

Chief executive's report

Purpose

Board's primary role in relation to this paper:

- A. Set strategy
- B. Set risk appetite
- C. Oversee performance
- D. Understand context

1. This paper provides an update on work undertaken and issues that have arisen since the report to the last board meeting on 30 March 2023 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.

Recommendations/decisions required by the board

3. The board is invited to:
 - a. Note the updates contained in this paper.
 - b. Agree the extension of temporary delegation arrangements set out in paragraph 61.
 - c. Note the risk report at Annex A.
 - d. Note the OfS communications overview at Annex B.
 - e. Note the near final summary business plan 2023-24 at Annex C, which will be published soon.

Further information

4. Available from Susan Lapworth.

Summary of main activity

5. On 18 May we published our annual report on the financial sustainability of higher education providers. The report sets out our analysis of actual and forecast position for the 257 providers that submit financial data directly to the OfS each year. It also includes relevant patterns and trends alongside other contextual information relating to financial sustainability and risk across the sector. For the first time we have included in the published report a summary of the themes we discussed with finance directors of providers at a series of roundtable events earlier in the year.
6. On 25 April, we published three case studies to show how we use our powers in a targeted way when we are concerned that there is increased risk of a provider ceasing the provision of higher education.
7. On 29 March we published the analysis of responses and decisions in relation to our consultation on a new approach to regulating equality of opportunity, particularly reforms to access and participation plans (APPs). The analysis has informed our decisions to proceed with the proposals broadly as set out in the consultation with some revisions. We have also concluded a series of webinars offering information and advice for providers submitting new APPs in the first wave.

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.

Quality investigations

8. Our assessment teams have completed their visits to all 11 providers subject to investigations relating to the quality of courses in business and management and computing. Teams are now completing their draft reports and we are beginning to share these with providers and inviting any comments about the factual accuracy of a report, and representations in relation to a provisional decision that we should publish the report. We will consider any representations and make final decisions about publication. We will then consider whether any further regulatory intervention is appropriate, for example to require a provider to take action to resolve any concerns.
9. We are progressing our assessments of individual providers compliance with condition B3 (student outcomes) for 12 providers. We anticipate publication of information about these assessments in the coming months. We intend to publish information about our approach to selecting providers for assessment in the 2023 monitoring cycle in July 2023. We plan to seek advice from the Quality Assessment Committee at its next meeting to inform decisions about our approach.

The Teaching Excellence Framework (TEF)

10. The TEF Panel is currently assessing the 229 providers that are taking part. For each provider the panel is considering the numerical indicators published by the OfS alongside the provider's submission, and a student submission if available. Students from 204 providers chose to make submissions and we published a [blog](#) in March about the high level of student engagement with the TEF.
11. The TEF Panel was appointed in December 2022 and comprises two-thirds academic and one-third student members. Following initial training and calibration, the panel has been meeting to make provisional decisions about the TEF ratings. The work for panel members is intensive and the timetable for producing outcomes is tight. Meetings will continue into July, and we expect to release provisional decisions to providers at the beginning of August. The panel will consider any representations made by providers and make its final decisions, in time for publication of ratings from late September. We anticipate publication of the reasoning for the panel's judgements later in the autumn. We intend to brief the board on the TEF outcomes in September.

Student outcome and experience measures

12. On 28 March we published [descriptions and definitions](#) of student outcome and experience measures. These are the measures we use in our regulation of student outcomes and access and participation, and to inform TEF assessments. We also published the [categorisations](#) applied to individualised student data returns in algorithm form and information about how we use these to construct the student outcome and experience data indicators. This is intended to help providers and other users of our measures to understand the definitions and approaches we use.

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

13. 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.

Higher Education (Freedom of Speech) Act 2023

14. The [Higher Education \(Freedom of Speech\) Bill](#) received Royal Assent on 11 May 2023 following consideration of amendments in both Houses. The new Act includes the statutory tort framed as a 'last resort'. This means that persons wishing to bring proceedings under the tort must have first had their complaint considered by the OfS complaints scheme (or the Office for the Independent Adjudicator for Higher Education (OIA) complaints scheme), except where

they are seeking an injunction, for example, in circumstances where a student has been withdrawn from their course, or an academic staff member has lost their job because of free speech issues. In those circumstances, a timely remedy would be important and damages may not be sufficient.

