

**MINUTES OF THE TWO HUNDRED AND EIGHTY-SECOND MEETING OF THE OFCOM BOARD HELD ON
28 APRIL 2021 MEETING HELD VIRTUALLY VIA MICROSOFT TEAMS**

Present

Maggie Carver	Interim 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
Lindsey Fussell	Executive Member and Group Director, Networks & Communications
David Jones	Non-Executive Member
Graham Mather	Non-Executive Member
Tim Suter	Non-Executive Member
Ben Verwaayen	Non-Executive Member

In attendance

Martin Ballantyne	General Counsel
Jacqui Gregory	Corporation Secretary
Jenny Leyland	Assistant Corporation Secretary

Other Ofcom colleagues:

Katie Pettifer (item 5)
 Yih-Choung Teh (items 8 and 10)
 Iqbal Marikkar (item 8)
 Ali-Abbas Ali (item 9)
 Tom Walker (item 9)
 Guy Holcroft (item 10)
 Ian Macrae (item 10)
 Ian Strawhorne (item 11)
 Nuala Cosgrove (item 12)
 Melissa Tatton (item 13)
 Curtis Juman (item 13)

Item 1: Declaration of Members' Interests – oral

1. No new declarations of interest were notified.

Item 2: Chair's Introduction – oral

2. The Chair welcomed all to the meeting. She reflected on two major, recent events which were worthy of acknowledgement by the Board. The Access Review published on 18 March 2021 had required a delicate balancing of interests and had landed well. On 27 April 2021 Ofcom had announced the final results of the auction for spectrum in the 700 MHz and

3.6-3.8 GHz bands, following completion of the remaining stages. The total revenue raised by the auction was £1,379,400,00. It was noted that all money would be paid to the Treasury. The new spectrum would be used to deliver improved mobile coverage and further capacity for 5G. Both projects had involved several years of work and the Board recorded congratulations and gratitude to all those who had worked on the projects.

3. The Chair referred to a number of internal meetings which she had attended over the last month, including the One Ofcom Event held on 23 March 2021 during which the announcement had been made of a new Ofcom location in Manchester. Colleagues had been focused in their questioning on new ways of working which might apply when the current COVID-19 restrictions were lifted. Melanie Dawes had sent a helpful note to colleagues, which was also copied to Board Members, on the approach to handling the return to office-based working, with a “reuniting” phase over the summer and a more structured trial of new ways of working together starting in September 2021 (subject to any Government restrictions in place at the time).

Appointment of a Northern Ireland Member of the Ofcom Board

4. The Board was updated on the process for appointing a Northern Ireland Member of the Ofcom Board. A Memorandum of Understanding setting out the framework for the appointment process had been agreed by the Office of the First and Deputy First Minister and Departmental Solicitors Office and shared with DCMS. Subject to DCMS being content, this would be signed by the parties. A Statutory Instrument would be required at Westminster to commence the Board appointment and the process for laying the Statutory Instrument was under way with a letter from the DfE Minister to the DCMS Secretary of State. Both DCMS and DfE had confirmed that they were content for the recruitment process to commence once the Statutory Instrument had been laid, rather than waiting for it to come into law.

Appointments to the Channel Four Corporation (C4C) Board

5. Secretary of State approval had been received for the reappointment of Chris Holmes as C4C Deputy Chair for a three-year term commencing 11 June 2021. The recruitment for the appointment of three new NED Board Members for the C4C Board had commenced, the advertisement having gone live on 1 April 2021. As agreed with DCMS, any sift of applications would not take place until the new Ofcom Board Chair was in place.

Item 3: Minutes of the meetings held on 17 and 22 March 2021 and Matters Arising – Board Minutes 280(21) and 281(21) and Note of Action Points

6. Subject to an edit being made to the final sentence of paragraph 18 of the minutes of the 17 March 2021 meeting, the minutes of the Ofcom Board meeting held on 17 March and on 22 March 2021 were **APPROVED** for signature by the Chair 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**.

