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# **Ofcom Board Members' Code of Conduct**

**13 December 2017**

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# About this document

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It is essential that Ofcom maintains a reputation for impartiality, integrity and high professional standards.

There should never be any legitimate reasons for people outside Ofcom to suspect that Ofcom's decisions may be influenced by the private interests, or political interests and opinions, of Members, or that Members may be able to profit from information available to them through their work.

Ofcom's Board Members should comply at all times with this Code of Conduct (and any agreed modification to it) and act in good faith and in the best interests of Ofcom.

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# 1. Introduction

- 1.1 It is essential that Ofcom maintains a reputation for impartiality, integrity and high professional standards. There should never be any legitimate reasons for people outside Ofcom to suspect that Ofcom's decisions might be influenced by the private interests, or political interests or opinions, of Members, or that Members might be able to profit from information available to them through their work.
- 1.2 Working, therefore, within these necessary standards of impartiality, integrity and probity, it is important that Ofcom is able to attract Members with knowledge and experience at a senior level, whether in the professions, industry (including the sector it regulates), public or political life, and that no perception arises of personal interests or prejudices in Ofcom's decision-making. Ofcom seeks to manage, sensibly and appropriately, potential conflicts of interest that Members may have, or that may arise from time to time, and to ensure that the actions of Members do not bring into question Ofcom's impartiality and objectivity.
- 1.3 Ofcom is accountable to Parliament and, in a more general sense, to citizens and consumers. In support of its principles of openness and accountability, the Board will seek to lead with best practice.

## 2. The role of Ofcom, its Chair and Members

### Accountability to Parliament

2.1 Ofcom is responsible for providing Parliament (including its Select Committees) with such information as may be requested concerning its policy decisions and actions. Ofcom is under a specific duty to present its annual report to the Secretary of State, who then lays it before Parliament. Ofcom may be required to give evidence to Select Committees of Parliament and to the Parliamentary Accounts Committee. Accounts are subject to audit by the National Audit Office. A copy of the statement of accounts must be sent to the Secretary of State and to the Comptroller and Auditor General.

### Members of the Main Board

- 2.2 The responsibilities of Members include:
- a) the discharging of their duties under the Ofcom Act 2002, the Communications Act 2003, The Postal Services Act (2011), the Digital Economy Act (2010), the Digital Economy Act (2017) and any other relevant supplementary legislation or Orders thereto;
  - b) establishing the policy and strategic direction including the resourcing framework for the operation of Ofcom;
  - c) ensuring that the highest standards of corporate governance are observed at all times; and
  - d) ensuring that Ofcom operates within the limits of its statutory authority and that staff operate within the limits of delegated authority.

### The Chair of the Main Board

- 2.3 The Chairman, informed by the Chief Executive, has particular responsibility for leading the Board in:
- a) formulating Ofcom's strategy for discharging its statutory duties;
  - b) representing the views of Ofcom externally;
  - c) encouraging high standards of propriety;
  - d) providing an assessment of the performance of individual Members, should they be considered for re-appointment to Ofcom;
  - e) ensuring that Ofcom meets regularly throughout the year and that the minutes of meetings accurately record decisions taken; and
  - f) ensuring that when reaching decisions Ofcom takes proper account, where necessary, of directions given by the Secretary of State.

## Delegations

- 2.4 Ofcom Members serve on a part-time basis. Responsibility for specified matters may be delegated to individual Board Members, or committees of Ofcom (or their sub-committees), or to staff, within a clearly understood framework of strategic control.

## Confidentiality

- 2.5 Clause 393 of the Communications Act sets out restrictions on the disclosure of information without the consent of the person who provided the information. Any disclosure of information in contravention of that provision is a criminal offence subject to up to two years imprisonment and/or a fine. These restrictions continue to apply once Members have ceased being Members of Ofcom, in relation to information received while they held office. This is in order to avoid the risk that a particular firm might gain an improper advantage over its competitors by employing someone who, in the course of their Ofcom duties, had had access to technical or other information which those competitors might legitimately regard as their own trade secrets, or to information relating to proposed developments in Government policy which may affect that firm or its competitors.