15. We are currently working with Department for Education (DfE) officials on the timetable for commencement of the provisions in the new Act.

Free speech case

16. Our consideration of matters connected to freedom of speech and academic freedom at the University of Sussex is now at an advanced stage. Exempt from publication.

Our strategic goal is:

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

Lifelong loan entitlement

17. We continue to work with the DfE on the implementation of the lifelong loan entitlement (LLE). Our work will focus on three strands of activity: developing a third category of registration, developing student outcome measures for modular provision, and ensuring the regulatory framework supports the effective use of new funding arrangements and protects students and taxpayers. We received confirmation of additional funding from DfE in early May and have begun to escalate recruitment to bring in more OfS staff for this work. Exempt from publication.

Equality of opportunity

Our strategic goal is:

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

Insight brief: Studying during rises in the cost of living

18. On 17 March we published an [Insight brief](#) and accompanying [press release](#) on the impact of increases in the cost of living on students. The insight brief draws on findings from a poll of 4,021 students on the Savanta panel, research conducted by other organisations, and roundtable discussions attended by student representatives, staff from universities and colleges, and officers of higher education sector representative bodies and mission groups.

Revised approach to access and participation plans

19. On 29 March we published the analysis of responses and decisions in relation to our consultation on a new approach to regulating equality of opportunity. The analysis has informed our decision to proceed with the original proposals broadly as set out in the consultation with some notable changes in response to feedback:
 - a. We have extended the timetable for implementation, in particular, inviting a small cohort of providers to submit plans for 2024-25 onwards this summer (wave 1), with remaining providers to submit in summer 2024 for 2025-26 onwards (wave 2).
 - b. Expectations for the format of plan summaries are more explicit, and we will ask providers to submit summaries after plans have been approved rather than as part of their first submission.
 - c. We will continue to expect that plans include information about anticipated investment in activities to support access, which we had originally proposed removing to reduce burden.
20. To implement our reforms we issued, on 29 March, updated guidance setting out our expectations for access and participation plans alongside the sector-wide Equality of Opportunity Risk Register (EORR).
21. In parallel, the Centre for Transforming Access and Student Outcomes in Higher Education (TASO) published a rapid evidence review to inform the development of the EORR. We also published updates to our access and participation dashboard along with an accompanying press release. New data shows that students from disadvantaged backgrounds and those otherwise underrepresented in higher education are less likely to complete their course.

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.

Higher education market

22. We continue to make progress registering providers, including for longstanding complex cases. The report from the Provider Risk Committee on the board's agenda provides more detailed information about this.
23. We have made two decisions on applications for degree awarding powers (DAPs) since the board's last meeting. We have awarded time-limited Full DAPs to LIBF Limited, and indefinite Full DAPs to NCG.
24. We have taken a decision to approve the use of the word 'university' in the name of a registered provider: Newman University will now be known as Birmingham Newman University.

New data science and artificial intelligence conversion masters' courses

25. On 30 March we announced a further £8.1 million in funding for 30 universities to create bursaries for data science and artificial intelligence postgraduate conversion courses. Our announcement was covered by various local and regional newspapers.

26. On 30 March the Career Development Organisation published a second interim summary report of an evaluation of the programme of new data science and artificial intelligence postgraduate conversion courses supported by the OfS.

Our strategic goal is:

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

Regulating harassment and sexual misconduct

27. Our consultation on a new approach to regulating harassment and sexual misconduct in English higher education closed on 4 May. We received more than 300 completed consultation responses, the majority from providers or sector or specialist organisations. However, early analysis suggests that up to 10 per cent of responses were from current or former students, or student representative bodies including students' unions. This is a more significant student response than we have seen in relation to other consultations.

28. During the consultation period, we undertook significant engagement activity, including:

- a. Speaking engagements at sector conferences: WonkHE Secret Life of Students, Universities UK's Harassment and Sexual Misconduct conference, and UK Research and Innovation (UKRI) forum for bullying and harassment.
- b. Webinar and roundtable sessions with students and student advisors, and meetings with student representative groups (National Union of Students, the Union of Jewish Students).
- c. A webinar for higher education providers and approximately 20 meetings with key organisations or individuals in this area, including with:
 - i. Sector stakeholder groups including mission groups, representative groups, the OIA, UKRI, and relevant professional groups (e.g. AMOSSHE, The Student Services Organisation, and Universities Human Resources (UHR)).
 - ii. Organisations with a particular focus on harassment or sexual misconduct, including the Equality and Human Rights Commission (EHRC), Community Security Trust, Board of Deputies of British Jews, the 1752 Group, Lime Culture, and others.
 - iii. Academic experts involved in research in these areas.

