

Minutes of the OfS board meeting – 8 February 2024

Location: Broadway House, London

Timings: 1330 – 1600

Present members: James Wharton (Chair)
 Arif Ahmed (Director for Freedom of Speech and Academic Freedom)
 John Blake (Director for Fair Access and Participation)
 Martin Coleman
 Elizabeth Fagan
 Katja Hall
 Verity Hancock
 Susan Lapworth (Chief Executive)
 Simon Levine
 Dayo Olukoshi
 Michael Spence
 Caleb Stevens

Patrick Curry, Director, HE Quality and Regulation, Department for Education (items 1-11)

Apologies: Rachel Houchen
 Nolan Smith, Director of Resources and Finance
 Tom Mcilwaine, Chief of Staff

Officers: Jean Arnold, Deputy Director of Quality
 Jamie Black, Head of Higher Education Market (item 5)
 Will Dent, Head of Financial Analysis (item 5)
 Josh Fleming, Director of Strategy and Delivery
 Paul Huffer, Head of Legal
 Katherine Jacob, Corporate Governance Senior Officer (clerk)
 Meg Matthews, Head of Development and Effectiveness
 Sophie McIvor, Head of Communications
 Philippa Pickford, Director of Regulation
 Rowena Rowley, Head of Provider Governance (items 12 and 13)
 David Smy, Deputy Director Enabling Regulation
 Mike Spooner, Senior Adviser to the CEO and Chair

Item 1. Chair's welcome

1. Apologies were received from Rachel Houchen, Nolan Smith and Tom Mcilwaine.

2. Board members and Patrick Curry, Director Higher Education, Quality and Education from the Department for Education (DfE) were welcomed.
3. The chair noted that ministerial decisions are awaited on the appointments of new members of the board.
4. The chair informed the board that since the last meeting he had met with Sir David Behan, lead reviewer of the OfS Public Bodies Review; joined a quarterly meeting with Julia Kinniburgh, Director General for the Skills Group; and had attended a quarterly meeting with the Committee of University Chairs.
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 considers papers and makes decisions.

Item 2. Approval of minutes from the last meeting

6. The minutes of the board meeting on 12 December 2023 were approved.

Item 3. Chief Executive's report

7. The chief executive noted highlights from her written report:
 - a. Two further quality assessment reports have been published.
 - b. The publication of outcomes from the 2023 Teaching Excellence Framework exercise has recently been completed.
 - c. Two consultations on the OfS's new free speech functions are currently open, on the complaints scheme and on the approach to regulating students' unions on free speech matters. A third consultation will be launched in early spring on some of the key aspects of the new duties for providers and students' unions.
 - d. The programme of visits to providers continues, with more than 30 visits to a diverse range of providers planned in the first few months of 2024. Providers have given positive feedback on the visits. An online 'introduction to the OfS' event was held for people working in the higher education sector and more than 1,000 people attended.

Item 4. Intervention strategy 2024-25

8. Verity Hancock and Michael Spence declared conflicts of interest in relation to their roles at registered providers.
9. The draft intervention strategy for 2024-25 was presented.

10. Exempt from publication.

11. Exempt from publication.

12. Exempt from publication.

Item 5. Trends from Annual Financial Returns

13. Will Dent, Head of Financial Analysis and Jamie Black, Head of Higher Education Market, joined the meeting.
14. 267 providers have recently submitted annual financial returns relating to financial years ending in 2023. The data is currently being analysed. Early analysis indicates that, as expected, aggregate financial performance for the sector was weaker than in previous years. Aggregate forecasts suggest a further decline next year, with a longer and slower recovery period to follow. That recovery is reliant on growth in student numbers.
15. The board discussed whether under these circumstances providers will choose not to invest in capital expenditure.
16. It was suggested that the figures appear more optimistic than the forecasts of many commercial businesses. It was confirmed that providers' returns would be sense checked against sector-level data and information from other sources such as UCAS.
17. Exempt from publication.
18. It was suggested that the OfS should require evidence that a provider's leadership team has realistically assessed financial resilience and vulnerabilities. Incentives could be created to reinforce the need for robust financial management.
 - a. It was noted that there has been an increasing number of acute potential market exit cases, which require resource-intensive engagement. Resources are being prioritised on larger providers because a disorderly exit in those circumstances would have a significant impact on students.
 - b. The board requested at a future meeting a presentation on the OfS's approach to information gathering about financial sustainability and the requirements placed on providers, to support a discussion about whether the current requirements are sufficient for the level of risk in the operating environment.

Item 6. Risk report

19. Exempt from publication.
20. Exempt from publication.
21. Exempt from publication.
22. Exempt from publication.

Item 7. Finance report

23. The report on the financial position of the OfS at the end of period 9 (31 December 2023) was shared with the board.

Item 8. Report from the student panel

24. The chair of the student panel reported on the meeting held on 18 January 2024. He reported that the meeting had included:

- a. A presentation on the two open consultations on the new freedom of speech duties, and a discussion of how the duties will be implemented, including examples of situations that may give rise to free speech complaints. This was well-received by the panel.
- b. A discussion about how students have been engaged in the development of wave one of the access and participation plans.
- c. Training for the panel including an introduction to the work of Parliament and the role of select committees.

25. The chair of the board thanked the student panel for its work and commented that the refreshed focus on the areas that fall within the OfS's regulatory remit is proving to be effective.

Item 9. Report from the Quality Assessment Committee

26. A written report of the committee meeting held on 11 December 2023 was shared with the board. A verbal report had been given at the December board meeting, so there was no discussion.

Item 10. Report from the Provider Risk Committee

27. The committee had not met formally since the last board meeting, but the committee chair has been receiving briefings on specific provider cases.

28. The committee chair informed the board that two new independent members have been appointed to the committee: Charles Ilako and Simon Wilde.

Item 11. Report from the Risk and Audit Committee

29. A written report of the committee meeting held on 7 December 2023 was shared with the board. A verbal report had been given at the December board meeting, so there was no discussion.

30. The committee chair informed the board that it is anticipated that two new independent members will soon be appointed to the committee.

Item 12. National Audit Office (NAO) report on franchised provision

31. Patrick Curry left the meeting.

32. Rowena Rowley, Head of Provider Governance, joined the meeting.

33. The board was updated on the OfS's response to the recently published NAO report on student finance at franchised higher education providers. The chief executive is due to give evidence to the Public Accounts Committee on 26 February 2024.

34. A key recommendation from the report was for the DfE to take a systems-based approach to mapping out the formal responsibilities of the DfE, the OfS and the SLC for protecting student loan funding from the risk of fraud and abuse, making any legislative changes as needed. The OfS is engaging with DfE on this work.

35. Several of the recommendations in the report for the OfS have already been actioned:

- a. We have written to all providers to remind them of their responsibilities for courses delivered through subcontractual partnerships and senior level meetings are being held with those lead providers which appear to be particularly exposed to risk in this area.
- b. Exempt from publication.
- c. Exempt from publication.
- d. Data sharing arrangements are being finalised on the basis of the OfS's powers to disclose information to DfE and the SLC.

36. Exempt from publication.

37. Several live cases in this area were presented to the board for information.

38. The board supported the approach of the executive.

AOB / Closing remarks

39. Members and staff were thanked for their contributions to the board meeting and to the preceding strategy planning event. In particular, Josh Fleming and the strategy team were thanked for their delivery of the planning event.

40. The board was reminded that the next ordinary board meeting would be on Thursday 23 May, on Teams.