

Office for Students - approach to corporate governance

February 2018

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Contents

Introduction	2
Section 1 - Legal and other requirements	2
Section 2 - Roles and responsibilities	5
Section 3 – Scheme of Delegation (to apply from 1 January 2018 to 31 March 2018)	9
Guidance on the Office for Students’ Board proceedings	15
Code of Conduct for Members of the Office for Students	17
Acceptance of Gifts, Hospitality and Awards: Guidance for members of the Office for Students	21
Declaration of Interests: guidance for members of the Office for Students	24
Office for Students Risk and Audit Committee: terms of reference	25
Office for Students Remuneration & Nominations Committee: terms of reference	28

Introduction

Effective governance underpins the management of well-run organisations and is the hallmark of any effective corporate entity, whether in the public, private or voluntary sector.

The approach to corporate governance adopted by the Office for Students (OfS) ensures it can maximise the impact of its work whilst still discharging its statutory duties.

This document sets out the standards to which the Board and all employees of the OfS are expected to operate and, as part of the OfS's commitment to openness, transparency and accountability, is published on the OfS website.

The Board must approve any substantive revisions to this and associated documents.

In addition to its on-going requirement to review its own operation and practices, the Board has made a commitment to carry out an external review of its effectiveness within two years of operation. This will be in line with good practice.

Section 1 - Legal and other requirements

1. The OfS is a Non-Departmental Public Body established under the Higher Education and Research Act 2017¹, and sponsored by the Department for Education (DfE).
2. Under the terms of the Act, the Board shall consist of the following members appointed by the Secretary of State – the Chair, the Chief Executive Officer, the Director for Fair Access and Participation, and at least seven and not more than twelve other ordinary members (HER Act 2017, schedule 1 (2(1))).
3. At least one of the ordinary members must have experience of representing or promoting the interests of individual students, or students generally, on higher education courses provided by higher education providers (HER Act 2017, schedule 1 (2(3))).
4. In appointing the Chair and the ordinary members, the Secretary of State must have regard to the desirability of appointing persons having experience across the wider higher education sector, including in the provision of higher education, employing graduates and promoting choice for consumers (HER Act 2017, schedule 1 (2(2))).
5. Subject to the OfS Board delegating access and participation functions², the Director for Fair Access and Participation (DFAP) is responsible for overseeing the performance of these functions and reporting performance on this to the Board. The DFAP may also report on measures taken by OfS to comply with its general duty to promote equality of opportunity in connection with access to and

¹ www.legislation.gov.uk/ukpga/2017/29/pdfs/ukpga_20170029_en.pdf

² As outlined in Schedule 1 s3 (3) of HER Act 2017.

participation in higher education provided by English higher education providers (HER Act 2017, schedule 1 (3)).

6. All Board members have indemnity for personal liability described by the Treasury as follows:

“An individual Board Member who has acted honestly and in good faith will not have to meet out of their own personal resources any personal civil liability that is incurred in the execution or purported execution of their Board function, save where the person has acted recklessly.” (January 1999)

7. A member shall hold office as an ordinary member, Chair, Chief Executive or Director for Fair Access and Participation in accordance with the terms of their appointment. On ceasing to be a member they may be eligible for reappointment by the Secretary of State (subject to any requirements of the Commissioner for Public Appointments) (HER Act 2017, schedule 1 (4)).

8. Board or committee decisions will not be invalidated by a Board Member vacancy or by a defect in the appointment of a Member (HER Act 2017, Schedule 1(10)).

9. A member may resign by giving notice in writing to the Secretary of State. It is anticipated that members will normally do so through the Chair (HER Act 2017, schedule 1 (5(1))).

10. The Secretary of State may remove a member if they have been absent from meetings for more than six months without the Board's permission, or if they become unable or unfit to be a member. Membership will cease if the member becomes a Civil Servant (HER Act 2017, schedule 1 (5(2) and (3))).

11. The OfS shall pay members an honorarium and allowances as determined by the Secretary of State (HER Act 2017, schedule 1 (6)).

12. A representative (the Assessor) of the Secretary of State can attend and speak at any Board or committee meeting but not take part in their decisions (HER Act 2017, schedule 1 (9(3))).

13. The OfS shall give the Secretary of State or their representative copies of all papers and other documents provided to members or committees as requested by the Secretary of State. Board and Audit Committee papers will normally be routinely sent by the Clerk to the Board / Audit Committee to DfE officials acting on behalf of the Secretary of State. Other information will be provided on request (HER Act 2017, schedule 1 (9(4))).

Regulatory framework

14. The OfS must prepare and publish a regulatory framework giving a statement on how it intends to perform its functions and providing guidance on registration conditions. The OfS must have regard to this framework when exercising its functions. In addition the OfS must establish and maintain a register of English higher education providers (HER Act 2017, s75 and s3).

OfS committees

15. The Board is required to establish a Quality Assessment Committee from April 2018 to provide it with advice on the discharge of its duty to ensure that provision is made for assessing the quality of education in providers it funds (HER Act 2017, s24).

16. The Board may establish other committees for any purpose, and any committee may in turn establish sub-committees. The membership, terms of reference, lifespan, powers and reporting lines of such committees can be fixed by the Board, who will keep under review the structure and scope of these committees. The OfS shall pay committee members any allowances as determined by the Secretary of State (HER Act 2017, schedule 1 (8)).

17. The Board has established the following committees:

- a. Risk and Audit Committee
- b. Remuneration and Nominations Committee.

Other requirements

18. The OfS and United Kingdom Research and Innovation (UKRI) may cooperate with each other in exercising any of their functions, including in the sharing of information, or if required to do so by the Secretary of State (HER Act 2017, s112).

19. In addition, OfS may exercise its functions jointly with another relevant authority where it will be more efficient and effective in carrying out their functions (HER Act 2017, s113).