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.

Mental health

29. For 'university mental health day' in March, we focused on effective practice in relation to collaboration with students in developing mental health support. We published a [blog](#), three [new case studies](#) of funded projects and a range of [videos](#) from the student co-creators, as well as highlighting the [report](#) delivered in December 2022 by the programme's external evaluators on this area. Evaluation conducted by the communications team has found positive engagement through press, social media and website views, including the second highest level of impressions on the OfS's Twitter so far this year.

Guidance on student suicides

30. We launched in January the OfS funded UUK-Papyrus-Samaritans [guidance](#) for universities on how to respond to student suicides. This is a supplementary publication to the Suicide-Safer Guidance that we previously funded.

Student Space

31. Student Space continues to develop relevant online content to support student mental health. It has moved its focus from the pandemic to the uncertainty of student life.

Enabling regulation

Our strategic goal is:

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

Financial sustainability

32. In April we published [information](#) about our approach to assessing the financial sustainability of registered providers. We are now completing our assessment of the financial information submitted by providers in relation to financial years ending in 2022. All registered providers – excluding further education colleges and sixth form colleges – are required to make an OfS Annual Financial Return five months after their year-end. This includes financial data, financial and student number forecasts, and other relevant contextual information.

33. 257 providers are due to submit the 2022 return and we have so far received information from 224 providers. Following our triage process we have identified 99 providers for a more detailed assessment of financial viability and sustainability.

34. In parallel to assessments for individual providers we have completed our analysis of the aggregate financial position for the sector and on 18 May we published our [report](#) on the patterns and trends we can see in the data, together with our view of risk. The report finds that while university finances are generally remain in good shape, significant variation remains in the performance of higher education institutions and there are growing risks, including from an over-reliance on international students and inflationary pressures.

35. In March, we hosted six roundtable events with senior financial officials from registered providers. Attendance covered 34 providers across the range of categories in our [financial typology](#) of the sector. We invited participants to discuss financial risks facing their provider and

the sector more broadly, and the mitigations available to manage these risks. These discussions were helpful in testing and confirming our understating of risks and we summarised the key points raised in an annex to our annual financial sustainability report.

36. On 25 April, we published three case studies relating to providers that had been at risk of market exit. One of the case studies related to the Academy of Live and Recorded Arts (ALRA), which closed in April 2022. The other two providers were able to resolve the particular financial challenges they had faced. The purpose of publishing these case studies was to show how we make judgements about financial risks facing providers and the actions we have taken in particular cases where there has been a material risk of market exit. We expect these case studies to be helpful to providers, offering reassurance to those without significant financial risk that they are unlikely to be subject to increased regulation, and showing those facing difficulties how we would use our powers in a targeted way to protect students from the consequences of a disorderly exit.

Protecting public funding

37. We continue to expand our work to protect public funding from potential misuse. We have increased our engagement with the sector to explain the reasons for our focus on this area, including flagging potential risks relating to the use of subcontractual partners to deliver teaching in the UK. We delivered two workshops at the Student Loans Company's (SLC) annual conference, and we are holding an OfS online event on 26 May aimed at the chairs of providers' audit committees and audit firms. We plan to highlight the important role of audit committees in ensuring providers have robust internal controls to protect public funding.
38. Our data tells us that around 5 per cent of students registered with registered providers are taught through subcontractual relationships with delivery partners. This represents approximately 14 per cent of students who are funded by the SLC. Our intelligence suggests that providers that chose to use these arrangements may be particularly exposed to the risk that public funding may be paid out inappropriately. We have identified the cohort of registered providers responsible for these students, and are increasing our monitoring and oversight of their arrangements accordingly.
39. As part of this work, we continue to engage with DfE and the SLC to ensure that we have a shared understanding of each organisation's responsibilities and approach to protecting public funding, both proactively and when issues emerge.

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.

Consumer protection

40. We have referred three providers to National Trading Standards under the terms of our agreement:
- a. An unregistered provider that is claiming in its advertising that it holds degree awarding powers and university title. We identified this provider when it approached us to apply for

registration, and we have also received questions from a student asking if it is a legitimate university.