Item 4: Chief Executive’s Report – Board Paper 28(21)

8. Melanie Dawes presented her report and provided an update on recent developments, including the following issues.

9. Consumer Issues: On 7 May 2021 Ofcom would be publishing annual research comparing quality of service levels among providers. This would include data gathered during the COVID-19 pandemic. The research would highlight some of the challenges providers had faced, including a sharp rise in call waiting times across the board and specific issues with some providers. Publication of the research would be coupled with publication of the Fairness for Customers report which would note that providers had taken positive steps to improve pricing practices and the treatment of vulnerable consumers, but that more was needed to improve customer service levels across the industry. In response to a question from the Board, the Executive provided an update on the progress operators were making to restore service levels impacted by the pandemic. Further details were provided in Board Paper 37(21) which had been provided to the Board for information. Ofcom had made it clear to the providers that the expectation was that they should raise the quality of service levels, working with any remaining pandemic restrictions, rather than using those restrictions as an excuse.
10. Broadcasting: The Board would see the recommendations emerging from the Public Service Media Review at the May 2021 Board meeting and final proposals in June. Work was also underway on the five-year Periodic Review of the BBC and the review of the BBC's Operating Licence.
11. *[Withheld from published minutes.]*
12. Digital Regulation: On 7 April 2021 the Government had formally announced that the new Digital Markets Unit (the DMU) was now up and running in shadow form inside the CMA, pending legislation to give it formal powers. The DMU would be developing codes of conduct to govern the relationship between digital platforms and news publishers, and that piece of work would be done with Ofcom.
13. The Digital Regulation Co-operation Forum (DRCF) had submitted the letter to the Secretary of State that the Board had seen in draft at the 17 March meeting. The letter set out what further measures might be needed to support regulatory cooperation between the members of the DRCF, for example, information sharing having regard to each other's duties. Melanie Dawes would chair the DRCF in its first year of operation.
14. Telecoms Security: The Telecoms Diversification Task Force had published recommendations including some which could potentially have resource implications for Ofcom. In response to a question from the Board, the Executive said that it was for DCMS to consider next steps, but that Ofcom would work closely with Government. No decision had been taken, as yet, on whether Ofcom might be given new or different powers.
15. Fibre Investment: On 19 March 2021 the Government launched "Project Gigabit", announcing the first tranche of £5bn fibre funding for non-commercial areas, and a call for inputs looking at satellite and other technologies to connect "very hard to reach" areas. Ofcom was providing technical advice to DCMS on both of these areas. In answer to a question from the Board, the Executive provided an update on the process followed to identify the areas to be covered by the first tranche of funding. Government would consider the next tranche once they had greater clarity on what the Devolved Governments' plans would achieve.
16. The Board **NOTED** the report from the Chief Executive.

Item 5: Executive Director Updates – Board Paper 29(21) and oral updates

17. With other areas having been discussed under the Chief Executive's update (the Chief Executive's Update at item 4 above refers), the main focus of discussion under the Executive Director updates item was Online Harms. An update paper had been circulated as Board Paper 29(21) on the Online Safety Bill process and timing. It was noted that Government were aiming to publish the draft Bill shortly after the Queen's Speech (11 May 2021). Whilst the paper focused on outstanding issues, the Board noted that a number of areas of concern previously discussed with the Board had now been resolved. Key remaining concerns were discussed including that there could be scope creep as the Bill went through the parliamentary process. The Board discussed possible areas and scenarios where this might occur, for example, including economic harm in the legislation.

18. The Board was updated on ongoing engagement with DCMS, including the involvement of Ofcom's lawyers. Reference was made to the need to manage expectations and to be realistic about what could be achieved, given the complexity of some of the issues, and concerns around enforceability and what would be needed in the legislation to support that. The Board recognised the complexity of the issues covered in the Bill especially in areas like enforcement. In answer to a question from the Board, the Executive confirmed that preparing to take online harms responsibilities was a key priority for Ofcom. Alongside work on seeking to ensure the legislation came out in the right place, as well as engagement on the Bill itself, there would be a focus on recruiting people with the necessary skills and experience to undertake the work, including taking account of new areas that were being brought into the scope of the legislation. The Chair commented that the discussion had reflected a significant amount of caution from the Board and a realism about the level of potential risk for Ofcom. She said that the Executive should be firm in holding its position on the areas identified and should seek support from the Board as necessary to do that as the legislative process proceeded.

19. The Board **NOTED** the update provided in Board Paper 29(21) and presented orally at the meeting. A further update would be provided at the next Board meeting in May 2021.