20. The Board may authorise an OfS member, an authorised employee of the OfS or an OfS committee to carry out any of its functions. The exception to this is a function relating to the OfS's access and participation functions which may only be delegated to the Director for Fair Access and Participation (HER Act 2017, schedule 1 (11)). The current Scheme of Delegation is set out in Section 3 of this document.

21. Subject to the above provisions, the Board can regulate its own procedures and those of any of its committees (HER Act 2017, schedule 1 (9)). The procedures by which the Board conducts its business are set out in Section 2 of this document and in separate guidance.

Section 2 - Roles and responsibilities

The Chair

1. Communications between the Board and the Secretary of State will normally be through the Chair (while day-to-day contact between the OfS and DfE is the responsibility of the Chief Executive). Nevertheless, individual Board members have the right of access to Ministers on any other matter which s/he believes raises important issues relating to their duties as a Board member or in respect of their appointment. In such cases, the member should normally inform the Chair in advance of their intention to do so.
2. The Chair has prime responsibility for providing effective strategic leadership on:
 - a. Leading and developing the overall strategic direction of the Board.
 - b. Representing the views of the Board to the general public, users of services and to the Secretary of State and, where appropriate, relevant Ministers.
 - c. Ensuring that the Board, in reaching decisions, takes proper account of guidance and instructions from the Secretary of State, relevant Ministers and DfE.
 - d. Ensuring that the Board meets at regular intervals and that minutes of meetings accurately record both the Board's decisions and, where appropriate, the views of individual Board members.
 - e. Ensuring that the Board and its members operate in line with the OfS's 'Approach to Corporate Governance'.
 - f. Advising the DfE on the membership needs of the Board.
 - g. Arranging for the appropriate induction and support of Board.
 - h. Appraising the performance of members and ensuring the effectiveness of the Board is kept under regular review.
 - i. Approve appointments to any OfS committee on advice, where appropriate, from the Remuneration and Nominations Committee.
3. If appointed and in the absence of the Chair, the Deputy Chair can assume responsibility for the functions listed above. If a member wishes to raise any issues in respect of the Chair, this should be done through the Deputy Chair. The Deputy Chair will also play a role in appraising the performance of the Chair on behalf of the Board.

The Chief Executive

4. The Chief Executive has prime responsibility for:
 - a. Ensuring complete and accurate advice to the Board in order that it can undertake its functions.
 - b. Formulating and recommending strategies to the Board for discussion and decision.

- c. Implementing Board decisions.
 - d. Representing the OfS with government departments, select committees, higher education providers and other stakeholder.
 - e. Requiring high standards of propriety of staff, and the efficient, effective and sustainable use of other resources throughout the OfS.
 - f. Approving the operating plan and budgets to implement the Board's strategic plan.
 - g. Accounting for the OfS's performance and expenditure.
5. The Chief Executive will normally also be appointed as the Accounting Officer for OfS and in carrying out this role will have personal responsibility for ensuring that resources authorised by Parliament in respect of the OfS are used for the purposes intended by Parliament.

The Director for Fair Access and Participation

6. The Director for Fair Access and Participation is a member of the Board and has prime responsibility for:
- a. Overseeing the performance of the OfS's access and participation functions.
 - b. Reporting to the Board on the performance of these functions.

Corporate responsibilities of Board members

7. Board members have corporate responsibility for ensuring that the OfS complies with any statutory or administrative requirements for the use of public funds and discharges its duties as set out in the Higher Education and Research Act 2017. Other important responsibilities of Board members include:
- a. Ultimate responsibility for ensuring that the OfS operates within the limits of its statutory authority at all times; within the limits of its delegated authority agreed with DfE; and in accordance with any other conditions relating to the use of public funds, and ensuring effective arrangements to discharge this responsibility through the Chair and the Chief Executive.
 - b. Approving the overall strategic direction of the OfS within the legislative, policy and resources framework agreed with the Secretary of State.
 - c. Ensuring that high standards of corporate governance are observed at all times by the Board and its committees.
 - d. Overseeing the delivery of planned results by monitoring performance against agreed strategic objectives and targets.
 - e. Ensuring that, in reaching decisions, the Board has taken into account any guidance or instruction issued by the DfE.

- f. Ensuring that the OfS meets its wider statutory obligations, for example on equality, Prevent, health and safety as well as on its principal regulator role under the Charities Act 2011.
- g. Ensuring that there are satisfactory arrangements in place for the Board to receive assurance about the OfS's corporate governance, internal control and risk management, including through the Audit Committee and the Committee designated as the OfS's quality assessment committee.
- h. Evaluating the effectiveness of the Board and its committees.
- i. Advising ministers on their higher education policies.
- j. Monitoring the performance of the Chief Executive and other senior staff and will establish a Remuneration Committee to carry out this work on its behalf.

Responsibilities of individual Board and Committee members

8. Individual Board and Committee members should also be aware of their wider responsibilities as members. Board and Committee members must:

- a. Undertake on appointment to comply at all times with the Code of Conduct and with rules relating to the use of public funds.
- b. Act in good faith and in the best interests of the OfS.
- c. Not misuse information gained in the course of their public service for personal gain or for political purposes, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations (including, where appropriate, any HE provider regulated by the OfS with which they have a connection).
- d. Comply with the Board's guidance on the acceptance of gifts and hospitality.
- e. Comply with the Board's guidance on 'Declaration of Interest'.
- f. Respect the confidentiality of Board papers and other information obtained in the course of their OfS activities.

9. Under the terms of appointment set out in Schedule 1, Section 5 (2) of the Higher Education and Research (HER) Act 2017, the Secretary of State is empowered to remove a Board member from office if he or she is frequently absent from Board meetings or is unable or unfit to discharge the functions of a Board member.

The OfS as an employer

10. The OfS Board should ensure that:

- a. The OfS complies with all relevant employment legislation.
- b. Suitably qualified staff are employed and these staff have access to expert advice and suitable training opportunities to enable them to exercise their responsibilities effectively.

