

**MINUTES OF THE TWO HUNDRED AND SEVENTY-SEVENTH MEETING OF
THE OFCOM BOARD HELD ON 18 NOVEMBER 2020
MEETING HELD VIRTUALLY VIA MICROSOFT TEAMS**

Present

Terry Burns	Chairman
Maggie Carver	Deputy Chair
Kevin Bakhurst	Executive Member and Group Director, Broadcasting & Online Content
Melanie Dawes	Executive Member and Chief Executive
Angela Dean	Non-Executive Member
Bob Downes	Non-Executive Member
David Jones	Non-Executive Member
Graham Mather	Non-Executive Member
Tim Suter	Non-Executive Member (recused from minute 15)
Ben Verwaayen	Non-Executive Member

In attendance

Lindsey Fussell	Group Director, Networks & Communications
Martin Ballantyne	Interim General Counsel
Jacqui Gregory	Corporation Secretary
Jenny Leyland	Assistant Corporation Secretary

Other Ofcom colleagues:

- Yih-Choung Teh (minutes 23-28)
- Iqbal Marikkar (minutes 23-28)
- Vikki Cook (minutes 29-31)
- Gwen Morgan (minutes 29-31)
- Siobhan Walsh (minutes 29-31)
- Marina Gibbs (minutes 32-33)
- David Matthew (minutes 32-33)

Declaration of Members' Interests – oral

1. David Jones advised that he had been appointed as a non-executive member of the Board of Ofwat with effect from 1 December 2020. The Board congratulated David on the appointment and **NOTED** that the new role would not give rise to a conflict of interest with his role as a non-executive member of the Ofcom Board.

Chair's Introduction – oral

2. The Chairman welcomed all to the meeting.
3. Board Working Lunch: A diary placeholder had been put in for a Board working lunch on 14 December 2020. Board Members acknowledged that this would be subject to the COVID-19 pandemic restrictions in place at the time.

4. Northern Ireland Stakeholder Event: Following a suggestion made at the last Board meeting, the Ofcom Board would be hosting a virtual Northern Ireland Stakeholders event on 16 December 2020.

5. Office of the Telecoms Adjudicator 2: Rod Smith, the current Office of the Telecoms Adjudicator (OTA2), was due to retire and, in accordance with the MoU for the OTA2 Scheme, Ofcom was responsible for appointing a replacement individual, following consultation with BT and other communication providers as regards selection criteria and nominations. The Board was updated on the consultation which was being undertaken on the proposed appointment of David Halliday to the role. Mr Halliday had confirmed his willingness to take on the role. Ofcom's Delegations of Authority Framework provided that the Finance Director had the ability to make the appointment, but as this was an Adjudicator appointment the Board was being sighted on it. The Board **NOTED** that – subject to the outcome of the consultation being supportive - Ofcom would appoint David Halliday as OTA2 upon the retirement of Rod Smith.

Minutes of the meeting held on 21 October 2020 and Matters Arising – Board Minutes 276(20) and Note of Action Points

6. The minutes of the Ofcom Board meeting held on 21 October 2020 were **APPROVED** for signature by the Chairman as an accurate record.

7. A summary of progress against action points had been circulated. Status updates against each of the actions were duly **NOTED**.

Chief Executive's Report – Board Paper 85(20)

8. Melanie Dawes presented her report and provided an update on recent developments.

9. Proposed Virgin/O2 Merger: The European Commission had referred the proposed Virgin/O2 merger back to the Competition and Markets Authority (CMA). Ofcom would be seconding some colleagues to the CMA to assist with the analysis.

10. Fixed Telecoms: The Board discussed current attitudes in the financial markets to investment in the telecoms sector. Melanie Dawes was due to deliver a keynote speech at the FTTH Council's virtual conference on 3 December 2020. It would be her first public statement on Ofcom's fibre strategy and would provide an opportunity to set out Ofcom's balanced, pro-investment narrative.

11. Online Harms: It now seemed unlikely that the Government's response to the Online Harms White Paper consultation would be published before December 2020. The Board was updated on the implications the delay might have for certain Ofcom work areas.

12. Digital Regulation Co-operation Forum (DRCF): As was reported at the last meeting, agreement had been reached on a more ambitious and strategic approach to collaboration with other digital regulators at a meeting of the DRCF on 20 October 2020. Since then, the Melanie Dawes had written jointly to the Government along with the Chief Executive of the CMA and the Information Commissioner, setting out the plans for closer working together. Melanie provided an oral update to the Board. Separately, the Secretary of State had written formally asking for Ofcom's views on the future landscape for digital regulation, as part of the forthcoming Government Digital Strategy. She noted that the Board would have an opportunity

to discuss the response to the Secretary of State's request at a future Board meeting (this was likely to be February 2021).

