



Draft minutes of the OfS Board meeting, 1 December 2020

Location: by video or telephone conference

Timings: 1230-1530

- 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
 - Ruby Gatehouse, TEF Manager
 - 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. 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 September minutes (paper 2.1)

3. The minutes of the board meeting held on 22 September 2020 were approved.

Chief executive's report (paper 3.1)

4. 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 22 September 2020. She advised that:
 - a. The OfS has continued with its work in responding to the experience of students in the context of COVID-19 (coronavirus) and the expectations placed on providers that they take all reasonable efforts to protect the interests of their students. This has included regular engagement with providers, particularly those moving between tiers and where we receive notification from students or third parties, as well as student polling. We are now planning to raise the profile of notification arrangements so that students and student unions are aware of the process (and the fact that we cannot act on their behalf), and know the sorts of issues we are able to consider and those where we are not. This should help establish if the relatively low number of notifications received to date by the OfS reflects the reality for students. Work will also be undertaken to look at providers' plans for exams and assessment next summer.
 - b. OfS has consulted with providers regarding the publication of their data relation to the 'start to success' metric. Bringing together continuation and graduate outcome data has the potential to provide useful information for students. A decision about publication will be made before Christmas.
 - c. OfS has not directly been involved in the announcements made by DfE, UCAS and UUK about the future approach to undergraduate admissions. It will, though, consider the emerging proposals to understand the impact on different groups of students, and make a decision in light of this about whether to initiate further work on its own admissions consultation, which is currently paused.
5. The DfE representative updated the board on DfE plans for reform of the higher education sector, noting that moving from a 3 year to a 1 year spending review limited the scope for funding commitments beyond 1 year. However, education and skills are being positioned as an important part of the post-coronavirus recovery. He confirmed that the DfE is continuing with its work on admissions. An update on plans for A level exams in summer 2021 is expected this week. The OfS and other stakeholders will be consulted on arrangements for developing a post-qualification admissions system. Details of the OfS teaching grant allocations and associated guidance will be provided in due course as will the DfE response to the independent review of the TEF.
6. The board:
 - a. Noted the updates contained in the report.
 - b. Noted the report on the use of delegated authority between 8 September and 18 November 2020 at Annex C.

Developing the OfS's position on free speech and academic freedom (paper 4.1)

7. In introducing this item, the chair reiterated his comments made at the March 2020 board that the OfS should be fully committed to the widest definition of free speech within the law and would never intervene to narrow free speech. His view was that free speech was something precious at the heart of British universities and should be maintained.
8. The Director of Regulation then introduced her paper updating the board on how the OfS is proposing to develop its regulatory approach to free speech and academic freedom. She also established the context within which this work is taking place and set out the plans for making this position public at an appropriate time, including engaging providers in a consultation through the use of an open letter. She noted the proposal to establish a broad enabling framework which promotes a culture of free speech and inclusivity.
9. The DfE representative confirmed that free speech is an important issue for ministers, and for wider society more generally. He advised he and his colleagues would wish to continue to work closely with OfS on ministers' emerging proposals, noting that some changes would be likely to require primary legislation. He expected the DfE to move forward on this in the New Year.
10. In confirming their full support for the approach outlined in the paper, the board made the following points in discussion:
 - a. The content and tone of the open letter was welcomed and likely to be well received by stakeholders.
 - b. In thinking about principles and practice, the letter should reflect that issues of concern affecting free speech were taking place on-line and not just on campus.
 - c. Some providers had expressed concern about how to reconcile the adoption of the IHRA definition of antisemitism with their established policies and principles on inclusivity and their own commitments to free speech. The responses to the open letter may reflect on this.
11. The board:
 - a. Expressed their support for the proposed approach to free speech and academic freedom.
 - b. Noted the director would update them in advance of any public statements made in relation to this matter.
 - c. Received the paper.

Presentation on sector level financial sustainability

12. The Director of Resources and Finance gave a presentation on the financial sustainability of registered higher education providers (excluding further education colleges as they return financial information to the ESFA) based on an interim financial return to OfS at the end of October 2020. The design and timing of the return was to understand the financial impact of coronavirus. He highlighted the conclusions arising from the analysis of the data as follows:
 - a. The aggregate position of providers is sound at this time with positive recruitment in 2020-21, income broadly holding up, cost controls in place and prudent cash management.
 - b. Borrowings have increased.
 - c. Some providers have accessed the government support available during the pandemic.

13. Overall, the findings indicated that there is a significant variability between providers with the sector operating within an uncertain environment which is subject to change as a result of, for example, the effects of coronavirus, a reduction in income from a number of sources and pressure on pensions. Further analysis and scenario testing of this and future data will be carried out to identify any trends.
14. The following points were raised in discussion:
- a. There was evidence that the banks were tightening up their approach to breaches of covenants.
 - b. Pressures on pensions, including both for USS and TPS, continue to be a concern.
 - c. Expenditure on restructuring costs for individual providers, if applicable, will be clearer when further data is received in early 2021.
 - d. Publishing the OfS's analysis of this data will highlight the hard work done by providers in managing their finances during the pandemic, the results of which have maintained the overall sound position of the sector.
15. The board:
- a. Noted plans to publish this analysis later in the month.
 - b. Noted that further data will be collected early in 2021 and, based on the analysis, a decision will be taken on the frequency of future data collections.

