



Chief executive's report

Purpose

1. This paper provides an update on work undertaken and issues that have arisen since the last board meeting on Friday 3 February to the extent that they are not covered in other board papers.
2. The paper is structured around the headings and goals of the OfS strategy 2022-2025 and therefore provides a progress report in delivering those goals.
3. Annex A sets out proposals for changes to the OfS's scheme of delegation, with an explanation of the effect of those changes. The board is asked to agree these changes and to note that a paper later on the board's agenda provides further information about proposed changes to the role of the Quality Assessment Committee.

Recommendations/decisions required by the board

4. The board is invited to:
 - a. Note the updates contained in this paper.
 - b. Agree the minor amendments to the OfS Scheme of Delegation set out in Annex A.
 - c. Exempt from publication.
 - d. Exempt from publication.

Further information

5. Available from Susan Lapworth.

Summary of main activity

6. On 23 February, we launched a consultation on a new approach to regulating sexual harassment and misconduct. We proposed the introduction of a new condition of registration, which would require each provider to publish and implement a single document setting out how it will tackle harassment and sexual misconduct, with particular requirements for the content of that document. We also proposed a ban on the use of non-disclosure agreements in cases of harassment and sexual misconduct, and a requirement for certain staff-student relationships to be registered. Our consultation received substantial coverage in the sector press and wider media.
7. We have published an Insight brief on cost of living pressures on students, which draws from polling we commissioned and four roundtables we hosted on this issue. We have drawn attention to the work providers are doing to mitigate the effect of cost pressures on their students. The briefing highlights that cost pressures will be one of the areas providers will be expected to consider as part of the Equality of Opportunity Risk Register in their new access and participation plans.
8. The House of Lords Industry and Regulation Committee has announced a new Inquiry into the work of the OfS. This will:
 - a. Explore whether the statutory duties of the OfS are clear and examine its performance against these duties.
 - b. Look at how our regulatory framework has developed, our relationship with the Government and whether we have the necessary expertise and resources to carry out our functions.
 - c. Examine our work on financial sustainability including the extent of systemic financial risks in the sector.
9. We have submitted written evidence to the committee¹ and expect to give oral evidence in April or May.
10. On similar themes, James, Martin and I contributed to a UUK event on 'good regulation' on 16 March.

¹ A copy of the written evidence is available in the Resources area of Diligent: Supporting information for the March 2023 board meeting.

Quality and standards

Our strategic goal is:

Students receive a high-quality academic experience that improves their knowledge and skills, with increasing numbers receiving excellent provision.

Student outcomes

11. We continue to progress our first assessments of student outcomes under revised condition B3. We have opened investigations in relation to 12 providers on the basis of our published prioritisation criteria. As set out in our published guidance, these providers have been invited to submit any contextual information in relation to the data indicators we are assessing, which may justify performance below a numerical threshold. We are now considering that evidence and the next stage will be to make a judgement about whether the provider is compliant with condition B3 or at increased risk of non-compliance in the future. If we conclude that this is the case, we would then consider what the appropriate regulatory response would be.
12. A further six providers were selected for assessment and remain at the first stage of the process. This is because those providers have now made requests to amend the data from which our indicators are constructed, exempt from publication.
13. We have begun to evaluate the impact of the implementation of condition B3. We have commissioned an external agency to conduct telephone interviews with 40 registered providers. These will take place before July.

Quality investigations

14. We continue our investigations in relation to business and management courses and computing courses at a number of registered providers. We expect to have completed the assessment visits to 10 of the eleven providers by the end of March and expect to share draft reports with providers in the next few weeks. We will then consider publication matters and whether any further intervention is appropriate.

Our strategic goal is:

Students are rigorously assessed, and the qualifications they are awarded are credible and comparable to those granted previously.

The credibility of awards

15. We continue to progress investigations into matters relating to the credibility of awards at three providers. Exempt from publication.

Our strategic goal is:

Providers secure free speech within the law for students, staff and visiting speakers.

16. The Higher Education (Freedom of Speech) Bill has entered 'ping pong'. Most recently, the House of Lords considered Commons reasons on 21 March 2023, where an amended version of the statutory tort was re-inserted into the Bill. At the time of writing, we do not have a date for Commons' consideration of these amendments. We expect however that this is likely to be the final consideration of the Bill before it achieves Royal Assent. We are continuing to develop our plans for implementation once the Bill completes its passage and are working with DfE on the timetable for commencement regulations to be laid.
17. Our consultation on harassment and sexual misconduct includes specific proposals to ensure that the approach a provider takes to preventing harassment does not interfere with lawful speech. Initial discussions with sector stakeholders suggest the clarity this would provide about the interaction of these duties has been welcomed.
18. We continue to consider matters connected to freedom of speech and academic freedom at the University of Sussex.

