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Secretary of State for Education

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Dear Secretary of State

OfS recommendation of a body suitable for designation under Schedule 6 to HERA (English Higher Education Information: Designated Body)

I am writing to provide the OfS's recommendation that Jisc is a suitable body to be designated to perform the information duties in sections 64 and 65 of the Higher Education and Research Act 2017 (HERA).

This letter sets out the background to our recommendation, our analysis of Jisc's suitability in relation to the conditions set out in paragraph 4 of schedule 6 of HERA, and the steps we propose to take if Jisc is designated to ensure its effective performance.

Background

HERA provides for the designation of a body to perform the information duties as set out in sections 64 and 65 ("the information duties") and HESA was designated from April 2018. HESA and Jisc have announced that they intend to merge from 1 October 2022 and we understand that HESA has asked you to remove its designation should that merger take place. In February 2022, in light of the planned merger, the OfS invited expressions of interest from bodies wishing to be designated. We received a single expression of interest from Jisc. We then conducted a public consultation⁴ which enabled registered higher education providers, students, employers and other interested persons to provide views about whether Jisc is suitable for designation.

We received 23 responses to our consultation and have had regard to those responses and other relevant matters in reaching our recommendation.

Analysis

We have made an assessment against each of the four conditions in paragraph 4 of schedule 6 to HERA as set out below.

Condition A: the body is capable of performing the information functions in an effective manner

The merger of HESA and Jisc means that Jisc would acquire the knowledge, expertise and staff of HESA. All of the respondents to the consultation who expressed an opinion viewed this as a reason to agree that Jisc would be able to perform the functions effectively. [REDACTED]

[REDACTED] Given that Jisc will acquire the skills and expertise of HESA through the merger we have a high degree of confidence that it will be able to deliver the information duties in broadly the same way as HESA. Furthermore, the merger of Jisc and HESA provides opportunities to strengthen elements of HESA's approach to delivery.

The main area of concern in relation to [REDACTED] the Graduate Outcomes survey [REDACTED] are two-fold:

- The first concern relates to response rates for the survey. [REDACTED]
[REDACTED] If Jisc were to be designated we would require it to produce and implement a credible plan to deliver the target response rates for the survey.
- The second concern relates to Jisc's ability to perform the duties in section 64(1) of HERA. That section requires a designated body to perform the duties itself. Although HESA conducts the Graduate Outcomes survey itself, it subcontracts the telephone portion of the survey to a third party. We expect Jisc to continue this arrangement. The telephone activity required as part of the Graduate Outcomes survey is spread unevenly over the year. Outsourcing this activity is therefore a pragmatic way to manage the costs of the survey by benefiting from economies of scale by using a general purpose call centre and we are not concerned by Jisc's intention to continue with this approach.

We have had ongoing concerns about delivery of the Data Futures programme. The OfS brought Jisc into the programme [REDACTED]. HESA and Jisc have now been working closely together on the programme since December 2019 and we anticipate that the merger will have a further positive impact on the programme [REDACTED]. We understand that the Jisc board and executive are fully committed to the programme and recognise that delivery of Data Futures will be an important consideration for the OfS in monitoring whether Jisc remains suitable for designation. We would expect the current strengthened oversight arrangements for the programme to continue with appropriate and effective oversight from the Jisc board and chief executive.

The other area in which there is a potential concern in relation to the ability of Jisc to perform the information duties effectively relates to conflicts of interest. The designated data body does not deliver activity that directly relates to the decisions the OfS makes about individual providers. Jisc does, however, have a wider role in promoting the use of technology in education and it is therefore possible that Jisc will undertake work that is related to the OfS's approach to regulation. For the most part, we would not expect such work to generate any conflicts of interest. However, we have identified a number of areas where a conflict of interest could arise and we would work with Jisc to ensure these are effectively resolved, including by requiring Jisc to notify us in advance of any conflicts likely to arise in practice. We have not identified any substantive areas where we disagree with Jisc about the nature of conflicts and how they should be resolved.

Notwithstanding our concerns about the Graduate Outcomes survey and ongoing delivery risks in respect of Data Futures, our assessment is that Jisc currently satisfies Condition A.

Condition B(a): the persons who determine the strategic priorities of the body represent a broad range of registered higher education providers

Jisc is a registered charity and company limited by guarantee. There are two classes of membership of the charity: Representative Membership and Institutional Membership.

