



## **Draft minutes of the exceptional OfS Board meeting, 9 April 2020**

**Location: by video or telephone conference**

**Timings: 08.30-10.00**

- Present members:
- Sir Michael Barber (chair)
  - Martin Coleman (deputy chair)
  - Nicola Dandridge (chief executive)
  - Gurpreet Dehal
  - Elizabeth Fagan
  - Katja Hall
  - Verity Hancock
  - Kathryn King
  - Kate Lander
  - 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:
- Simon Levine
- Officers:
- Ed Davison
  - Josh Fleming
  - 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. In welcoming members and Ian Coates, the DfE representative, to this exceptional board meeting, the chair noted that Simon Levine had sent apologies. He also thanked members for making the time to join the meeting at short notice.
2. The meeting was an opportunity to keep the board up to date on developments since its last meeting and to discuss proposals for a consultation on the introduction of a new time-limited ongoing condition of registration to assist the OfS in its regulatory response to the COVID-19 pandemic. He noted that the OfS was facing many challenges: the most significant were around the financial sustainability of the sector and concerns around admissions in the summer.
3. Since the board met on 16 March 2020 the chair advised he has had several conversations with both the Secretary of State and the Minister, discussing with them the pressures for the sector and students, as well as with a variety of vice chancellors. They had been very supportive of what the OfS has achieved in a short space of time.
4. The chair noted that particular praise was due to the chief executive and the directors for all the work they had done under immense pressure, and he put on record his thanks on behalf of the board to them and to all the staff at OfS.
5. The chair advised there were many good examples of the sector dealing with the current situation, including the swift development of on-line teaching and learning for students and responding positively to the health crisis through the opening up of academic space and the targeting of research. This also needed to be publicly recognised.

## Chief executive's update

6. The chief executive summarised the seven work strands the organisation is now working to, superseding the previous business plan:
  - a. Learning and teaching, exams and assessment. Guidance issued to the sector last week highlighted the reduced regulatory approach the OfS is taking in the current circumstances.
  - b. Admissions. This has been a key focus of work, details of which are covered in the board paper.
  - c. Financial sustainability. Again, this is covered in the paper.
  - d. Market exit. This has not yet been triggered but we are mindful of the need to build capacity to deal with any provider failure.
  - e. Preparing for a post-coronavirus world. This is planning for a return to a 'new normal' and our preparedness to switch on our regulatory responsibilities again in a sensible and managed way.
  - f. Operational. This is around the continued functioning of the organisation and providing support to staff.
  - g. Amber activity. These are the activities identified from the existing business plan that we have to continue to do.
7. She noted that the executive team are taking responsibility for each different area with the Directors for Fair Access and Participation and External Relations working across all work strands.
8. On behalf of the Department, the DfE representative thanked the executive for its support over the last few weeks. The Minister shared the same issues of concern as the OfS. In

addition, she had asked if the OfS could also focus on student mental health and disadvantaged students and was supportive of any funding being used to provide support in such areas.

## **Regulatory response to COVID-19**

9. In introducing the paper, the chief executive noted the concern – widely acknowledged in the sector – that the financial pressures on providers, particularly through the loss of income from international students, would result in them changing their approach to this year's admissions process, for example, by making more unconditional offers to domestic students. This could have negative impacts on student choice with a risk of financial instability across the sector. The proposed consultation on the introduction of a new condition of registration would provide a temporary measure to enable OfS to take action in relation to conduct that was likely to harm the interests of students or create instability in the sector.
10. Reflecting the same concerns, Universities UK (UUK) had proposed with its members a student number control (SNC) arrangement which restricted the numbers of students a provider could recruit to its forecast numbers plus 5%. Subject to further consideration of the legal implications, a breach of the SNC could be relevant evidence in relation to a breach of any new condition of registration, with OfS able to impose monetary penalties accordingly.
11. The introduction of a new condition of registration would require consultation and she was seeking board approval for this approach, with a delegation to enable decisions about this consultation by herself, the chair, deputy chair and Director of Competition and Registration (or as many of them as were available).

## **Financial sustainability**

12. The Director of Resources, Finance and Transformation provided an update on the financial sustainability issues highlighted in the paper, noting that these are based on modelling that remains uncertain and includes a number of variables and assumptions. He advised that:
  - a. A significant number of students and providers are affected.
  - b. The focus is on cash and the actions that can be taken to address any shortfalls.
  - c. The model assumes providers will have access to government loan schemes and he is trying to get clarity on eligibility for providers, but even if they are eligible and can access loans it is unlikely that all providers will be able to draw down sufficient cash to meet the modelled shortfalls.
  - d. There is currently no evidence of an immediate failure of a provider but there are risks in the medium term (from the beginning of the next academic year).
  - e. Ongoing dialogue with banks suggests they are supportive of the sector but they are waiting to get clarification from government regarding access to loan schemes.
  - f. Providers are required to tell us if they are going to reach a position of less than 30 days' liquidity at any point in a rolling 3-month period. A small number of providers have been in touch but we have not identified any immediate issues.

## **Proposed condition of registration**

13. In considering the options available to the OfS, the Director of Competition and Registration reminded the board that the only mechanism we have to make a provider do something, or refrain from doing something, is through a condition of registration. None of the current

conditions were designed for the current circumstances and so would not work well in addressing potentially damaging offer-making strategies and other actions that providers might take in response to the coronavirus pandemic – hence the recommendation to introduce a new one. She noted that:

- a. The aim of the proposed new condition was to disincentivise undesirable conduct by providers, but the OfS would expect to take enforcement action where there was a breach of the condition and would consider the imposition of a substantial monetary penalty in such cases.
- b. The proposed condition was deliberately principles-based to ensure it could capture a range of undesirable conduct that was not in the interests of students and would be effective across the range of contexts in which providers work.
- c. The proposed condition contained an element of retrospectivity that would allow certain conduct to be taken into account where this occurred before any condition was imposed, including during the consultation period. It was also time limited, with a proposal that it would cease to apply at a particular point.
- d. Other types of regulatory intervention had been considered, [exempt from publication].