Our strategic goal is:

Graduates contribute to local and national prosperity, and the government's 'levelling up' agenda.

19. The DfE has announced it will proceed with plans to introduce a new approach to student loans which allows students to choose to study whole qualifications or modules. For the first two years, this will be limited to job-specific Higher Technical Qualifications, and some technical qualifications at Levels 4 and 5. This will then expand to other courses at Levels 4, 5 and 6. We have committed to work with DfE to deliver a single regulatory system to oversee this approach to student finance, and this means that a provider must be registered with the OfS to access LLE.

Equality of opportunity

Our strategic goal is:

Students' access, success and progression are not limited by their background, location or characteristics.

Student hardship

20. We have published an Insight brief on cost of living pressures on students. This draws from polling we commissioned and four roundtables we hosted to engage with providers, their representative bodies and students. We have drawn attention to the work certain providers are doing to mitigate the effect of cost pressures on their students. Such work may be fragile, given that costs are also increasing for providers and it is not clear how consistent or effective this work is across the sector.
21. We have reiterated the ongoing contribution of government funds, via both the student premiums which we distribute each year, and the additional £15m in hardship support recently

made available. The briefing highlights that cost pressures will be one of the areas providers will be expected to consider as part of the Equality of Opportunity Risk Register in their new access and participation plans.

International student integration and experience

22. We launched the project 'Working in partnership to improve international student integration and experience' with the UK Council for International Student Affairs and the DfE in 2022. This sought evidence of effective, innovative and sector-leading practices that ensure international students can integrate and receive a fulfilling experience while studying in England.
23. On 18 January, we published a report by LSE Consulting which analysed the responses to the call for evidence and separate fieldwork. This report set out three recommendations:
 - a. International students should not be treated as a homogenous population, and the effectiveness of interventions depends on adopting a multi-dimensional approach combining institutional and bottom-up initiatives when capturing their needs, concerns and particular challenges.
 - b. More efforts should be made by providers to support and enhance partnerships and cooperation between the academic community and the broad students' community.
 - c. More attention should be devoted to taking into account international students' needs in terms of cultural beliefs and socialisation norms when it comes to preventing, reporting and support measures to tackle harassment and sexual misconduct.

Access and participation plans (APPs)

24. On 9 February we published an outcomes report in relation to the requests we have considered from providers to vary their access and participation plans. We also published a blog on these issues.
25. 90 per cent of providers with an approved access and participation plan submitted a variation request in response to our invitation to do so (231 out of 256 providers). The majority of responses addressed all four national strategic priorities, with most pointing to either existing work (not previously mentioned in an APP) or an expansion of existing work.
26. We have also written to accountable officers to tell them that we expect to invite an initial cohort of 30-50 providers to submit new access and participation plans to take effect for the 2024-35 academic year onwards.
27. We have completed 2020-21 annual monitoring of access and participation plans. We expect to take the same highly risk-based approach to monitoring 2021-22 activity.

Our strategic goal is:

Prospective students can choose from a diverse range of courses and providers at any stage of their life, with a wide range of flexible and innovative opportunities.

Funding

28. On 9 March, we announced a little under £10 million in initiative funding for specialist performing arts providers. This new funding is designed to enhance the provision of, and access to, performing arts education and training at specialist providers, with a particular focus on contemporary music, drama and dance. The funding is available for a five-year period covering academic years 2022-23 to 2026-27.
29. We also announced formula funding for the 2022-23 academic year of £8 million to encourage greater provision of Level 4 and 5 qualifications and a further £8 million to accelerate the growth of degree apprenticeships.
30. We have received 26 bids (totalling £6.7 million) for OfS funding to encourage providers to offer scholarships to students studying artificial intelligence and data science postgraduate conversion courses. We expect to make funding announcements on 30 March.

Market entry

31. We have substantially accelerated progress on registering providers, including for longstanding complex cases. We have registered five providers since the board's last meeting. Exempt from publication. One provider has withdrawn from the registration process following engagement by the OfS setting out limitations in its application.

Open University validation project

32. We launched a pilot in May 2022 to allow the Open University to validate high quality vocational and technical (Level 4 and 5) courses delivered by further education colleges across England. We have now approved the university's proposals to work with nine colleges. This supports our intention to explore new ways for higher education providers to enter the sector and increase the availability of high quality courses. Two colleges will start delivering courses in September 2023, with the rest to follow in September 2024.