- b. Two registered providers relying on terms and conditions which do not appear to comply with consumer protection law, including:
 - i. Terms and conditions which are not clear, intelligible, and unambiguous.
 - ii. Multiple terms which require students to pay charges which may be disproportionate and unfair.
 - iii. Limiting a provider's liability.
 - iv. Terms which, in our view, allow the provider an unreasonably wide discretion to vary course content and structure, or to increase fees during the duration of the course.

41. Trading Standards has contacted two of the three providers, and we expect to receive further information about the engagement and their consideration of these issues later this month. We have identified three further cases relating to unregistered providers and we are considering making further referrals in relation to these.

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.

Finance data

42. For our Annual Financial Return, we impose the same minimum data requirements on all relevant providers. This ensures common definitions and reporting conventions are used so we have a consistent and comparative view of key financial information across the sector. It also means we can use the data most effectively, including modelling a range of scenarios and financial risks and processing financial and other data efficiently.
43. Much of the data is structured in a way that is consistent with the format adopted by many providers in their financial statements. We regularly review whether the information and data we collect is appropriate for our needs to ensure we are considering the regulatory burden we impose. In this context I have commissioned an independent review of the finance data we collect to ensure we are collecting the right data for our purposes. We have also asked for a view about whether we could be more risk based in relation to the data we collect from providers with different risk profiles.
44. In the meantime, we have also reviewed the arrangements for the submission of next year's Annual Financial Return, to allow for governing bodies to delegate the approval of financial forecasts and related commentary to the provider's accountable officer, provided that the governing body has appropriately engaged with the provider's financial position and forecasts.

Assessed student work

45. An important part of our work on quality relates to the rigour of assessment and the credibility of awards granted to students. To regulate effectively we need to have access to primary evidence, including students' assessed work. The guidance that underpins our revised condition B4 says that we expect a provider to keep appropriate records of assessed work for five years. That expectation is broadly consistent with previous guidance issued by a sector body.
46. Providers and their representative bodies have asked for further explanation of our expectations, particularly in relation to assessed work that would present particular storage challenges. We have therefore set up a working group with representatives from the sector to consider these practical issues. We anticipate producing further guidance to ensure there is a shared understanding of the approach we would be likely to take in practice.

Efficient and effective OfS

Delivery of quality and standards functions

47. We continue to put in place the arrangements needed to carry out the assessment functions previously undertaken by the Quality Assurance Agency for Higher Education (QAA). This relates to assessments of quality and standards for providers applying for registration or degree awarding powers. We have recruited a further 70 academics and practitioners across a range of subject areas to expand our pool of expert assessors. We now have just over 150 external assessors and will continue to recruit in a more limited and targeted way.
48. We are also continuing our work to deliver external quality assurance of endpoint assessment for integrated higher and degree apprenticeships of registered providers. We have secured funding for the development phase from DfE and are finalising a longer-term business plan. We expect to start to recruit apprenticeship assessors at the end of May and will be publishing revised and simplified guidance for providers in June, with the intention of starting the first assessments by September.
49. We published a [blog](#) in early April setting out our [plans for the future assessment of quality and standards](#). We have also held further discussions with sector representative groups about how we plan to deliver our quality and standards assessment functions.

Data futures programme

50. The data futures programme is currently on track. The readiness of providers to submit data through the new platform continues to be the most significant risk to delivery. Our oversight group is monitoring this closely and will reassess readiness after providers' submissions in May. The hard deadline by which all providers need to submit live data is in October 2023.

Statutory guidance in relation to funding

51. On 30 March we received [statutory guidance](#) from the Secretary of State setting out the strategic priorities grant available to us for distribution to providers for the 2023-24 financial year (1 April 2023 to 31 March 2024) and the government's priorities for its use.
52. The letter notified us of an increase of £57 million (4 per cent) in recurrent grant and confirmed no change to the £450 million in capital funding across the three financial years 2022-23 to

2024-25, most of which we have already distributed. Following a bidding exercise, we announced the allocation of £399 million of capital funding and the first formula-based allocation of £11 million. We also announced the second formula-based capital allocation of £11 million, with one more to be made next year. The balance of capital funding from the £450 million total supports capital expenditure and facilities provided to the sector by Jisc. In May we expect to announce decisions on the budgets we will set for the 2023-24 academic year (1 August 2023 to 31 July 2024) and the approach to their distribution.