14. The chair emphasised that the proposed introduction of this condition of registration was not because the OfS was seeking to impose additional regulation. It was about ensuring that students and the sector as a whole could be protected in the extraordinary circumstances caused by the pandemic. In responding to the consultation, it was hoped that the sector would recognise that this was the OfS's intention and would demonstrate a generosity of spirit in how it approached these unprecedented circumstances. This would need to be made clear in any communications around this issue.

## Admissions

15. The Director of Data, Foresight and Analysis noted that the paper had been written assuming there would be not be a SNC in place for 2020-21 recruitment. Since then, UUK had proposed its sector-led SNC and this would now need to be considered. The OfS is working closely with UCAS which is being supportive. A full proposal is expected from UCAS on Tuesday which was expected to be focused to place student choice at the heart of its work. This will enable OfS to develop the necessary information, advice and guidance for students, particularly to help less advantaged students.

16. The following points were made in discussion:

- a. The DfE representative advised that an extended moratorium on admissions is in place to 20 April 2020. Ministers are keen not to have a longer pause. DfE is working on a package of measures for the sector and expect to make an announcement in around 9 days. This will take into account:
  - i. The UUK proposals, including on a sector-led SNC.
  - ii. The measures being taken by OfS.
  - iii. Information on how providers can access the funding on offer from the government's business support schemes.
  - iv. Matters surrounding international students and research.
- b. Exempt from publication.
- c. There is a risk that in focusing recruitment on the domestic market to fill any income gaps left by a reduction in overseas students, providers may encourage registration from students who may not be suited to higher education. The OfS needed to support these students through providing good information, advice and guidance. If this is handled well then it may even reach audiences who might otherwise not have considered higher education.

- d. Individual providers and the sector as a whole need to demonstrate good leadership at a time of crisis as this is part of how they will be judged now and in future. It was noted that the new condition of registration is sufficiently broad in scope to deal with any management and governance behaviours that may be seen to destabilise the sector, such as unhelpful recruitment practices.
  - e. Exempt from publication.
  - f. Guidance has already been issued to the sector making it clear that students should expect a minimum level of teaching during the pandemic, and students will be encouraged to notify the OfS if they feel this is not happening. We will also be looking for any patterns of behaviour from individual providers or across the sector as a whole. Providers must also tell us when they cease to deliver a course.
  - g. Given the financial pressures, it was noted that providers are already taking mitigating actions to control and contain costs as well as focusing on the availability of government support. This does need to be done in a managed way as any loans will need to be repaid. OfS is also working with those providers that need to act quickly.
  - h. It was noted that students from under-represented groups might find the current situation particularly hard. OfS has made a clear statement to providers that we expect them to deliver the commitments in their access and participation plans, especially where these relate to providing financial support to students, but understand a certain degree of flexibility may be necessary for particular activities such as outreach. Briefings are being provided to identify resources and good practice in relation to groups of students who might need specific support. In addition, we are looking at where there may be gaps in provision, for example in relation to student mental health. Investment may be needed to plug these gaps.
  - i. It was recognised that small and specialist providers may face additional challenges and GuildHE were sensitive to these. This had also been raised with the minister.
  - j. Risks to the delivery of the apprenticeship programme were likely to put further education providers under increased pressure. This would affect HE delivered in FE settings which includes a large number of students from underrepresented groups.
  - k. The grading and assessment of 'A' level students poses an immediate issue with concern that teachers may under-predict the grades of students from under-represented groups. Ofqual are doing work to try and normalise this.
  - l. Keeping students and the sector updated is important. Additional effort is going into communications with stakeholders and providers, and a lot of FAQs have been added to the OfS and Discover Uni websites. Students are engaging more with our social media. Briefing notes are being published to share interesting ideas and examples of good practice in the sector.
  - m. Labour market changes during the time of the pandemic may affect the decisions of potential future students. It will be important to keep these learners engaged.
  - n. It was critical that, through a package of actions, the overall stability of the sector is preserved. OfS's work on preparing for a post-coronavirus world will consider the wider issues of how the whole higher education landscape might look in the future.
17. In concluding the discussions, the chief executive thanked the board for their helpful comments and advised she would endeavour to reflect these into the OfS's work, including in the proposed consultation.
18. The chair acknowledged the contribution of members and their unanimous support for the principle of the introduction of a time-limited ongoing condition of registration. In responding to the recommendations in the papers the board agreed the following delegations to the chair, deputy chair, chief executive and director of competition and registration (or by as many of them as have capacity in the event of ill-health):

- a. a decision about whether to proceed, or not, with a consultation on a time-limited ongoing condition of registration
- b. the final drafting of the proposed condition, based on the general approach set out in Annex C of the paper
- c. the final drafting of the consultation document.

## **Closing remarks**

19. In closing the meeting, the chair thanked the board for participating in the meeting. He also thanked the executive for their work in preparing for the meeting and their exceptional work in challenging times
20. The next scheduled meeting of the board will be on 21 May 2020 but members would be kept informed of any key developments between now and then.
21. The meeting closed at 10.05.