



## **Draft minutes of the OfS Board meeting, 27 November 2019**

**Location: Finlaison House, London**

**Timings: 13.30-17.00**

- Present members:
- Sir Michael Barber (chair)
  - Martin Coleman (deputy chair)
  - Nicola Dandridge (chief executive)
  - Gurpreet Dehal
  - Elizabeth Fagan
  - Katja Hall
  - Verity Hancock
  - Kathryn King (joined by telephone)
  - Kate Lander
  - Simon Levine
  - Martha Longdon
  - Chris Millward (Director for Fair Access and Participation)
  - David Palfreyman
  - Monisha Shah
- Attendees:
- Ian Coates, Department for Education representative
- Apologies:
- Steve West
- Officers:
- Cassie Agbenenu, Student Engagement Manager (for paper 7.1)
  - Ed Davison
  - Josh Fleming
  - Yvonne Hawkins, Director of Teaching Excellence and Student Experience
  - Paul Huffer, Head of Legal
  - Susan Lapworth, Director of Competition and Registration
  - 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, Finance and Transformation
  - Ben Whitestone, Head of Governance

## Chair's welcome

1. It was noted that this would be the last board meeting for Yvonne Hawkins, Director of Teaching Excellence and Student Experience, who was leaving the OfS in December. On behalf of the whole board the chair thanked her for all that she has done at the OfS and in her 10 years at HEFCE before that.
2. The chair welcomed Ian Coates from the DfE and Kathryn King who was joining the meeting by telephone. He noted that apologies had been received from Steve West.
3. The chair reported on a number of meetings and visits he been involved in since the last board, although some things had been put on hold as a result of the pre-election period. He advised that:
  - a. He had met with the Secretary of State and discussed a variety of issues, including the TEF. It was noted that the Independent Review of the TEF would be published after the election together with the government's response. He would also be meeting with the Permanent Secretary at DfE and was hoping to meet with the Cabinet Secretary soon.
  - b. He and the executive had discussed the OfS's likely responses to different possible governments post-election. In all cases, it was likely that access and participation would be a high priority.
  - c. There was evidence that the OfS was effecting change in the sector without the need to use its regulatory powers, for example on grade inflation and vice chancellor pay, with some evidence this was also beginning to work on unconditional offers. An important factor in this was getting the tone right in the OfS's communications with the sector and there was still work to do on this.
  - d. He had recently spent some time with the OfS legal team to understand their work and, in particular, the work they are undertaking in preparation for a judicial review hearing in February.
4. 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.

## Presentation on cyber security

5. A senior speaker from the National Cyber Security Centre joined the meeting to give a presentation to the board on the work of the NCSC and, in particular, its work with the higher education sector.
6. The board:
  - a. Noted that the OfS has Cyber Security Plus accreditation and that its cyber security arrangements were being reviewed by internal audit in January.
  - b. Suggested some kind of sector review would be helpful to better understand the wider risks associated with cyber security.
  - c. Questioned whether the OfS should be using the management and governance conditions of its regulatory powers to ensure providers were doing enough in this area and agreed to return to this issue at a future meeting.
  - d. Thanked the speaker for the insightful presentation.

## Approval of September minutes (paper 3.1)

7. The minutes of the meeting held on 26 September 2019 were approved.

### Chief Executive's report (paper 4.1)

8. The chief executive presented her paper which provided an update on work undertaken and issues that have arisen since the date of the last board meeting on 26 September 2019. The following issues were highlighted:
  - a. At the end of the pre-election period, the OfS annual review will be published and an analysis of access and participation plans will be published in January.
  - b. Following a recent Equality and Human Rights Commission report, OfS will issue a consultation on harassment and sexual misconduct in early 2020, setting out our expectations in this area.
  - c. The OfS has issued information and guidance to providers and students around the current industrial action by the University and Colleges Union. We are continuing to monitor the impact on students.
  - d. The OfS has written to a number of providers where there were concerns over unexplained increases in degree classifications asking them to provide more information about why this has been happening. Where there is evidence of grade inflation raising concerns about compliance with the regulatory framework, cases will be pursued under the framework.
  