## 3. Interests

- 3.1 The interests of the Member and their close family members must not create any impression that Ofcom’s decision-making processes might be influenced by their personal circumstances.

### Investments in the sectors we regulate

#### Restrictions on direct financial investments

- 3.2 All Members must disclose to the Corporation Secretary details of any direct financial interests they, their partner<sup>1</sup> or dependent children hold in a company in the communications and postal sector. They should do this when they join Ofcom, and whenever they make any changes to their portfolio of interests.
- 3.3 For these purposes a **direct financial interest** is a financial interest:
- **owned directly by a Member**, their partner or dependent children (e.g. shares);
  - **under the control of a Member**, their partner or dependent children (including, for example, financial interests managed on a discretionary basis by a Member or their partner for others); or
  - **beneficially owned<sup>2</sup> by a Member**, their partner or dependent children through an investment vehicle, trust, or other intermediary, when the Member or their partner either controls the intermediary, or has the authority to supervise or participate in the intermediary’s investment decisions.
- 3.4 The following section identifies three categories of company which should guide a Member’s approach to managing their investment portfolio.
- 3.5 All Members, their partners and dependent children are not permitted to hold direct financial interests in companies which fall into **Category (1)** unless permission is granted by the Corporation Secretary (which will be granted only in exceptional circumstances).
- 3.6 All Members, their partners and dependent children may, with the permission of Ofcom, be permitted to hold direct financial interests in companies in **Category (2)** or **Category (3)** if communications or postal activities do not comprise a significant part of the group’s activities. For these purposes, ‘significant’ refers to either or both the degree of influence on the market value of shares (which variations in financial/trading positions and prospects of the communications and postal activities can be expected to have), or the scale of the business of the company in the United Kingdom (e.g. a substantial subsidiary in the United Kingdom of a US-listed company).
- 3.7 If a Member is unsure about how to interpret these guidelines (in particular, which investments fall into which categories) or needs to liquidate any shares they hold in the

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<sup>1</sup> Partners for this purpose are taken to include spouses, civil partners and unmarried partners.

<sup>2</sup> A financial interest is beneficially owned when a Member, their partner or dependent children is not the owner of the interest but has a right to some or all of the underlying benefits of ownership. These benefits include the authority to direct the voting or the disposition of the interest, or to receive the economic benefits of the ownership of the interest.

communications or postal sector to comply with these conditions, they should seek guidance from the Secretary to the Corporation.

## The categories of financial investment

3.8 There are numerous individual companies in the UK communications and postal sectors. Many are subsidiaries of other companies, often with diverse interests. In some cases, participation in these sectors is a major activity; in others, it is less significant. Generally, they fall into three broad categories:

- (1) **Category 1.** Companies for which a significant part of their activity is regulated by Ofcom (excluding those companies which require solely a Wireless Telegraphy licence) in the communications or postal sectors ('Ofcom-regulated companies'). Examples of Ofcom regulated companies are: ITV plc, BSkyB plc, STV Group plc, UTV Media Group plc, Royal Mail plc, BT plc, Vodafone Group plc, TalkTalk Telecom Group plc.
- (2) **Category 2.** Companies which provide an Ofcom-regulated service but where this service forms only a small part of the company's or overall group's activity in the United Kingdom (for example, a major supermarket group (Tesco plc) or football club (Manchester United plc) which also offers telecommunications services as an ancillary part of its business).
- (3) **Category 3.** Other companies that are not regulated by Ofcom but which are involved in the communications or postal sectors, e.g. a publicly-quoted independent producer.

3.9 Guidance on which companies fall into each of these categories can be obtained from the Secretary to the Corporation or the Finance Director. Ofcom maintains a list of organisations which fall into **Category 1**, drawing on the market intelligence we gather on telecommunications operators working under General Conditions, and on Broadcast/Wireless Telegraphy Act licensees.

## Other types of involvement with the sectors we regulate

3.10 A conflict is likely to arise should a Member:

- join the Board of companies in the communications or postal sectors;
- join advisory boards of companies in the communications or postal sectors;
- take up employment with a company in the communications or postal sector;
- undertake consultancy work for a company in the communications or postal sector; or
- join any other body, organisation, charity or group with a clear connection with the communications or postal sectors.

