



## **Draft minutes of the OfS board meeting, 30 September 2022**

**Location: 15 Fetter Lane, London/Teams**

**Timings: 1015-1300**

- Present members:
- James Wharton (chair)
  - John Blake (Director for Fair Access and Participation)
  - Martin Coleman
  - Elizabeth Fagan
  - Katja Hall
  - Verity Hancock
  - Rachel Houchen
  - Kate Lander
  - Susan Lapworth (Chief Executive)
  - Dayo Olukoshi
  - David Palfreyman
  - Monisha Shah
  - Michael Spence
- Attendees:
- Emma Davies, Department for Education (DfE) representative
- Apologies:
- Simon Levine
  - Martha Longdon
- Officers:
- Jean Arnold, Director of Quality
  - Louisa Baker, Head of Governance
  - Harriette Cradock, Strategic Adviser to Director for Fair Access and Participation
  - Ed Davison, Competition and Registration Manager
  - Gary Downing, Strategic Business Manager
  - Josh Fleming, Head of Strategy and Evaluation
  - Paul Huffer, Head of Legal
  - Kate Nickols, Corporate Governance Manager (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 formally congratulated Susan Lapworth on her appointment as chief executive of the OfS.
2. The chair welcomed members and noted that Simon Levine and Martha Longdon had sent apologies. He welcomed Emma Davies from the DfE who was attending in place of Hannah Sheehan.
3. The chair noted that recruitment is underway to recruit a new student member to replace Martha Longdon when her term of office ends in December 2022.
4. The chair reported on a meeting with Kit Malthouse in his new role as Secretary of State for Education.
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 July minutes (paper 2.1)

6. The minutes of the board meeting held on 13 July 2022 were approved.

## Chief executive's report (paper 3.1)

7. 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 13 July 2022.
8. The following points were raised:
  - a. There was confirmation that the Secretary of State had formally approved Jisc as the Designated Data Body (DDB) for England, subject to completion of the merger of Jisc and HESA, which is expected to be completed soon.
  - b. Today we have published further information in relation to revised condition B3 which sets minimum expectations for student outcomes. The publication included details on the setting of minimum numerical thresholds. We expect to undertake assessments of compliance with revised ongoing condition B3 for around 20 providers this year and have set out in Regulatory advice 20 the framework we will use to make decisions about which providers to select for assessment. Data dashboards of providers' performance were also published as official statistics.
  - c. The Specialist provider panel had made assessments about which providers were considered to be world-leading for their teaching and education related activity. Funding allocations are expected to be confirmed in October following the panel's final decisions taking account of any representations from providers.
  - d. The reasons for voluntary de-registration often related to mergers between registered providers.
  - e. Use by providers of 'out of date' TEF ratings in their marketing materials, contrary to the OfS's guidance issued in June 2021. It was noted that advertising historical TEF awards could be misleading to the public and this raised questions about whether such advertising complies with the Advertising Standards Authority's code.

9. The board:
  - a. Noted the updates contained in the report.
  - b. Thanked OfS staff for the important and significant amount of work that had gone into the publication of revised condition B3 and the supporting information and data.
  - c. Agreed that further consideration would be given to our approach to providers using out of date TEF ratings.

## **Financial risks for registered providers (paper 4.1)**

10. The Director of Resources and Finance introduced his paper setting out the OfS's emerging register of system-wide financial sustainability risks at a time of increasing pressures, to test with members whether the register was sufficiently comprehensive. The register included consideration of risks such as the increasingly volatile financial environment, UK tuition fees and student recruitment, international student recruitment, investment in research and innovation, capital expenditure and providers' ability to borrow.
11. Following group discussions of the draft risk register, the major themes reported were:
  - a. Rising costs (energy costs, and salary and pension costs)
  - b. Potential longer-term borrowing difficulties arising from increases in interest rates, linked to inflation.
  - c. The differential experience of providers (size, subject mix and specialisms, student intake mix, and location).
  - d. The differing capacity of individual providers to identify and manage financial risk.
  - e. The differential experience of student groups and the equality impact of providers' decisions in response to financial pressure.
  - f. Costs arising from maintaining and investing in providers' estate.
  - g. Future investment in research and innovation including the extent of the replacement for EU Horizon funding.
  - h. Reliance on international student fees and the impact of movement in currency markets, immigration policies or unexpected geo-political events.
  - i. Exempt from publication.
12. In concluding its discussions, the board:
  - a. Agreed the importance of re-enforcing the responsibilities of members of providers' governing bodies, particularly in relation to financial matters and pro-active planning for financial shocks.
  - b. Agreed to review at its forthcoming planning event the OfS's approach to monitoring financial sustainability of registered providers.

## **Future arrangements for assessing quality and standards (paper 5.1)**

13. The Director of Quality introduced her paper updating the board on the implications of the announcement by the Quality Assurance Agency (QAA) that it no longer consents to be the designated quality body (DQB) from 31 March 2023. She advised on:
  - a. The plan for managing the remaining work to be carried out by the QAA by 31 March 2023.
  - b. The approach to developing the OfS's capacity to deliver assessments, building on the model currently being put in place for investigations.