9. The following points were made in discussion:
  - a. In terms of external communications, the OfS needed to continue to be robust and clear, and it should continue to be confident in making explicit its interventions where they are working in the best interests of the students. At the same time, the OfS should also acknowledge where providers and the sector are making changes which have a positive impact on students.
  - b. Noting the delays imposed by the pre-election period, it was agreed that the board should have the opportunity to comment on the OfS annual review before it is published in December. In future years, time for a full discussion should be built into the board timetable.
  - c. Whether the OfS's value for money strategy took into account of the perceptions of students and graduates, then the value for money of the OfS should likewise take into account the views of providers and other stakeholders. It was agreed the views of stakeholders would be fed into this work.
  - d. Exempt from publication.
  
10. The board:
  - a. Approved the proposed revisions to the OfS board proceedings and code of conduct.
  - b. Approved the proposed revision to the QAC terms of reference.
  - c. Exempt from publication.
  - d. Noted the decisions taken under delegated authority.
  - e. Noted the updates contained in the report.

### Mid-point strategy review (paper 5.1)

11. The chief executive introduced the paper providing an update to the board on the executive team's work following the board's mid-point strategy review at the September offsite. She asked the board to consider whether the list of 'success criteria' included in the paper accurately reflected the board's views on the OfS's priorities for the next 18 months.
  
12. The following points were made in discussion:
  - a. There were a number of success criteria and would they all have equal weighting. It should be clear how each will be assessed.

- b. At the mid-point in the OfS strategy, there was a need to look at the overall burden on providers, and how the OfS's regulation impacted on different types of providers.
- c. There should be a definition of 'operating effectively'.
- d. There should be success criteria based on the satisfaction of OfS staff and on demonstrating the OfS values. Also something capturing public trust.
- e. It should be made more explicit that the OfS's focus was on more than just undergraduate students.
- f. By 2022, the OfS would be subject to a tailored review. The success criteria could be looked at in this context.
- g. The Treasury's Public Value Framework should be taken into consideration in developing the next strategic plan.

13. In response the chief executive noted that:

- a. The success criteria need to reflect that the OfS is still in operational set up phase and acknowledge what it has achieved so far.
- b. There are plans for a staff survey and the outcomes will be built into the success criteria along with a measure related to the OfS values.
- c. The suggestion that the OfS should look at the overall burden on different types of providers would form part of planned work in 2020 looking at this issue.
- d. Internal and external criteria will be separated out.

### **TEF review (paper 6.1)**

14. The Director of Teaching Excellence and Student Experience introduced the paper, giving the board some background on the development of the TEF. She noted that:

- a. TEF had been successful in improving parity of esteem between teaching and research, incentivising greater focus on learning and teaching, and quality improvement.
- b. Three different models of subject level ratings had been trialled. The methodology highlights the importance of addressing subject variation within TEF, but it does not yet enable robust and credible ratings to be produced at subject level.

15. The Director for Fair Access and Participation then set out the anticipated timescales and approach for developing and implementing the future TEF scheme, once the Independent Review of the TEF and the government's response to it have been published. He noted that:

- a. The TEF incentivises improvement through its effect on providers' reputation, which affects all aspects of their business, including student choice.
- b. The regulatory framework is designed so that TEF can drive improvement above the baseline quality requirements, so there is a strong imperative for OfS to implement the future approach as soon as possible, and to do so in a way that is coherent with the regulatory conditions.
- c. TEF will influence behaviour, and thereby incentivise improvement, from the time when the proposed approach is published for consultation, and OfS can supplement this by publishing metrics at subject level as they become available.
- d. Given the evidence on variability between subjects, there is an imperative to demonstrate subject differences within the TEF metrics, assessments and outcomes, whilst recognising the constraints on producing subject level ratings in the next phase.
- e. The timetable for reform could be impacted if there is a change of ministers following the election.