53. The statutory guidance also confirmed that widening access to higher education for disadvantaged students remains a priority for ministers and we are asked to maintain funding for the Uni Connect programme at £30 million. We have confirmed allocations for all 29 Uni Connect partnership lead providers.

House of Lords Industry and Regulators Committee

54. Along with James, I gave evidence to the House of Lords Industry and Regulators Committee, as part of its inquiry into the work of the OfS. Among other things, the committee asked about the role and remit of the OfS, the way in which we engage with students and providers and our regulation of quality. Comments from James about the importance of tackling grade inflation were picked up by The Times, Independent, and a number of regional and local newspapers. How the OfS monitors the financial sustainability of providers has also been a key theme of the committee sessions.

OfS offices

55. Our tenancy in Finlaison House will end in mid-June 2023, and our London-based staff will move into Sanctuary Buildings in Westminster on 7 June. Our new office space will be smaller overall than our current London office but the new building does have shared space and appropriate staff facilities. We expect to deliver significant cost savings as a result of this move.
56. We continue to rationalise our Bristol office estate. Exempt from publication.

OfS staff

57. We have announced the appointment of Philippa Pickford as our new Director of Regulation; she will join us in mid-July. As a result, we have been able to confirm permanent senior staffing arrangements for our core regulatory activities. We continue to recruit to fill remaining vacancies.
58. In addition, Josh Fleming has been appointed as Director of Strategy and Delivery for the next 12 months.
59. PCS has recently re-balloted its members and renewed its mandate for industrial action. Action was taken by OfS staff on 1 February, 15 March and 28 April, with [numbers exempt from publication] employees absent due to action on those days.

OfS business plan for 2023-24

60. The OfS business plan for 2023-24 was agreed in March and we plan to publish a summary of the plan on 25 May. A near final version of the document we expect to publish is attached as Annex C.

Temporary delegations

61. When I was appointed interim chief executive in April 2022, we made a number of temporary internal promotions. This included the temporary appointment of Jean Arnold as Director of Quality and David Smy as Director of Monitoring and Intervention. At the board meeting on 24 March 2022, the board agreed temporary delegated authority for the Director of Quality and the Director of Monitoring and Intervention to ensure that they had the same delegated authority as the Director of Regulation. These delegation arrangements were due to expire on 31 March 2023, but the board decided to extend them until 31 May 2023 in anticipation that the new Director of Regulation would join the OfS by that date. It has now been confirmed that the new Director of Regulation, Philippa Pickford, will join the OfS on 17 July 2023. To cover the period before Philippa arrives and to ensure a smooth transition, we are asking the board to extend the delegation arrangements for a further period. I am therefore recommending that the board makes the following decisions:

- a. A decision to make the following temporary changes to delegation arrangements from 1 June 2023 until 31 July 2023:
 - i. All references to “director” and “director of regulation” (other than references to the “director for fair access and participation” and “director of resources and finance”) in the published scheme of delegation and any other delegation arrangements are to be treated as a reference to the following three directors: the “director of regulation”, “director of quality”, and “director of monitoring and intervention”;
 - ii. Any provisions in part 9 of the published scheme of delegation which relate to the interpretation of that scheme (for example, provisions that relate to interpreting and determining the scope of reserved matters) apply to the delegated authority of the “director of quality” and the “director of monitoring and intervention” in the same way as they apply to the “director of regulation” and any other reference to “director”.
- b. A clarificatory decision that these temporary changes to delegation arrangements are made in addition to, and do not in any way restrict or limit, any existing delegated authority of the director of regulation (for example, if any time during the period of the temporary changes, an employee of the OfS takes up the role of director of regulation) or any other director.

Risk report

62. The regular risk report is attached in Annex A of this paper, for the board’s information. We are currently completing a review of strategic risks to ensure that the risks remain relevant and that our strategic and corporate risks are appropriately integrated. We plan to discuss these issues with the Risk and Audit Committee in June and then to bring a substantive paper to the board meeting in July.

63. In relation to the current strategic risks, the board should note that:

- a. Exempt from publication.
 - i. Exempt from publication.
 - ii. Exempt from publication.

- iii. Exempt from publication.
- b. Exempt from publication.
- c. Exempt from publication.