- c. Rules for recruiting and managing staff provide for appointment and advancement on merit, on the basis of equal opportunity for all applicants and staff.
- d. The OfS adopts management practices which use resources in the most efficient and economical manner.
- e. The OfS operates within restrictions and/or conditions set by central government.
- f. An employee code of conduct is in place. This will cover arrangements to enable staff to raise concerns about propriety with a nominated official.

Professional advice

11. Board members (or others involved in the governance of the OfS) may wish to seek professional advice in the furtherance of their duties. Normally they should consult the OfS's professional advisers. However, if they consider it necessary to take independent advice, they will be entitled to do so at the OfS's expense on condition that the Chair or Chief Executive is consulted beforehand, and subject to a limit of £10,000 in any one instance. Expenditure in excess of this sum may only be incurred with the prior approval of the Board.

Section 3 – Scheme of Delegation (to apply from 1 January 2018 to 31 March 2018)

What is it?

1. The OfS's statutory duties are described in Section 2 of the Higher Education and Research Act 2017. Within that legislative framework, this Scheme of Delegation sets out how OfS makes decisions, either through the OfS Board itself, through its committee structure, or through a structure of delegations through the Chief Executive and Directors to staff. It also sets out how material decisions taken under that delegated decision-making structure are reported back to the Board.

Why is it important?

2. It is important because it outlines how decisions are taken, how staff are accountable for these decisions and how these are then reported to the Board. It ensures that staff know what is expected of them, and if asked by external agencies (such as the National Audit Office) how a decision has been made, we can clearly demonstrate the process. Ensuring that there is clarity on decision making is an important aspect of appropriate use of public funds as set out in Managing Public Money³.

Who has the authority to take decisions in OfS?

The Board

3. Matters reserved to the OfS Board are:

- consideration and approval of the 'Approach to Corporate Governance'
- consideration and approval of the OfS's strategic objectives
- consideration and approval of a regulatory framework including registration conditions
- approval of risk management arrangements and consideration of reports of the Risk and Audit Committee.

4. However, it is not practical for the Board to make every decision necessary to fulfil OfS's role. It therefore delegates the authority to make certain decisions to the OfS Chair, the Chief Executive and the Director of Fair Access and Participation, taking into account the advice of the OfS's senior Executive team or others as appropriate.

5. Any functions which the Board has delegated can be reassumed by the Board if it decides to do so.

Urgent decisions between Board meetings

6. Should there be timetabling issues preventing the Board from meeting in person to discuss issues, the Board can consider such issues via correspondence or a special meeting. If this is not

³www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

possible, the Board delegates authority to the Chair and Chief Executive to take urgent decisions between Board meetings.

7. Any significant decision will be reported via the delegated authority reporting process.

The Chair

8. The Chair has particular responsibility for providing strategic leadership. The Board may delegate decisions to the Chair as circumstances dictate. This includes appointing Board members/independent members to OfS committees.

9. Where the Chair of the Board has an actual or potential conflict of interest, the Chair delegates authority to the Deputy Chair of the Board.

10. There may be instances where the Chair is absent, with or without prior notice. In these circumstances the Chair delegates authority to the Deputy Chair.

The Chief Executive

11. The Chief Executive is the Accounting Officer, which means she is the OfS staff member who ultimately takes responsibility for the proper and regular use of public funds and ensuring value for money.

12. It is not practical for the Chief Executive to make every day-to-day operational decision necessary for the smooth running of OfS. Decision-making is therefore cascaded down through Directors to senior managers and to others. Responsibility still remains with the body or person delegating.

13. Where the Chief Executive has an actual or potential conflict of interest, the Chair or a member of the OfS's senior team will take responsibility.

14. There may be instances where the Chief Executive is absent, with or without prior notice. In these circumstances the Chief Executive (or, in extremis, the Chair or the Board) delegates authority to a Director as Acting Chief Executive. This will enable urgent decisions to be taken during such periods of absence.

The Director for Fair Access and Participation (DFAP)

15. The HER Act 2017 makes provision for the OfS Board to delegate responsibility to the DFAP for OfS's access and participation functions and the Board has decided to delegate these responsibilities to the DFAP⁴.

Financial management

16. As set out in Managing Public Money, the OfS is required to:

⁴ See HER Act 2017 Schedule 1 S3

- use its resources efficiently, economically and effectively, avoiding waste and extravagance
- plan to use its resources on an affordable and sustainable path, within agreed limits
- carry out procurement and project appraisal objectively and fairly, using cost benefit analysis and generally seeking good value for the Exchequer as a whole
- use management information systems to gain assurance about value for money and the quality of delivery and so make timely adjustments.

17. The OfS must have regard to the principles of regularity and propriety in its management of public funds. As defined in Managing Public Money, regularity is 'the requirement for all items of expenditure to be compliant with the relevant legislation (including EU legislation), delegated authorities and following the guidance in Managing Public Money'. Propriety is 'the requirement to meet high standards of public conduct, including robust governance and the relevant parliamentary expectations, especially transparency.'

18. If any member of staff is in any doubt over the regularity or propriety of a particular issue, they should contact the Head of Finance or other senior member of staff. This includes whistleblowing/Public Interest Disclosure procedures. The Risk and Audit Committee will be advised of the issues, if appropriate.

19. As set out in Managing Public Money, the OfS is also required to 'respect agreed budgets and avoid unaffordable longer term commitments, taking a proportionate view about other demands for resources' and 'ensure that the organisation's procurement projects and processes are systematically evaluated to provide confidence about suitability, effectiveness, prudence, quality, and good value judged for the Exchequer as a whole – not just the accounting officer's organisation'.

Financial regulations

20. All staff are required to operate under the financial management principles described above and set out in Managing Public Money. Guidance is provided to staff in guidance for budget holders and managers, the Staff Guide, and the Procurement Guide⁵. These detail the authority limits, thresholds and procedures to be followed. The most effective controls over expenditure are those that operate at the point that expenditure is committed. Budget holders and budget managers, therefore, need to be able to track commitments, and not just what has been paid against their budgets.