13. Telecoms Security: On 28 October 2020, Ofcom had given evidence to the Science and Technology Select Committee for their 'UK telecommunications infrastructure and the UK's domestic capability' inquiry. Committee members' questions had focused on Ofcom's role in promoting vendor diversification in the UK telecoms market. The Board was updated on the Government's current ambitions for encouraging vendor diversity. The Board was reminded that Ofcom has an observer role at the Government's Telecoms Diversification Workforce.

14. Mobile Strategy: The Board was updated on plans to focus Ofcom resource on developing a mobile strategy. The outcome of that work would be brought to the Board in due course.

15. Martin Bashir's Panorama Interview with Princess Diana in 1995: The Board was advised that the BBC was about to announce an independent inquiry led by a former Supreme Court Judge. The Inquiry, which had been commissioned by the Director General of the BBC, would focus on how Martin Bashir obtained the interview, and whether BBC executives had covered up his alleged wrongdoing. Ofcom had received a letter from David Hooper suggesting that there was a legal case for Ofcom to investigate the matter. Ofcom's response would say that, whilst the case raised important and serious issues, Ofcom did not believe it had a locus to investigate. A similar letter would be sent to the Director General of the BBC, and both letters would be published on Ofcom's website.

Tim Suter left the meeting during discussion of the foregoing item.

16. The Board **NOTED** the report from the Chief Executive.

Executive Director Updates – oral

17. Kevin Bakhurst provided an update on recently ongoing content standards and licensing cases.

18. Lindsey Fussell updated the Board on the voluntary agreement reached with communications providers regarding the treatment of customers who might fall behind on their payments as a result of the impact of the COVID-19 pandemic.

19. The Board **NOTED** the oral reports provided by the Executives.

Reports from Non-Executive Board Members – oral

20. Bob Downes reported on concerns raised by the Cabinet Secretary for Economy, Fair Work and Culture in the Scottish Government that the Scottish Government should have appropriate involvement in the appointments process for the new Chairs of both the BBC and Ofcom, and also in the Government's review of the future of public service broadcasting. Bob Downes also reported that Rick Hill, Chair of the CCP, had written to the Ofcom Chair and HMRC regarding the implementation of the Northern Ireland Protocol and the customs regulations that would apply in NI resulting in new administrative processes applying to GB-NI postal movements. David Jones updated the Board on issues raised at a meeting he and Melanie Dawes had attended recently with the First Minister for Wales and the Deputy Minister for the Economy and Transport.

21. The Board **NOTED** the oral updates provided by Non-Executive Board Members.

Review of Delivery against the Ofcom Plan of Work 2020/21 – Board Paper 86(20)

22. Board Paper 86(20) summarised Ofcom’s main activities and associated consumer outcomes for the first half of 2020/21 across policy, programmatic, and operational work. There was a more detailed table in Annex 1, setting out (i) progress delivering priority projects; and (ii) how far these projects were expected to deliver the desired consumer outcomes. This drew on information reported in the regular performance reports. The paper also provided an overview of key lessons learnt from this review of the first half of 2020/21, which we would be taken account of during the formulation of the Plan of Work for 2021/22.

23. During discussion, comments included how well the organisation had responded to the challenges of the COVID-19 pandemic restrictions, such that delivery of the 2020/21 work plan remained broadly on track. The experience of the pandemic had highlighted the importance of programmatic/business as usual work, including spectrum enforcement and network resilience, alongside the policy work, and the need to put more emphasis on how well that programmatic work was done as part of Ofcom’s internal communications.

24. The Board **NOTED** the update on delivery against the Plan of Work 2020/21, as set out in Board Paper 86(20).

Ofcom Plan of Work 2021/22: Themes and Narrative – Board Paper 87(20)

25. The Board was invited to comment on the proposed structure for the 2021/22 Plan of work consultation and strategic themes for inclusion in the Plan for Work, as set out in Board Paper 87(20). Some changes were proposed to the structure for the 2021/22 Plan which were intended to improve the narrative flow across the document. The number of strategic themes had been reduced from nine in 2020/21 to seven in 2021/22, in part to reflect the new organisation structure introduced in September 2020. If the proposed new duties for Ofcom in relation to online harms regulation were not confirmed ahead of the publication of the consultation, some changes to the document would be needed to reflect that, or the publication date might be put back to January 2021 so the position was more certain.