16. The following points were made in discussion:

- a. The TEF is a mechanism for incentivising high quality provision. The regulatory baseline tackles low quality and the OfS's provider-level interventions are designed to

address low quality in a timely way without depending on the TEF, which is retrospective and episodic.

b. Although membership of the TEF advisory group will be formed through stakeholder nominations, the aim is to select from within the nominations made and, where necessary, to co-opt members so that the group will reflect the diversity of the sector and students, and secure the necessary learning and teaching, EDI and employment expertise.

c. The timeline for the exercise is determined by the need to create metrics, some of which are based on data that is not yet available, to recruit and train panellists and assessors, and to enable moderation of assessments; parallel timelines can, though, be developed to support decision-making.

d. Noting the effect a TEF rating can have on a provider's overall standing, the consultation will consider how frequently they can come back in to have their TEF award reviewed.

e. As teaching excellence and ratings improve, some stretch in the system may be required so that the requirements for top grades continues to be raised higher.

17. The board:

a. Agreed that the main purpose of the future scheme should be to drive quality above the baseline requirements. Clearer criteria on how this can be achieved will be detailed in the next round of discussions with the board once the independent review, government response and subject-level pilot report has been published.

b. Agreed the provisional timetable and approach for developing and implementing the future scheme, noting that this would also need to be discussed with the government in place after the election.

c. Agreed the need for an advisory group to comment on the detailed design and implementation of the future scheme. The proposed terms of reference and composition of the group would be considered by the chair of the Remuneration and Nominations Committee before it is finalised.

*Kate Lander left the meeting at 15.30.*

### **OfS student engagement strategy (paper 7.1)**

18. The Director of External Relations introduced the paper setting out a new approach to student engagement for the OfS from February 2020, noting that the aim of the strategy was to enable students to shape the regulation of higher education drawing on their own experiences.

19. In the following presentation, Martha Longdon, chair of the Student Panel, and Cassie Agbenenu, Student Engagement Manager at OfS, provided an overview of the strategy and how this has been developed with the input of the Student Panel. It was noted that:

a. OfS has adopted an ambitious approach and in many areas going further than other regulators do in engaging their stakeholders.

b. The strategy would bring together the knowledge and views of students along with the policy expertise of OfS colleagues. Innovative pilots planned for year 1 would be a good opportunity to learn what works and what doesn't.

c. There will be a review of the Student Panel including consideration of how it can reach students that aren't currently represented.

20. In commending colleagues for producing a thorough piece of work, the following points were raised in discussion:

- a. To deliver the strategy it would be important to work with student unions and other networks students have involvement with. The NSS already captures the views of students. This and any other relevant data should be used to inform the OfS's work.
- b. There needed to be a clear definition of what is meant by 'past' and 'future' students to ensure there is appropriate engagement with these groups. Some of this can be done through the Student Panel and keeping in touch with past members.
- c. Engagement needs to be clear and focussed, recognising that students are unlikely to have a day to day relationship with OfS.
- d. It should be clear how the outcomes of this work will be fed back to stakeholders and to demonstrate any impact it has had.

21. The board:

- a. Thanked the Student Panel for their contribution to this piece of work.
- b. Noted progress with development of the strategy and welcomed receiving further updates on progress.