21. The power to commit the OfS to expenditure is assigned to specific individuals. Other staff are not normally permitted to order goods or services. Guidance is supplemented by Government's spending controls which apply to some categories of spend such as that on advertising, marketing and communications; digital and technology, consultancy, and property and facilities management.

⁵ Guidance within HEFCE's Staff Guide and Procurement Guide will apply during this interim period.

Programme budgets

22. Programme budgets are agreed by the OfS Board, normally on an academic year basis. The programme budget refers to the grant paid to OfS that is available for distribution to providers of Higher Education and other organisations in order to achieve OfS's strategic objectives.
23. The Board delegates to the Chief Executive the authority to agree the specific allocations to providers or to funded organisations from within these programme budgets.
24. The Board delegates to the Chief Executive the ability to make changes to individual funding allocations or virements between budgets, but this must not exceed the overall programme funding available. Changes in allocations will usually follow changes in data and/or information affecting the original allocations. All other programme budget allocations are delegated to the Chief Executive for approval.
25. Furthermore, the Chief Executive may delegate to the appropriate Director the responsibility for management of programme budgets that relates to their strategic responsibilities. Each Director will be provided with a delegation to manage a specified amount of OfS's resources in accordance with authorisation limits set by the Board or a lower limit set by the Chief Executive. The Director as budget holder is responsible for ensuring it is effectively managed and delivers value for money, and these responsibilities cannot be delegated further.
26. A Director can delegate the day-to-day management of budgets under their control to a budget manager. The delegation of responsibility for budgetary management must be documented and the delegation must be within defined parameters. This delegation does not absolve the Director from their responsibility for the budget.
27. The Director must ensure that all Budget managers within their responsibility:
- have a clear view of their budget management objectives and the means to assess and measure outputs or performance in relation to those objectives
 - have the information (particularly about costs), training and access to the expert advice which they need to exercise their responsibilities effectively.

Administration budgets

28. Administration budgets relate to the costs of OfS's operation, such as staff salaries and premises. The Board delegates to the Chief Executive the authority to agree administration budgets in discussion with Directors. The Chief Executive may delegate to the appropriate Director (or senior member of staff) the responsibility as budget holder for managing administration funds that relates to their strategic responsibilities. The Director may delegate to a budget manager the day-to-day management of the budget. This delegation does not absolve the Director (or senior member of staff) from their responsibility for the budget.

Approval of payments

29. Where invoices are against a contract or purchase order that has been approved in accordance with the requirements set out above, these can be approved by the budget holder or the budget

manager having been satisfied that the invoice is in accordance with the contract or purchase order, and that the goods or services have been received.

30. The following limits apply for payments (subject to budget availability):

up to £9,999	budget manager
£10,000 to remaining uncommitted budget	budget holder or Director

Staffing and remuneration decisions

31. The Board delegates to the Chief Executive the authority to determine the numbers of posts and how the OfS is organised to deliver its aims and objectives. This will include any changes to the formal organisational structure which may result in increases or decrease in the number and nature of posts. This must be achieved within any guidance provided by Government.

32. The OfS's pay policy which determines pay levels, pay bands and annual pay settlements is decided by the Chief Executive, in discussions with the Directors and subject to review from the Remuneration Committee. The OfS is required to submit an annual pay remit, based on Treasury pay guidance that has to be approved by the Secretary of State and the sponsor department. The approved remit then sets the parameters for negotiations with any recognised trade union. Arrangements are different for Directors: their pay awards are approved by the Remuneration Committee taking account of Cabinet Office and HM Treasury guidance.

OfS's internal policies and procedures

33. The Board delegates its authority for the approval of OfS internal policies and procedures to the Chief Executive. However, the Chief Executive can seek Board approval for a policy and the Board can request to approve a policy, should it wish to do so.

Business continuity

34. In the event of an emergency that causes a major disruption to business or prevents access to OfS's Bristol or London office, the agreed business disruption actions will be implemented. The Crisis Management Group⁶ is empowered by the Chief Executive to take the necessary actions.

Use of the OfS Seal

35. The use of the Seal to 'seal' a deed or other formal document requires approval by both the Chair and Chief Executive.

Making decisions on use of data

36. The Chief Executive should determine the most appropriate processes to consider how data is assessed and used including, judgements about the acceptability of data.

⁶ From 1 January to 31 March 2018 the OfS will rely on HEFCE's Business Continuity Arrangements.

Date of review

37. This scheme will next be reviewed in March 2018.

Guidance on the Office for Students' Board proceedings

Introduction

This document sets out the arrangements and standards through which the OfS Board will conduct its proceedings and carry out its business.

Meetings

1. Board meetings will normally be held at least four times a year. Board meetings are held in private with neither press nor public present.
2. Board meetings will normally be convened well in advance with a minimum of five clear working days' notice. Notice of a meeting shall be given to members in writing. Failure to receive notice of a Board meeting will not invalidate that Board meeting or any business transacted at that meeting.
3. If required, the Chair may convene a special meeting of the Board. This may be conducted in any manner which the Chair considers appropriate, including by electronic means, in correspondence (including email) or by telephone or video conference, and all members participating shall count as part of the quorum.
4. A special meeting may also be convened in response to a written request to the Chair from a minimum of three members specifying the business to be transacted and confirming why it cannot wait until the next ordinary meeting.

Quorum

5. The quorum for Board meetings is half the current number of its members (HER Act 2017, schedule 1 (9 (2))). Should the need arise, members may attend meetings by telephone or video link. Members attending by telephone or video link shall be considered to be present at the meeting. A Board member is not counted towards the quorum for an item in respect of which they have a conflict of interest and is not entitled to take a decision.
6. Observers or other attendees, e.g. OfS staff, who attend meetings will not form part of the quorum.
7. The names of all members present at a meeting of the Board shall be recorded in the minutes of the meeting.
8. If the Chair is unavailable to chair the meeting or has declared themselves to have a conflict of interest in relation to any matter, the Deputy Chair will chair the meeting. If both are unavailable, the members present shall appoint one of their number to take on the role as chair of the meeting.