Item 6: Report from the Chair of the Content Board - oral

20. Tim Suter reported on a meeting of the Election Committee which had been held to consider a complaint about due impartiality received from the Alba Party in relation to the BBC's coverage of the Scottish Parliamentary Elections. The publication of the decision of the Committee was imminent. Tim Suter referred to matters discussed at the meeting of the Content Board held on 30 March 2021. It was noted that this had been Janey Walker's last meeting, as her term as a member of the Content Board would conclude on 30 April 2021.

21. The Board **NOTED** the oral update provided by Tim Suter.

Item 7: Reports from Non-Executive Members – oral

22. Bob Downes reported on the political situation in Northern Ireland and on MG Alba's proposal regarding funding from the BBC licence fee.

23. David Jones updated the Board on the political situation in Wales ahead of the forthcoming elections.

24. Graham Mather updated the Board on a meeting with the Chair of the Communications Consumer Panel/ACOD and the Panel's priorities.

25. The Board **NOTED** the oral reports from Non-Executive Members.

Item 8: Strategic Planning Update – Board Paper 30(21)

26. Yih-Choung Teh introduced this item. At the 17 March Board 2021 meeting the Board had been updated on a new approach to Ofcom's strategy development process. Board Paper 30(21) provided further detail on this new approach, including a proposed timeline and outline process for the Executive engaging with the Board over the coming months.

27. During discussion reference was made to the value of having a planning process, even though coming out of the COVID-19 pandemic and with such a fast-changing environment, it would be difficult for any organisation to set a three to four-year strategy. Reference was made to the importance of being able to identify and understand trends and adjust accordingly. Alongside considering work to be prioritised, there would need to be a focus on areas to be deprioritised given resource constraints.

28. Following discussion, the Board:

- **NOTED** the revised approach to the formulation of Ofcom's strategy and planning process, as described in Board Paper 30(21). While the full process would take time to embed, in this first interim year pragmatic steps would be taken to implement the main elements of the revised approach.
- **NOTED** plans for increased engagement with Board Members on strategy development during this process, as set out in Section 3 and the Annex to Board Paper 29(21).

Item 9: Media Ownership Rules Review – Board Paper 31(21)

29. Kevin Bakhurst introduced this item. Ofcom was required to review the Media Ownership Rules every three years and make recommendations to the Secretary of State. A two-phase review was proposed. Phase 1 would involve proposing a narrow set of changes to the existing Media Ownership Rules, to update them as far as was practicable, as set out in Board Paper 31(21), with a consultation planned for June 2021. Phase 2 would be a longer-term piece of work which would take a much wider look at plurality issues. It would consider the influence and disruption of the digital platforms on the distribution of news sources, as well as looking at existing gaps in the regulatory framework. The aim was that any recommendations for change resulting from the Phase 2 work could potentially be reflected in the Media Bill that DCMS were planning for 2022. DCMS had confirmed that they would welcome that input.

30. During discussion the Board expressed appreciation for a good and timely paper. With reference to the Phase 2 work, comments were made that a balance would need to be struck when considering the potential for news aggregators to have either a positive or negative impact on the democratic process, and one of the areas to be explored would be how they operate and the algorithms they use.

31. Following discussion, the Board:

- **AGREED** the recommendations on changes to the existing Media Ownership Rules, as set out in Board Paper 31(21), with a consultation on those recommendations planned for June 2021;
- **APPROVED** the proposal to undertake a 'Phase 2' piece of work on media plurality, noting that the scope of the existing Media Ownership Rules did not address concerns about plurality that had developed over recent years; and
- **NOTED** that Ofcom and the Competition and Markets Authority (CMA) had been commissioned by the Secretary of State for Digital, Culture, Media and Sport to consider how a code of conduct under the planned new Digital Markets regime could govern the relationships between platforms and news publishers.

Item 10: Online Nation 2021 – Board Paper 32(21)

32. Yih-Choung Teh introduced this item. The Online Nation report provided an opportunity to set out key trends and market developments in terms of both industry metrics and consumer experience and provided context for future policy work in online harms and online markets, as well as how changing consumer behaviour and industry structures were impacting on the broadcast and telecoms sectors. The third Online Nation report was due to be published in May 2021.

