opportunities to look at performance and the factors affecting this in the round. For example, we submit and publish our annual report but the board does not reflect on that public account of performance, although the Risk and Audit Committee does.
15. It would be helpful to hear the board's thoughts about whether it would like further opportunities to scrutinise and challenge performance and, if so, what that might look like in terms of agenda items for future meetings.

## **D Understand context**

16. One of the points made during discussion of the board's effectiveness in March was that it would be helpful to have discussions about the wider context for the OfS's work. This was framed in terms of 'strategy' and we agree that discussions of this nature would helpfully inform the development of the next strategy from 2025. We agree that the board's agendas may feel under-developed in this area, although planning days have regularly provided opportunities for discussion and reflection here. We have added an item on today's agenda to test an approach to this type of discussion – relating to subcontractual relationships between providers.
17. We think that understanding the perspectives of stakeholders is an important component of this element of the board's role. We hear from the chair of the student panel after each of its meetings and board members routinely engage with the panel and its members. We agreed recently that we would invite board members to join visits to providers as part of our refreshed approach to engagement. The board has commented previously about the potential benefits of hearing from other stakeholders, for example, employers.
18. The board has previously operated with an experimental panel tasked with 'horizon scanning'. The panel was set up as a two year trial, and was disbanded at the end of that period. The insights generated by the panel were useful and helped shape the OfS's work, and proved the use-case for horizon scanning at the OfS. The panel format, however, was not always conducive to the task. We are currently reforming our approach to executive team meetings and plan to build such scanning into our new arrangements. That would provide a helpful conduit for future board business.
19. It would be helpful to hear the board's thoughts about whether it would like further opportunities to develop its understanding of the context in which the OfS operates and, if so, what that might look like in terms of agenda items for future meetings.

## **Next steps**

20. If the board agrees with the 'A, B, C, D' categorisation set out in this paper, we propose to:
  - a. Use the categories in board agenda and papers to indicate how an item fits into the board's role – we have done that for the agenda and papers for this meeting so the board can see what this might look like.
  - b. Consider patterns of business in each category each year as part of the annual review of the board's effectiveness.