Decision making

9. Board discussions take place in accordance with the Code of Conduct for members of the OfS. If a member has an interest then it shall be declared by the member and recorded in the minutes. The member shall leave the meeting for the item in question if the Chair considers that their interest is so substantive that their continued presence would prejudice the proper conduct of the Board's business.

10. Decisions by the Board will normally be made by consensus. However, if an individual Member has a reservation, then that reservation may, on request, be minuted. Failing consensus, decisions will be made by a vote. In the case of a tied vote, the Chair has a casting vote.
11. The Chair may determine if any item should be 'reserved business' and involve only Board members to discuss this item in 'closed session'.

Minutes

12. The minutes of Board meetings are drafted by the Clerk and are the formal record of the decisions made by the Board at that meeting. The Chair will be asked to agree the minutes before they are presented to the Board for approval at the following meeting.
13. If it is necessary for the Board to make any decisions between meetings then a formal electronic record of individual members' approval will be maintained by the Clerk. This will be reported in the minutes of the next ordinary meeting of the Board.
14. The Board is committed to carrying out its work transparently. In doing so, its minutes will be published on the OfS website (subject to any necessary redactions and in line with any appropriate exemptions in the Freedom of Information Act) once formally approved by the Board.

Agenda and papers

15. The agenda and papers for Board meetings will normally be issued seven days before the meeting. Members will be advised of any instances where a paper will be late. These will be issued as soon as possible before the meeting or tabled at the meeting.
16. The agenda may include starred items which are items judged by the Chair as unlikely to require discussion. Members are given the opportunity to indicate if they wish to discuss any of them. Otherwise, the recommendations are deemed to have been accepted by the Board.
17. The Chair and Chief Executive may ask the Clerk to redact or withhold a paper from any person, member or observer if it contains information which, if disclosed, might harm or unfairly disadvantage providers, individuals (including members of staff), contractors or third parties. Confidential papers may be handled in any way necessary to keep the information contained in them secure.

Transparency

18. The OfS attaches considerable importance to being an appropriately open and transparent organisation. It will publish extensive information about what it does and how it operates – all of which is available on its website.

Code of Conduct for Members of the Office for Students

Introduction

1. The purpose of this Code is to give guidance to Board members on their responsibilities and the standards to which they are expected to operate. Relevant sections apply equally to committee members, senior managers and others who contribute to the Office for Students (OfS) at a governance level.
2. This document is published on the OfS website as part of its commitment to openness and accountability and to give confidence to the general public and other stakeholders as to the OfS governance standards.
3. This Code is based on current best practice, including in the Civil Service Code, guidance from HM Treasury and the Department for Education (DfE), the OfS's sponsor department.

Public service values

4. The Board must at all times:
 - a. Observe the highest standards of impartiality, integrity, honesty and objectivity in relation to the stewardship of public funds and management of the OfS.
 - b. Comply fully with the principles of openness, and comply with all reasonable requests for information from Parliament, the Secretary of State, users of services and individual citizens.
 - c. Be accountable to Parliament, users of services, individual citizens and staff for the activities of the OfS, its stewardship of public funds and the extent to which key performance targets and objectives have been met.
 - d. Maximise value for money through ensuring that services are delivered in the most efficient and economical way, within available resources, and with independent validation of performance wherever practicable.
 - e. Fully adhere to the standards set out in "The 7 Principles of Public Life"⁷.
 - f. Adhere to the same governance standards we would expect of registered higher education providers.

Public engagement

5. Board members should normally speak with one voice in public on matters to do with the OfS. Appearances on television or radio, briefings to journalists, etc, should be undertaken with caution and it should be clear when the member is speaking in a purely personal capacity or representing an organisation other than the OfS.

⁷ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

Similarly, the writing of newspaper columns, blogs or contributions to social media (i.e. Twitter, Facebook, LinkedIn, etc.) should avoid comment on or details of sensitive or confidential OfS information. Members are also reminded of the permanency of social media content.

6. If social media is used to communicate about your work with the OfS then these communications may need to be disclosed if subject to a request under the Freedom of Information Act.

7. Members of the Board may seek advice from the Chair of the Board or the Chief Executive in advance of any public engagement activity should they wish to do so. Committee members should also exercise discretion in any such activity and may approach the clerk to the committee for advice should they wish to do so.

8. Further information is available in Social Media guidance for civil servants published by the Cabinet office⁸.

Political activity

9. Board members are expected not to occupy paid party political posts or hold particularly sensitive or high profile unpaid roles in a political party. However, members are free to engage in political activities, provided that they are conscious of their general public responsibilities and exercise a proper discretion, particularly in regard to the work of the OfS. On matters directly affecting that work, they should not make political speeches or engage in other political activities. The Chair and Chief Executive should abstain from all controversial political activities. However, these restrictions do not apply to members serving as non-party local councillors or to Peers not taking a party whip in the House of Lords. Committee members are not similarly restricted, but should treat the information derived from OfS as confidential in exercising any role that might be considered political or sensitive.

Confidentiality

10. In the course of carrying out their duties, Board and Committee members may become aware of unpublished price sensitive information relating to English higher education providers or associated organisations e.g. a group holding company, whether listed on a UK stock exchange or elsewhere. Where this occurs members must not themselves deal in any securities, or provide advice/procure other people to deal in such securities.

11. This prohibition on dealing does not extend to investment assets which are exclusively managed by an independent portfolio manager with full discretion over investment decisions, provided that there is no communication of unpublished and price sensitive information by the Board or committee members to the independent portfolio manager.

12. These restrictions continue to apply once members have ceased being members of the OfS in relation to information received while they held office.