14. The following points were raised in discussion:

- a. The board noted the ongoing risks associated with delivery of the remaining work to be completed by the QAA.
- b. There was not currently another body that was likely to be suitable to be designated.
- c. The board was open, in principle, to working with a new DQB. However, it would not wish to do so in practice unless it could be confident that [exempt from publication] any new DQB would represent a more efficient and effective solution than the OfS performing the assessment functions itself.
- d. The board supported the set of principles set out in the paper to underpin consideration of future longer-term arrangements.
- e. The assessment functions would need to continue to be delivered in house in the medium term and the board noted the considerable resource implications of this.

15. The board:

- a. Welcomed the QAA's commitment to deliver a smooth transition and to avoid disruption for providers.
- b. Noted developments since the last board meeting and work underway in planning for future arrangements.

## **Risks to equality of opportunity (paper 6.1)**

16. The Director for Fair Access and Participation gave a presentation on a proposed new framework which aims to identify and mitigate risks to equality of opportunity across the sector. He explained that the OfS considers equality of opportunity in relation to an individual's agency within systems they cannot fairly control. The OfS's proposed definition of equality of opportunity is broad in focus, including economic disadvantage as well, for example, protected characteristics. He advised that we expected to propose that the OfS's analysis of risks to equality of opportunity, together with each provider's own analysis of its specific risks, would feed into the development of a provider's access and participation plan. Members were invited to discuss the risks to equality of opportunity at sector level, including consideration of the severity and likelihood of the impact of each risk.

17. Following group discussions of the risks and mitigations, the main themes reported were:

- a. That many risks, such as lower prior attainment, crystallise before admission to higher education.
- b. Equality of opportunity encompasses different factors and settings. There is a need to consider the diversity of provision, including the availability of apprenticeships and FE's role as a springboard to higher education.
- c. Cost-of-living pressures are affecting a broader span of the population, changing the nature of risks to equality of opportunity.
- d. The risk that providers may become more risk adverse in admissions decisions in relation to disadvantaged students.
- e. The challenges for providers in designing selection processes which fairly take account of students' background.
- f. The risk to students' participation without the social capital and knowledge that may deliver social mobility.

- g. Impacts on choice of location of study, and risks to families who are expected to provide financial support to dependents.
  - h. Differential effects on providers reflecting size, subject-mix and specialisms, student characteristics and intake mix, and location.
  - i. Risks to the effectiveness of support provided to address attainment gaps in the context of system-level financial pressures.
  - j. The challenges of progression into rewarding professional employment in an adverse financial climate, and the greater need for disadvantaged students to have opportunities to gain employment experience.
  - k. The challenge for a regulator in assessing performance in a dynamic environment.
18. In concluding the discussions, the board expressed its gratitude for the work of OfS staff on the proposed reforms to our regulation of equality of opportunity, supportive of the approach taken to the development of Equality of Opportunity Risk Register (EORR) and the associated proposed reforms, and agreed that it was important that it continued to be sighted on this work as it developed.

## **Intervention strategy (paper 7.1)**

19. The Head of Strategy and Evaluation introduced his paper setting out for the board the OfS's approach for determining its intervention strategy each year. He advised that:
- a. We have changed the name of the strategy from the 'enforcement strategy' to reflect the wider range of decisions that could be made in relation to an individual provider.
  - b. Annex A reflects the de facto intervention strategy for the current year as this reflects decisions that have largely already been taken as a consequence of recent consultations.

20. Exempt from publication.

## **Finance report (paper 8.1)**

21. The Director of Resources and Finance introduced his paper updating the board on the financial position of the OfS for the five-month period ended 31 August 2022 and forecast expenditure for the full financial year (to 31 March 2023).
22. The board received the report.

## **Student panel update (paper 9.1)**

23. The chair of the student panel had prepared her report to the board on its most recent meeting held on 26 June 2022. Although she was unable to attend the board meeting, members could raise any questions with her following the meeting.
24. The board:
- a. Received the report from the student panel.
  - b. Noted the minutes from the June 2022 panel meeting which have been approved by the panel and will be published on the OfS website in due course.

## Report from the Provider Risk Committee (paper 10.1)

25. The chair of the Provider Risk Committee presented his report to the board on its most recent meeting held on 27 September 2022. The committee discussed:
- a. The decision to impose a monetary penalty, which was in relation to the University of Buckingham's breach of condition F3 (provision of information to the OfS) relating to audited accounts for the period 2019-20.
  - b. Exempt from publication.
  - c. Exempt from publication.
  - d. Exempt from publication.
26. The board received the oral report from the Provider Risk Committee and thanked the committee for its work.

## Report from the Quality Assessment Committee (paper 11.1)

27. The board received the report from the Quality Assessment Committee on its most recent meeting held on 12 September 2022.

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

28. The chair of the Risk and Audit Committee presented her report to the board on its most recent meeting held on 8 September 2022. The committee had discussed:
- a. Exempt from publication.
  - b. The decision to establish independent assurance for the Data Futures programme. This oversight had been welcomed by the partners in the programme.
29. The following points were made in discussion:
- a. There was exploration of the reasons for seeking independent assurance in relation to the Data Futures programme. The programme was six months' away from going live. Exempt from publication.
30. The board received the oral report from the Risk and Audit Committee.

## Closing remarks

31. The chair thanked members for coming to London to attend the meeting in person and for their contributions. He encouraged members to contact him outside of board meetings with any issues.
32. He reminded members that the next meeting of the board will be held on 8 December 2022.

The meeting closed at 1250.