Finance report (paper 6.1)

16. 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 seven month period ended 31 October 2020 along with forecast expenditure for the full financial year (to 31 March 2021). He advised of a small underspend in the year to date for the Administration budget. He expected this to be utilised this by the end of the financial year. Work is underway to distribute the up to £20 million Programme funding announced in September 2020 for additional recurrent and capital teaching grants and to support increased student numbers.
17. 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

Oral report from the Student Panel

18. The chair of the Student Panel updated the board on the activities of the panel and its members over the last few months. In thanking the panel for their work during such a challenging time, she advised that:
- a. Following the appointment of several new members in August, the panel held an emergency meeting which resulted in the publication of a set of expectations for self-isolating students. This had generated a lot of engagement with students and been well received.
 - b. The panel held productive discussions with the Universities Minister and she indicated she would like to meet with the panel again.
 - c. As well as meeting as a panel, members are contributing individually through their involvement in a wide variety of OfS work where there is a student interest including on the review of the NSS, the Horizon Scanning Panel, the Review of Digital Teaching and Learning and student mental health.

19. Reporting on the outcomes of its most recent meeting held on 28 October 2020, the chair of the panel advised the panel's agenda had covered a number of issues, including access and participation and progress on targets, accessibility, and digital poverty.
20. The board received the oral report from the Student Panel noting that its next meeting will be held in February 2021.

Oral report from the Provider Risk Committee

21. The chair of the Provider Risk Committee updated the board on the outcomes of its most recent meeting held on 26 November 2020. He advised that:
 - a. The committee took the view that the process for submitting applications for registration should be re-opened by the end of the year.
 - b. The committee discussed the implications of the Court of Appeal's judgement in the Bloomsbury case.
22. The board received the oral report from the Provider Risk Committee.

Report from the Horizon Scanning Panel (paper 9.1)

23. The chair of the Horizon Scanning Panel presented the written report of its meeting held on 15 September 2020. He advised that the panel had considered the strategic plan scenarios discussed at the earlier board planning event at its most recent meeting held on 16 November 2020.
24. The board received the written report from the Horizon Scanning Panel.

Designated data body annual report (paper 10.1)

25. The Director of Data, Foresight and Analysis presented the annual report from the designated data body (HESA) as required under paragraph 8 of schedule 6 of the Higher Education Research Act 2017 (HERA). He advised that:
 - a. This report was a fair reflection of HESA's performance over the year. Where there have been issues with a KPM, HESA had worked with OfS to find ongoing solutions.
 - b. Response rates to the Graduate Outcomes Survey need to be improved.
 - c. There had been resourcing challenges for HESA as a result of coronavirus and the need to focus on the Data Futures project. Gurpreet Dehal was now a member of the Data Futures Quarterly Review Group which will give the board better oversight of the project.
26. In noting the report the board:
 - a. Considered that it would have been helpful if the paper had set out in more detail the challenges that have arisen throughout the year and how these have been addressed. The board could then have taken a view on whether this was satisfactory.
 - b. Suggested there was a role for the Risk and Audit Committee to scrutinise the actions taken to date and to provide assurance to the board that these were sufficient.

The chief executive, directors and officers left the meeting at 1440

Report from the Remuneration and Nominations Committee (paper 11.1)

27. The chair of the Remuneration and Nominations Committee presented the written report of its meeting held on 16 September 2020 and gave an update on subsequent matters arising. The discussions are captured in a separate confidential minute.

28. The board received the written report from the Remuneration and Nominations Committee.

The chief executive, directors and officers re-joined the meeting at 1452.

Update on TEF

29. In response to a request from a member, the Director for Fair Access and Participation advised that he expected the OfS's consultation on the future TEF to be issued in spring 2021, which would cohere with the timescale for the second phase of the quality and standards consultation (subject to the outcomes of the current phase 1 consultation). This would ensure we are able to make proposals in relation to both baseline and above baseline requirements, and for the use of data across the two functions. A formal response from the DfE to Shirley Pearce's independent review of the TEF was expected in the New Year and the board would have the opportunity to advise on the approach during the development of the consultation.

Closing remarks

30. In closing this part of the meeting, the chair, on behalf of the board, paid tribute to the executive for all that it had done over the year and in rising to the challenges of the last few months in particular. He thanked the members who were leaving the meeting at that point for their contribution to the meeting and to the planning event which preceded it.

In declaring an interest in the following paper, Verity Hancock, David Palfreyman, Monisha Shah and Professor Steve West left the meeting at 1500.

- 31. Exempt from publication
- 32. Exempt from publication
- 33. Exempt from publication
- 34. Exempt from publication
- 35. Exempt from publication

Closing remarks

36. In closing the meeting, the chair thanked Kate Lander, Martin Coleman and the executive and their staff for their hard work in delivering a successful planning event. He also thanked board members for their own contributions over the last two days.

37. The next formal scheduled meeting of the board will be on 18 January 2021.

38. The meeting closed at 1535.

Outstanding actions arising from current and previous board meetings:

Status update

Exempt from publication