⁸ Further information is available in Social Media guidance for civil servants published by the Cabinet office - www.gov.uk/government/publications/social-media-guidance-for-civil-servants/social-media-guidance-for-civil-servants

Personal liability of Board members

13. Any legal proceedings initiated by a third party are likely to be brought against the OfS, not individual members. In exceptional cases, proceedings (civil or criminal) may be brought against the Chair or other individual Board members. For example, a Board member may be personally liable if he or she makes a fraudulent, reckless or negligent statement which results in loss to a third party. Board members or others involved in the governance of the OfS who misuse information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation.

14. However, individual Board members (or others involved in the governance of the OfS) who act honestly, reasonably, in good faith and without negligence should not normally incur any liability in an individual capacity, provided they are acting in furtherance of their Board or related governance functions.

Declaration of interests

15. Board members and committee members should register with the Clerk to the Board any personal or business interests which may conflict or be perceived to conflict with their responsibilities. Members also have the opportunity to declare interests at the start of each meeting or during a meeting if it becomes apparent they should do so. Separate guidance is provided within this document on what interests should be registered and how these will be recorded.

Gifts and hospitality

16. Board members and committee members are required to comply with relevant OfS guidance on the acceptance of entertainment, gifts, hospitality and awards. Board members are required to advise the Clerk to the Board of all offers or other benefits received in the course of carrying out their duties. The offer will be recorded in the OfS gift register and guidance given to the Board member on whether they can accept any offer.

17. The OfS gift register will keep a record of all offers and declarable gifts and hospitality which will be available for public inspection on request.

18. Further information on the acceptance of gifts and hospitality is provided separately.

Security policy

19. Board members are required to comply with OfS's Information Security Policy. In addition, Board members have a responsibility to respect the confidentiality of Board papers or other information supplied to them in their role as members by:

- a. Not sharing papers or other information provided to them in their OfS role with anyone outside of the Board, the relevant Committee or the OfS⁹.

⁹Members of the Board or a Committee will often have a personal assistant (or equivalent) who would be expected to have access to OfS papers. This is acceptable providing the staff concerned are bound by similar obligations concerning the confidentiality of information they have access to in their role.

- b. Only keeping papers (including those sent in a compressed Winzip file) and other information for only as long as necessary to carry out their role as a Board member. For Board and Committee papers, this will normally be to the date of the meeting or shortly after as papers are frequently published or can be made available to members on request.
- c. Where they are no longer needed, securely disposing of Board or Committee papers (or leave them with the Clerk at the end of each meeting) and deleting electronic copies from computers and devices.
- d. Avoiding using data sticks as a storage system. If required, only an encrypted memory stick supplied by the OfS should be used.
- e. Ensuring devices such as mobile phones or laptops used to receive or view OfS information are installed with up-to-date vulnerability protection (for example, virus protection and anti-spyware) and require some kind of user authentication to access them.
- f. Promptly reporting any loss or incident to the Clerk.

20. Members are reminded that, when they reach the end of their term of office, they should promptly destroy all OfS records that are confidential in any way. If there are subsequent queries, OfS will support the former member in responding to them.

Acceptance of Gifts, Hospitality and Awards: Guidance for members of the Office for Students

1. This guidance applies to Board and other Committee members where they are explicitly acting on behalf of the OfS.
2. The OfS is responsible for allocating significant sums of public money and for maintaining a register of HE providers, in which registration confers benefits to those providers.
3. It is imperative that members should maintain high standards of propriety and professionalism if they are offered gifts, hospitality or awards, including avoiding laying themselves open to suspicion of dishonesty and not putting themselves in a position of conflict between their official duty and private interest.
4. Some members may spend time with representatives of HE providers and other organisations where it is normal business practice or social convention to offer gifts, hospitality or awards. Offers of this kind can place members in a difficult position since to refuse may cause misunderstanding or offence; but to accept may give rise to questions of impropriety or conflict of interest, or to criminal liability.
5. Members may not accept any benefit as an inducement or reward either for:
 - a. Taking any action (or specifically not taking action) in his or her official capacity as a member
 - b. Showing favour (or disfavour) to anyone in his or her official capacity as a member.
6. The guiding principles are:
 - a. The conduct of individuals must not create suspicion of any conflict between their official duty and their private interest.
 - b. The actions of individuals in their official capacity must not give the impression (to any member of the public, to any organisation with whom they deal or to their colleagues) that they have been (or may have been) influenced by a benefit to show favour or disfavour to any person or organisation.

Gifts

7. Gifts other than of token value should generally be refused or avoided. Members should register any gift whose value is estimated to exceed £10.00. The member should also have regard to whether a gift, or the circumstances in which it is offered, are appropriate. The yardstick for appropriateness is the risk of embarrassment to, or loss of public confidence in, either the member or the OfS.
8. If members have any doubts about whether a gift should be refused (it is accepted, for example, that refusal of a gift may cause offence), they should consult the Clerk to the Board who at his or her discretion may discuss the matter with the Chair.

9. If the Clerk considers that a gift cannot be used to support the OfS's business, s/he may authorise retention of the gift by the member. Alternatively, if the member does not wish to retain the gift, then arrangements may be made for the gift to be stored until disposal, for example as a donation to a charity.

10. Members should make arrangements to record any gifts whether given or offered, or whether refused or accepted, in the central register held by the Clerk, who will also register whether a gift has been accepted, registered, refused or disposed of. Any member with a query about the contents of the register should direct it to the Clerk.

Hospitality (including fees)

11. It is accepted that members may receive hospitality from the head or senior members of an HE provider or other stakeholder of the OfS; that they may attend as part of their official OfS function an event organised by another body for promotional or influential purpose; that they may sometimes be offered a nominal fee for presenting a paper or speech at a conference; and may receive the occasional invitation to a cultural event. The normal level of hospitality may include alcoholic drinks at, say, an official reception or working dinner.

12. Offers of hospitality that exceed the normal level described above should in general be refused. The following items should be avoided:

- a. Hospitality offered instead of fees for broadcasts, speeches, lectures or other work done.
- b. Inducements which could lead to a contractual relationship between the OfS and a supplier or consultant.
- c. Substantial offers of social functions, travel or accommodation.
- d. Acceptance of meals, tickets and invitations to sporting, cultural or social events, including from the same source.