Our strategic goal is:

Providers act to prevent harassment and sexual misconduct and respond effectively if incidents do occur.

Regulating harassment and sexual misconduct

33. On 23 February, we published a consultation on a new approach to regulating harassment and sexual misconduct in English higher education. We are proposing a new condition of registration which would ensure that each provider would:

- a. Publish a single document setting out how it will make a significant and credible difference in tackling harassment and sexual misconduct, and operate in accordance with that document.
- b. Introduce mandatory training for students and staff, including bystander training.
- c. Ban the use of non-disclosure agreements in cases of harassment and sexual misconduct.
- d. Require certain staff-student relationships to be registered, and mitigations put in place against abuse of power or conflict of interest (we are also consulting on the option of prohibiting such relationships, but not as our preferred option).

34. There was substantial coverage of our consultation in the national press from The Times, Telegraph, BBC website, Daily Express and Guardian, as well as all of the major sector outlets. It was welcome to see the consultation discussed widely on broadcast media, including on Today programme news bulletins on Radio 4, a feature on Radio 1s Newsbeat and discussions on the Jeremy Vine Show on Radio 2 and on LBC. I was interviewed about our plans by Times Radio, and wrote an opinion piece for The Times Red Box.

35. Colleagues have hosted webinars on the proposals, including one specifically for students and student representatives. We also contacted a range of student media outlets with a tailored press release, and have produced an advert for podcasts, as we seek to generate responses to the consultation from students in particular. This consultation closes on 4 May.

Our strategic goal is:

Providers encourage and support an environment conducive to the good mental health and wellbeing that students need to succeed in their higher education.

36. For University Mental Health Day on 9 March we published a blog discussing the benefits of tailored support for students and case studies from two of the 18 ongoing projects from the mental health funding competition.

37. As part of the joint working project between providers and the NHS to support student mental health, the first action learning sets have now all been held. These bring together heads of student services in universities with NHS mental health trust leaders in all English regions with the aim of building new integrated care pathways for student mental health.

Enabling regulation

Our strategic goal is:

Providers are financially viable and sustainable and have effective governance arrangements.

Annual financial return

38. We are assessing the annual financial data submitted by providers in January and February 2023. All registered providers (excluding further education colleges and sixth form colleges) are required to submit financial data, financial and student number forecasts, and other relevant contextual information. 81 of the 203 providers required to submit information at this point have performance that will necessitate a more detailed assessment of financial viability and sustainability.
39. We are also analysing the data to understand patterns and trends for the sector as a whole and will report on these alongside other contextual issues relating to the sector's financial sustainability and exposure to risk.

Roundtables with finance directors

40. We are hosting a series of roundtables with finance directors at a range of providers. We have invited them to discuss the financial risks they and the sector are facing and the mitigations they have at their disposal to manage these risks. We are also seeking feedback about the information we require from providers to inform the further development of our risk-based approach to monitoring. We will use this information to inform our financial sustainability risk register, modelling, assessment of individual provider's finances and our publications on financial risks.

Concerns relating to the use of Student Loans Company (SLC) funding

41. We continue to progress cases that involve concerns that SLC funding may be being paid inappropriately, particularly where courses are delivered through sub-contractual partnerships. We are concerned about intelligence we have seen suggesting that providers do not always have appropriate controls in place to protect public funding and that students may not be properly engaging with teaching and assessment. We continue to extend our work in this area. Alongside work on individual cases we plan to engage with providers, and their governing bodies, more widely to ensure these risks are understood and properly addressed.

HESA Data Futures

42. The Data Futures programme is proceeding to plan, with a 'provider readiness' survey currently underway. When we have the outcomes of the survey we will want to assess the extent of risk to the submission of appropriate data, and identify actions to reduce this risk where necessary.

Our strategic goal is:

Students receive the academic experience they were promised by their provider and their interests as consumers are protected before, during and after their studies.

43. We continue to consider potential cases for referral to National Trading Standards (NTS) under our new agreement. This agreement delivers a legal backstop for the enforcement of consumer protection law on matters relating to higher education and guarantees that trading standards will review cases referred by the OfS with a view to taking action if it considers that there is a probable breach of consumer law.
44. We have tested four cases with the NTS. Three of these relate to contractual terms and conditions currently in use and we were particularly interested in understanding NTS's views on specific provisions relating to:
- 'Force majeure' clauses and attempts to limit a provider's liability, particularly in relation to industrial action and oversubscribed courses.
 - The re-issuing of terms and conditions on an annual basis (or more regularly) for a three-year degree course.
 - The level of detail of terms and their overall clarity.
45. The fourth case relates to the use of university title and the publication of misleading information.
46. Following advice from NTS we are now preparing our first referrals.