Jisc's expression of interest for designation sets out a number of ways in which it would gather the views of registered providers, including through the use of a statutory oversight committee, which we understand will include a wider range of providers than the Jisc board. However, condition B(a) is clear that the individuals who set the strategic priorities of the body should represent a broad range of registered higher education providers. In this case the 'body' is Jisc and therefore those individuals are the members of the Jisc board. Jisc recognises that it is the Jisc board which needs to satisfy this condition and has amended its articles of association to aid in addressing this point.

It is clear from Jisc's articles of association that it intends to represent a broad range of providers and we take the view that, as currently constituted, the board achieves this. However, there is nothing to stop the Jisc board reducing the diversity of its membership in future. Schedule 6 paragraph 10 of HERA requires the OfS to notify you if we have significant concerns about the continued suitability of the designated body and we could do so if we took the view that the membership of the Jisc board had changed to the extent that we considered it no longer to represent a broad range of higher education providers.

Given the current constitution of the Jisc board, its articles of association and the powers under paragraph 10 of schedule 6 of HERA, our assessment is that Jisc currently satisfies Condition B(a).

Condition B(b): the body commands the confidence of registered higher education providers

Jisc is a long-established organisation. In their responses to the consultation, providers and their representative bodies expressed strong confidence in a post-merger Jisc becoming the designated data body. Given these significant levels of support, our assessment is that Jisc satisfies Condition B(b).

Condition B(c): the body exercises its functions independent of any particular higher education provider

Jisc has previously operated independently of individual providers and is not dependent on any provider. This will continue to be the case and therefore our assessment is that Jisc satisfies Condition B(c).

Condition C: the body consents to being designated under Schedule 6 of HERA

Jisc has been clear that, subject to the merger proceeding, it would consent to being designated. Our assessment is therefore that Jisc satisfies Condition C.

Condition D: the body is a body corporate and is not — (a) a servant or agent of the Crown, or (b) a body to which the Secretary of State appoints members

One potential concern in relation to condition D is that Article 22.5 of Jisc's articles of association requires "one person nominated by the Funding Bodies and appointed to the Board on the

recommendation of its Nominations and Governance Committee”. The funding bodies include the OfS and at least one crown body, the Department for Education. As a result, you, as Secretary of State, have a limited role in the appointment of one of the members of Jisc. However, we take the view that one of the aims of condition D is to ensure that the designated body is independent from Government and we do not consider that your limited role would be likely to compromise the designated body’s independence in practice. This is because you make a nomination jointly with other funding bodies to Jisc’s board and it is ultimately a matter for Jisc’s nominations and governance committee to decide whether to accept any nomination.

Jisc is a registered charity and company limited by guarantee and we do not believe that it has been entrusted to perform any functions on behalf of the crown. We therefore hold the view that it is therefore a body corporate and is not a servant or an agent of the crown. Our assessment is that Jisc satisfies Condition D.

Overall conclusion

Having reviewed the evidence, the OfS considers that, following the merger of Jisc and HESA, Jisc will be suitable to perform the information duties. We have not identified any other bodies through our call for expressions of interest or consultation that could be suitable for designation.

Where we consider there to be only one body suitable for designation, we are required by paragraph 2(3) of schedule 6 of HERA to recommend that body. The OfS therefore recommends that Jisc is designated to carry out the information duties.

Steps we propose to take to ensure effective performance of Jisc if it is designated

The designation of a new body to perform the information duties would present an opportunity for the OfS to reset its relationship with that body. We would expect to develop a new designation agreement which would set out our information and publication requirements and refreshed arrangements for monitoring the performance of the designated body. We would also take the following steps to address the concerns set out above in our assessment:

- In relation to response rates for the Graduate Outcomes survey, we would require Jisc to produce and implement a credible plan to meet the target response rates.
- To ensure delivery of the Data Futures programme to scope, time and budget, we would continue to require strengthen oversight from the Jisc board and chief executive. We would also expect to seek independent assurance about the ongoing delivery of the programme.

Please let me know if you require any further information about our recommendation, or the analysis on which it is based. We would be very happy to engage further with officials as appropriate.

Yours sincerely



Susan Lapworth
Chief Executive