26. Comments noted during the Board’s discussion of this item included whether under the strategic theme “Evolving Ofcom for the Future” reference should be included to Ofcom’s role in thought leadership. Reference was made to the importance of Ofcom’s horizon scanning work. The Board asked that the drafting of the narrative should place more emphasis on nations and regions diversity and on the green agenda as it impacts the sectors which Ofcom regulates. Reference was made to the role of the Content Board in inputting to Ofcom’s work and the areas the Ofcom Board would want the Content Board to focus on. (It was noted that the Content Board’s proposed Plan of Work for 2021/22 would be considered by the Ofcom Board in February 2021.)

27. The Board was supportive of the proposed structure for the 2021/22 Plan of Work and strategic themes as set out in Board Paper 87(20). The Board **NOTED** that the more detailed Plan of Work reflecting consultation feedback would be brought to the Board for approval in March 2021.

Future of Public Service Broadcasting: Small Screen, Big Debate: Draft Consultation – Board Paper 88(20)

28. The Board **NOTED** that the objective of the Small Screen: Big Debate ('SS:BD') programme of work was to ensure that, in a rapidly changing media landscape, audiences continued to receive the benefits of Public Service Media ('PSM')¹ in the future. Ofcom was developing a range of options for Government to consider, and consultation on this was planned for December 2020.

29. The Board discussed and commented on the draft executive summary/overview text for the consultation, which was set out at Annex 1 to Board Paper 88(20). Discussion focused on (i) how radical the proposals presented should be, bearing in mind this was a consultation and not the final document; (ii) the balance between the points to be brought out in the executive summary and the detail to be found in the supporting chapters of the document and in the additional material available online; (iii) the importance of the creative industries to the UK economy; and (iv) the long term objective of protecting the provision of universally available public service content.

30. The Board **NOTED** that the full consultation document would be reviewed and approved by the Chair, Tim Suter (as Chair of the Content Board), Melanie Dawes and Kevin Bakhurst, with publication planned for 8 December 2020. Other Board Members would receive a copy for information.

Update on Royal Mail and on Ofcom's plans for progressing the Postal Work Programme – Board Paper 89(20)

31. The Board was updated on Royal Mail's results for the first half of the financial year 2020/21 which were due to be announced on 19 November 2020.

32. Following discussion, the Board:

- **AGREED** the positioning of the Annual Monitoring Report (AMR), particularly regarding Royal Mail's financial sustainability.
- **NOTED** that the Review of User Needs would be published together with the AMR at the end of November 2020. The Review of User Needs would set out that a move from the current six day a week delivery of letters to five days should continue to meet user needs. It would also highlight the growing importance of fast and reliable parcel delivery services to UK consumers.
- **NOTED** that, until there was clarity from BEIS on its position regarding the Universal Service Order (USO), and specifically the number of delivery days for letters, Ofcom would continue the current programme of work, reviewing the broad postal regulatory framework, which would also position Ofcom to respond to any requests for advice from Government.
- **NOTED** that the scope of Ofcom's broader review of the regulatory framework included a longer-term strategic view of what the appropriate form of regulation might be five to ten years from now. In exploring these questions, consideration would be

¹ As we set out last year in our paper [The Future of Public Service Media](#) given the range of platforms involved, it is becoming more appropriate to describe this content as Public Service Media ('PSM') rather than traditional Public Service Broadcasting.

given to the balance between supporting the sustainability of Royal Mail against distorting competition in the growing and successful parcel delivery market.

Annual Report and Performance Report on the BBC – Board Paper 90(20)

33. A few days before the meeting, Board Members had been provided with a draft of the Annual Report and Performance Report on the BBC and a revised draft incorporating comments received had been provided to the Board as an Annex to Board Paper 90(20).

34. The Board **APPROVED** for publication the Annual Report and Performance Report on the BBC, as set out in the Annex to Board Paper 90(20).

Information Items

35. The Board **NOTED** the following information items.

- Quarterly Performance Report – Board Paper 91(20).
- Board Work Programme/Forward Agendas – Board Paper 92(20).
- Minutes of the Advisory Committee for England (24 September 2020); Advisory Committee for Northern Ireland (9 September 2020); Advisory Committee for Scotland (8 September 2020); Advisory Committee for Wales (15 September 2020); Communications Consumer Panel/ACOD (17 September 2020); Content Board (6 October 2020); and Risk and Audit Committee (8 October 2020).

Any Other Business

36. There were no additional matters raised at the meeting.

Date of the Next Meeting

37. The next scheduled Board meeting will be held on Wednesday, 9 December 2020.