Our strategic goal is:

The OfS minimises the regulatory burden it places on providers, while ensuring action is effective in meeting its goals and regulatory objectives.

Regulatory burden

47. We continue to consider the burden that our regulatory places on providers and to explain our approach.
48. Our consultation on a proposed new condition relating to harassment and sexual misconduct set out clearly how we had considered the regulatory burden that would be imposed if a new condition were adopted into the regulatory framework following consultation. We acknowledged that for some providers there may be significant work to do, the greatest burden would be on those providers that present the greatest regulatory risk to students, i.e., those furthest away from the position that we had set out in our voluntary statement of expectations and the requirements of the proposed condition. We consider this to be appropriate in the context of the risk posed to students and because we have expended time and OfS resources previously encouraging self-regulation of these issues. We also set out ways in which we have sought to limit regulatory burden in our proposals.

49. As set out above, our approach to monitoring providers' access and participation plans for 2020-2021 was delivered with a highly risk-based approach, which we expect to continue for 2021-2022 monitoring.
50. The business plan for 2023-2024 has been agreed, with implementation sequenced to minimise the burden on providers in relation to responses to consultations and changes to policy approach.

Efficient and Effective OfS

Performance of quality and standards assessment functions

51. The DfE published its consultation on the removal of designation from the Quality Assurance Agency for Higher Education (QAA) in February and this closed on 3 March 2023. The DfE has analysed responses and expects to publish decisions shortly.
52. We continue to plan to take on quality and standards assessment activity from the QAA from 1 April 2023. We are recruiting additional expert academic assessors, and received 300 applications. We have invited more than 90 applicants to attend assessment centres in March and expect to undertake further recruitment in due course.
53. We expect to charge a fee for the assessment activities that will no longer be carried out by the QAA and we continue to engage with DfE officials on the secondary legislation needed for this.
54. We continue to engage with sector representative groups about the longer-term arrangements for conducting assessments. We will be holding a second roundtable in April to hear feedback on the principles that would underpin any future arrangements which we previously shared with the group.

Industry and Regulation Committee inquiry

55. The House of Lords Industry and Regulators Committee has launched an inquiry into the work of the OfS. The inquiry is looking at whether our statutory duties are clear and examining our performance against those duties. It is looking at how our regulatory framework has developed and our relationship with the Government. It is considering whether we have the necessary expertise and resources to carry out our functions. The inquiry is also examining our work on financial sustainability including the extent of systemic financial risks in the sector.
56. We welcomed the inquiry when it was launched, seeing it as an opportunity to explain why we regulate and how we do it. We have submitted written evidence and provided background information to the committee. We expect to be invited to give oral evidence after Easter.

2023-24 business plan

57. At the beginning of March, directors agreed the OfS business plan for 2023-24. The plan is structured around the goals in our strategy. Each goal has a headline plan for the strategic period (referred to internally as a 'roadmap'), and the activity described in each roadmap forms the basis of the business plan. The plan reflects the priorities set out by the board in its previous discussions: first, as a set of activities which reflects the board's views on the overall strategy and the intervention strategy; and second, through the individual line items, which reflect board discussions wherever relevant.

58. Exempt from publication.

59. As in previous years, we expect to publish a summary of the plan in May 2023 and will provide this to the board at its next meeting.

Freedom of Information Act request

60. We successfully defended a complaint to the Information Commissioner's Office about our refusal to release provider- and subject-level data in response to a Freedom of Information request. The data related to 2021 NSS questions about providers' approaches during the pandemic. We had refused the request on the basis that the release of this data could damage the commercial interests of providers.

Industrial action

61. Following OfS staff's involvement in the Public and Commercial Services Union (PCS) strike on 1 February, a second strike was held 15 March. This related to the ongoing national dispute in relation to pay, pensions, job security and redundancy terms. Exempt from publication.

Staff conference

62. In February, we held our first staff conference since before the pandemic. The day included speeches from me, James Wharton and John Blake on our ambitions for our work in this strategy period. Kate Lander hosted external speakers Marcial Boo, Chief Executive of the Equality and Human Rights Commission, and Dame Clare Moriarty, Chief Executive of Citizens Advice. They spoke about how approaches they had taken to drive success in delivery of complex agendas. We also held a session thinking about how we can embrace diversity in our approach to our work and thinking, by learning to disagree well.

Regular risk report

63. The regular risk report is attached in Annex B of this paper, for the board's information. The board should note:

a. Exempt from publication.

b. Exempt from publication.

c. Exempt from publication.

d. Exempt from publication.