13. If members have any doubt about whether to accept hospitality they should refer the matter to the Clerk, who in turn may discuss it with the Chair.

14. If, exceptionally, the Clerk agrees that the circumstances justify the normal level of hospitality being exceeded, this will be recorded in the central register.

Awards and prizes

15. Members should consult the Clerk if they are approached by an outside organisation offering an award or prize which could in any way be seen to be connected with their OfS role. Retention of the award or prize will normally be allowed, provided that:

- a. It is offered in recognition of personal achievement.
- b. It is not a gift (see above).

16. In deciding whether the award would give rise to public criticism that it was in fact a gift, members are advised to consider:

- a. The status of the awarding body - for example, whether it is a registered charity, an HE provider receiving funding from the OfS or any other organisation with a clear connection to the work of the OfS.
- b. The regularity and nature of the awards made by the body.
- c. The range of people or bodies to whom the awards are given.
- d. The method of selection.
- e. The standing of the selectors
- f. Actual or potential OfS dealings with the awarding body.

These provisions do not apply to the acceptance of National Honours.

Declaration of Interests: guidance for members of the Office for Students

1. Any Board and Committee members' interests should be declared and registered with the OfS. This includes relevant indirect interests through a partner, spouse or immediate family. Relevant interests in this context include:

- a. Executive and non-executive directorships of, significant shareholdings in, or employment by, public or private companies likely or possibly seeking to do business with the OfS or with any of the providers or organisations it funds or regulates.
- b. Ownership or part-ownership of, or employment by, businesses or consultancies likely or possibly seeking to do business with the OfS or with any of the providers or organisations it funds or regulates.
- c. Remunerated or honorary positions and other connections with providers, organisations or advisory groups which may give rise to a conflict of interest.
- d. Collaborations, including between providers or by region or subject.
- e. Membership of societies or professional bodies with a relevant interest.

2. Members' interests are recorded and published on the OfS website. Members are encouraged to advise the OfS immediately of any changes. To ensure accuracy of the details, a survey of members' interests will be carried out by the OfS at least annually. Exceptionally, a member may register an interest which is itself exempt from publication but which would be made known to the Clerk, Chief Executive and Chair.

3. Any member who has a material interest in a matter under consideration at a meeting of the OfS should declare that interest at the start of the meeting, whether or not that interest is already formally recorded. At the discretion of the Chair, the member concerned should withdraw from the meeting during the relevant discussion or decision and this will be formally recorded in the minutes.

Office for Students Risk and Audit Committee: terms of reference

Purpose

1. The Board of the Office for Students (OfS) has established a Risk and Audit Committee (RAC) as a committee of the Board to support it and the OfS Accounting Officer by advising on the comprehensiveness and reliability of the processes relating to corporate governance, risk management and internal control.
2. This remit does not extend to the matters of risk, control and governance at the English higher education providers regulated by the OfS.
3. Except where explicitly delegated otherwise, the RAC acts only in an advisory capacity and has no executive or decision making powers.

Responsibilities

4. The RAC will advise the OfS Board and Accounting Officer on:
 - The processes for the assessment and management of OfS's current and future risks
 - The robustness of the OfS's systems for identifying and monitoring internal control processes
 - The appointment of the OfS's Internal Audit provider and Head of Internal Audit, and the planned activity and results of this service
 - The OfS's accounting policies and annual financial statements, including both the interim accounts and final audited accounts, the completion report and OfS response, and the Governance Statement
 - The strategy, remuneration and work of the National Audit Office (NAO) for the audit work undertaken on the annual accounts
 - The adequacy and timeliness of management response to issues identified by both internal and external audit, and any relevant reports from the NAO, Government, the OfS's Sponsor Department or other third parties
 - The adequacy of controls and processes relating to Health & Safety, counter-fraud, bribery and whistleblowing within the OfS
 - Processes and assurances relating to arrangements for information security and cyber security within the OfS
 - The 2017-18 annual report and accounts for HEFCE and OFFA following their planned closure at end of March 2018
 - Any other matter upon which the Board has asked for assurance or advice.

Authority

5. The RAC is authorised by the OfS Board to:
 - Seek any information it needs from any employee of the OfS and any others with whom it has an accountability relationship
 - Seek information from the internal auditors and the NAO (in their capacity as external auditors). The Head of Internal Audit and the NAO will have confidential access to the chair of the RAC

- Procure specialist ad hoc advice (including legal advice) at the expense of the OfS up to £10k per annum or as agreed by the Board.

Membership

6. The members of the RAC, including its chair, are appointed by the OfS Board. Members will have a mix of skills and experience to provide a range of expertise to cover the activities of the OfS, including at least one member with relevant qualifications and experience in accounting and finance.
7. Members are normally appointed for a period of three years. Re-appointment for up to three further years is subject to satisfactory appraisal by the RAC chair and approval by the Board.
8. The chair of the RAC must be:
 - A non-executive member of the OfS Board but not its Chair to ensure the independence of the RAC
 - Independent of providers on the OfS register.
9. The RAC will consist of:
 - No less than three non-executive members of the OfS Board (including the RAC chair)
 - Up to three independent members.
10. The validity of any proceedings of the Committee shall not be affected by a vacancy among the members or by any defect in the appointment of a member. The quorum necessary for the transaction of the business of the Committee shall be three members, including at least one member of the OfS Board.
11. The RAC may co-opt additional members for a period not exceeding a year to provide specialist skills, knowledge and experience.
12. A register of declared interests for all members of the RAC will be published on the OfS website. If it is deemed that a member has an actual or perceived conflict of interest then any relevant paper(s) may be withheld or the member asked to leave the meeting for the duration of the discussion at the discretion of the Chair. If the conflict is significant or likely to be long-term, then the member may be asked to step down from the RAC.
13. All members of the RAC are legally indemnified against negligence by the Department for Education.