*Elizabeth Fagan left the meeting at 16.00*

### **Consumer protection (paper 8.1)**

22. The Director of Competition and Registration introduced a strategic discussion paper looking at how the OfS should develop its approach to consumer protection. In her accompanying presentation she highlighted that the current regulatory arrangements put the burden of enforcing consumer protection rights on students themselves. It would be better to provide clarity on what students are being offered rather than focus on tools for consumer protection, some of which are already available but are not being used.
23. As a member with a particular interest in this area, David Palfreyman commented that:
  - a. The paper had made a good start in scoping the relevant issues. He noted that there were a number of issues for the board to consider including value for money, information on choice and quality.
  - b. As consumers, students need to have something set out to show what their money is being spent on and what their rights are.
  - c. A standardised, sector wide contract that could be used by providers would be of significant value. If this was data driven then it would challenge providers to be clear about what they were offering.
24. The following points were raised in discussion:
  - a. To make any approach to consumer protection effective there would need to be clarity about process, the remedy for the student and enforcement mechanisms.
  - b. Taking steps to ensure there is a clear and transparent contract in place between students and providers would not assist students in enforcing their rights if something goes wrong. The OfS would be in a different position if it had the powers to apply administrative penalties on those providers that infringe customer rights.
  - c. Although a standard contract had some benefits it could be difficult to apply uniformity across a wide range of student provision. There is already a lot of information available to students from providers. Standardisation could result in other important issues being hidden.
  - d. The Office of the Independent Adjudicator for Higher Education (OIA) already provides the OfS with data on student complaints which feed into our monitoring activities and we are working with the OIA in developing our approach to consumer protection. There may also be value in developing a relationship with Trading Standards.

- e. Any work in this area needs to be proportionate. The OIA already has a role in dealing with individual student complaints and there is the possibility that the Competition and Markets Authority will get more powers. We should therefore be clear about the reasons for the OfS taking further action in this area. Any additional requirements should be subject to a judgement about proportionality and regulatory burden.

25. The board:

- a. Welcomed the work that had been done to date.
- b. Noted that more detailed proposals would be brought back to the meeting in January 2020.

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

26. The Director of Resources, Finance and Transformation updated the board on the year-to-date position on OfS's Administration costs and Programme expenditure for the six month period ended 30 September 2019 and forecast for the full financial year to 31 March 2020.
27. The board noted the paper.

### **Report from the Student Panel (paper 10.1)**

28. The chair of the Student Panel updated the board on the work of the panel since the last board meeting noting that a number of points had been covered in the discussion of the student engagement strategy. In addition, she highlighted that there had been a good discussion of TEF and it was important for the panel to continue to be involved in this work.
29. The board received the report of the Student Panel.

### **Report from the Provider Risk Committee (paper 11.1)**

30. The board received a paper on the work of the Provider Risk Committee and the outcomes of its most recent meeting held on 18 November 2019.
31. Exempt from publication.
32. The board received the report of the Provider Risk Committee.

### **Report from the Horizon Scanning Panel (paper 12.1)**

33. The board received a paper on the work of the Horizon Scanning Panel and the outcomes of its most recent meeting held on 16 September 2019.
34. The chair noted that:
  - a. The panel had received a presentation on artificial intelligence and education. At a future meeting the board will need to think through the implications of this.
  - b. There had been a discussion on subjects and pattern of subject choice. It is clear that if it is left to the market to shape what courses are put on it will lead to some subjects not being readily available to study, modern foreign languages in particular. Noting the social and economic value of certain subjects, the panel considered whether there was a role for the OfS in this area. It would also require a discussion with government.



- c. The panel had discussed the role of the OfS in relation to climate change, following a letter received from the NUS. A paper on this will come to the board in January.

35. The board received the report of the Horizon Scanning Panel.

### **Prevent annual report (paper 13.1)**

36. The Director of Teaching Excellence and Student Experience introduced the paper and advised that there had been a high degree of compliance from sector bodies with the Prevent duty, and where there was evidence of a risk of non-compliance, the Prevent team had engaged in detailed discussions with providers. This was the first year of the risk-based monitoring approach. Where further information had been requested from providers, they were now on track to demonstrate compliance.

37. The board received the annual report on Prevent monitoring.

### **Closing remarks**

38. In closing the meeting the chair thanked the board for their contributions.

*Directors and officers left the room at 17.05.*



**Outstanding actions arising from current and previous board meetings:**

**Status update**

Exempt from publication.