33. The Board was provided with an interactive demonstration of some of the key findings from the Online Nation research. During discussion it was suggested that, although Ofcom's research was a fantastic resource which was widely used and the source cited, perhaps more could be done to give that area of Ofcom's work a higher profile and gain it greater recognition. Simon Redfern, who had joined Ofcom in early 2021, as Ofcom's Communications Director, was drawing up a new communications strategy which would be shared with the Board in due course.

34. The Board **NOTED** the plan for Online Nation in the current year, as set out in Board Paper 32(21).

Item 11:

35. *[Withheld from published minutes.]*

Item 12: Annual Litigation Review – Board Paper 34(21)

36. In his annual report to the Board as General Counsel, Martin Ballantyne provided an update on the cases dealt with over the past year. These could be grouped into three broad themes: (1) cases where the appellant appeared to be making a statement by bringing a case; (2) cases brought for commercial reasons; and (3) cases which genuinely raised important questions of law. There had also been threatened litigation - either explicit or implicit - which had taken team resource to head off. The General Counsel expected that the litigation in the coming year would fall into the same broad themes as had been the case for the previous year.

37. Following discussion, the Board **NOTED** the report provided orally and in Board Paper 34(21) and commended the General Counsel and the Legal Team on their excellent work, the high quality of the legal advice given and the valuable contribution it made to Ofcom's work across the organisation.

Item 13: Environmental Management Update – Board Paper 35(21)

38. Melissa Tatton introduced this item. Ofcom’s Plan of Work for 2021/22 set out that *Ofcom* would act to reduce its carbon footprint and address sustainability and climate change issues, as well as supporting the Government’s approach in Ofcom’s regulated sectors. Board Paper 35(21) focused on the internal approach to reducing Ofcom’s emissions. The Policy and Management Board had agreed that Ofcom should adopt the ISO14001 standard and work towards certification. ISO14001 had been identified as industry best practice and provided an auditing framework to help ensure continuous improvement. Achieving certification would strengthen Ofcom’s credentials in its role looking at sustainability in the communications sector. A number of colleagues had expressed a personal interest in this work, and the plan was to formally establish a colleague group to support this activity. A full project plan would be created, with specific objectives, milestones, and timelines to ensure that work was completed within the next 12 months, with certification following that. The Strategy and Technology Teams would report to the Board on the outcomes of their work through the Plan of Work reporting, and Ofcom’s internal approach would be included as appropriate.

39. The Board:

- **NOTED** that the Government was still working up its position in respect of both an internal and external approach in terms of Climate Change and Net Zero 2050. Ofcom had made some progress against the Government’s 2016-2020 Greening targets, without a formal programme being in place.
- **NOTED** that Policy and Management Board had approved Ofcom adopting ISO14001, working towards certification in Environmental Management over the next 12 months, in line with the Plan of Work. This timetable would allow time to accommodate any new Greening targets.
- **NOTED** that this work would align closely with the external work on Climate Change and Sustainability joint project.

Item 14: Objectives for the Chief Executive for the Appraisal Year 2021/22 – Board Paper 36(21)

40. The Board reviewed the objectives set out in Annex 1 to Board Paper 36(21) for the Chief Executive for the Appraisal Year 2021/22. The Chief Executive explained that her personal objectives were based on the key priorities for Ofcom for the year ahead, consistent with the approach taken in 2020-21 and in previous years. This was helpful to ensure alignment of objectives across the senior team. The Board **APPROVED** the Chief Executive’s objectives for 2021/22, as set out in Annex 1 to Board Paper 36(21), but asked that in future they would like more clarity on personal priorities and also how delivery would be measured. The Board asked that a strawman of the format and type of content to be included in the Chief Executive’s 2022/23 objectives should be considered at a future People Committee, with final sign-off of the actual objectives being sought at the People Committee in April 2022.

Item 15: Information Items

41. The Board **NOTED** the following information items:

- Update on Fairness Commitments and Comparing Customer Service Reports - Board Paper 37(21).
- Monthly Finance Report – Board Paper 38(21).
- Board Work Programme/Forward Agendas – Board Paper 39(21).
- Minutes of the Communications Consumer Panel/ACOD (meeting held on 18 February 2021).
- Minutes of the Risk and Audit Committee (meeting held on 3 March 2021).

Item 16: Any Other Business

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

Item 17: Date of the Next Meeting

43. The next scheduled Board meeting will be held on Wednesday, 26 May 2021.