Meetings

- The RAC will normally meet at least three times a year. The chair of the RAC may convene additional meetings as they deem necessary.
- In the absence of the RAC chair, the meeting will be chaired by another member that is also a member of the OfS Board.
- While only members have a right to attend, meetings of the RAC will normally be attended by the Accounting Officer, the Director of Finance, the Clerk to the Committee, the Head of Internal Audit and a representative of the NAO in their capacity as external auditors.

- The RAC may also require any other officials of the OfS to attend to assist it with its discussions on any matter.
- The RAC may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.
- Individually, the Accounting Officer, Executive Directors, the Clerk to the Committee, the Head of Internal Audit and the NAO may, through the chair, request to meet with RAC members to discuss a confidential matter.

Reporting

- The RAC will formally report in writing to the OfS Board after each meeting. This will be complemented, where necessary, by an oral report from the RAC chair at the Board meeting.
- RAC meetings shall be minuted and draft minutes circulated to members as soon as possible after the meeting.
- The RAC will provide the OfS Board and the Accounting Officer with an annual report, timed to support finalisation of the annual report and accounts (including the governance statement) summarising its conclusions from the work it has done during the year.
- The terms of reference for the RAC will be reviewed on an annual basis. The OfS Board will be asked to approve any changes to the terms of reference.
- The RAC's main duties shall be described in the OfS's annual report and accounts.

Other

14. The RAC may set up a sub-committee to provide advice on any of the above issues. The membership and terms of reference of any sub-committee shall be agreed by the RAC Chair.
15. The RAC will review its own effectiveness annually and report outcomes to the OfS Board.
16. The terms of reference of the Risk and Audit Committee will be approved by the Board and published on the OfS website.
17. Approved by the OfS Board on 21 December 2017.

Office for Students Remuneration & Nominations Committee: terms of reference

Purpose

1. The Office for Students (OfS) has established a Remuneration & Nominations Committee to support the OfS Board and Accounting Officer, in their responsibilities for the pay and performance management of senior management and for the pay remit relating to OfS staff. It also provides advice to the OfS Chair on the nominations and appointments of independent members to any OfS Committee.

Responsibilities

2. The responsibilities of the Committee shall be:
- a. To make recommendations to the OfS Board on the terms and conditions of employment of the Chief Executive, noting that some aspects of the terms and conditions will then need to be referred to the Department for Education (DfE) for approval. Unless there are exceptional circumstances, the Board delegates consideration and approval of these recommendations to the Chair of the Board.
 - b. To support the OfS Chair in setting objectives with the Chief Executive and monitoring the Chief Executive's performance.
 - c. To carry out an annual review of the remuneration of the Chief Executive and the Director for Fair Access & Participation (DFAP) including making recommendations to DfE about proposed changes to basic pay and levels of performance related pay within the context of the terms and conditions agreed by the Board.
 - d. To agree the terms and conditions of employment of other OfS Directors.
 - e. To support the OfS Chief Executive in monitoring the Directors' performance.
 - f. To carry out an annual review of the remuneration of Directors, and to make decisions about changes to basic pay and levels of performance related pay involving DfE as required.
 - g. To review the aims of the annual pay remits, which seek authority from DfE for the nature and scale of pay awards to OfS staff, delegating the details to the Chief Executive. To set and review the ongoing appropriateness and relevance of the approach to remuneration.
 - h. To review the remuneration report that forms part of the OfS' Annual Report and Accounts which must include details of the remuneration of all Board members, Chief Executive, DFAP and Directors.
 - i. To support the OfS Chair, Chief Executive and DfE in the consideration of succession planning requirements at Board and Executive level.
 - j. Provide advice to the OfS Chair on the appointment of suitable independent members to any OfS Board Committee, and seeking to ensure that recruitment is open, fair and promotes equality of opportunity.
3. The Committee will take account of remuneration and appointments policy and advice provided by the HM Treasury, the Cabinet Office and DfE in carrying out its work.

Authority

4. The Committee is authorised by the OfS Board to:
 - a. Seek any information it needs from any employee of the OfS and any others with in order to perform its duties
 - b. Procure specialist ad hoc advice (including legal advice) at the expense of the OfS up to £10k per annum or as agreed by the Board.

Membership

5. The Committee shall be appointed by the OfS Board. It shall consist of not less than three non-executive, ordinary members of the Board one of whom will be appointed as Chair of the Committee. The Chair of the OfS Board may be a member of the Committee but should not act as its Chair.
6. In the absence of the Chair of the Committee at any meeting, he or she may nominate a Chair for that meeting from the remaining members or, failing that, the members may elect a Chair for the meeting.
7. Appointments to the Committee shall be for a period of up to three years, which may be extended for up to a further three-year period, providing the Board member still meets the criteria for membership of the committee.
8. Any two members of the Committee will comprise a quorum for decision making.

Meetings

- The Committee will normally meet at least once a year. The chair of the Committee may convene additional meetings as they deem necessary.
- In the absence of the Chair, the meeting will be chaired by another member that is also a member of the OfS Board.
- While only members have a right to attend meetings, the Committee may also require any other officials of the OfS to attend to assist it with its discussions on any matter.
- The Committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.
- The Committee may invite the Chief Executive to attend any parts of its meetings other than those directly affecting their personal remuneration or performance assessment.

Reporting

- The Committee will formally report in writing to the OfS Board after each meeting.
- Committee meetings shall be minuted and draft minutes circulated to members as soon as possible after the meeting.
- The Committee's activities will be reported in the OfS annual report and account including disclosure of all senior staff remuneration as required by HM Treasury's Financial Reporting Manual (FRoM).

- Committee papers and minutes are available to the National Audit Office on a need to know basis and to any OfS Board member by agreement with the Chair of the Board (and subject to compliance with data protection rules). They will otherwise remain confidential.

Other

9. The Committee shall, from time to time, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the OfS Board for approval.

10. The terms of reference of the Committee will be approved by the Board and published on the OfS website.

11. Approved by the OfS Board on 21 December 2017.