3.11 If a Member plans to take on any of these roles, they should in the first instance refer them to the Secretary to the Corporation who will discuss with the Member and the Chairman whether such engagement is acceptable.



- 3.12 All Members will be asked to declare if their partner is, or becomes, employed by a company in **Category (1)**. Where this is the case Ofcom will discuss with the Member concerned any perceived conflict of interest arising from their partner's such employment, and what action should be taken – which may include advising the Member that they can no longer continue in their role at Ofcom.
- 3.13 The general principle is that engagement or involvement with an Ofcom-regulated company will not be permitted. Engagement or involvement with other communications or postal sector companies will depend on how far the company concerned is concerned in, or affected by, a significant number and/or range of Ofcom Board decisions, coupled with the company's prominence (e.g. if a supplier, whether it is closely tied to an individual Ofcom-regulated company). These factors, taken together, will indicate whether a Member's involvement in the company is acceptable or unacceptable.

## Avoiding other potential conflicts in discussions and decisions

- 3.14 There may be other conflicts that must be dealt with before a Board item can be discussed. Board Members should declare any direct or indirect interests or connections they may have (including investments in Categories 2 and 3). They should declare not only financial interests, but also those which involve any material benefit to either party. Personal friendships, other than mere acquaintances, may constitute a connection, as may the employment of close family members. If in doubt, Board Members are advised to declare the connection in order to give other Board Members the opportunity to determine an appropriate response. A general notification of interest may be given, which would apply to all Board meetings.
- 3.15 Paragraph 17 of Schedule 1 of the Ofcom Act 2002 provides that a person with an interest must not take part in any relevant discussion or decision unless the other Board Members present decide unanimously that the interest is to be disregarded. Decisions on participation must be in favour of the most severe exclusion suggested (for example, if two Board Members are content for the declaring Board Member to participate in a discussion, but not a decision, and the other two wish the declaring Board Member to leave the meeting altogether, the declaring Board Member must leave).

## Register of interests

- 3.16 Ofcom maintains a register of Members' interests which is updated annually. This ensures that Ofcom has a current record of members' interests.
- 3.17 On joining Ofcom all Members must make a declaration of any political interests they may have, or interests they or their spouse/partner or dependent children have, relating to:
- a. office or Board appointments;
  - b. consultancy work and/or employment;
  - c. frequent appearances on TV and radio, or writing newspaper columns;
  - d. relevant financial interests; and
  - e. any public and/or charitable appointments.

3.18 Members will be expected to sign annual declarations that they have no interests which conflict with their duties. Members will also be expected to notify the Corporation Secretary when their interests change, so that the Register can be amended accordingly.

## 4. External communications

### General principle

- 4.1 The conduct of Members when performing duties in a personal capacity or for other organisations can have a bearing Ofcom's reputation for independent and impartial evidenced-based decision making.
- 4.2 The points set out below are designed to ensure that Members' outside interests do not conflict with their duties at Ofcom.

### Relationship with Government

- 4.3 The Secretary of State for the Department for Digital, Culture, Media and Sport ('DCMS') ('the Secretary of State') is responsible for appointing the Non-Executive Members to the Board (known as the 'Members') and for approving the appointment of the Chief Executive. The Secretary of State may also remove Members from office under any of the circumstances listed in Paragraph 2(4) of the Ofcom Act 2002 (bankruptcy, conflict of interest, misbehaviour, or incapacity). Additional members of staff (known as 'Staff Members') may be appointed to the Board by the Members. There may be up to a total of ten Members and Staff Members (together known as the 'Board Members'), with a majority being Members.
- 4.4 Relevant Ministers in the devolved administrations are responsible for appointing nations' Non-Executive Board Members (known as the 'Nations Members'), in accordance with the procedures set out in the relevant Memorandum of Understanding.
- 4.5 Communications between Ofcom and the Secretary of State, or their equivalents in the devolved administrations, will normally be through the Chairman, except where Ofcom has agreed that an individual Board Member should act on its behalf. Nevertheless, an individual Member has the right of access to Ministers on any matter which he or she believes raises important issues relating to his or her duties as Member of Ofcom. In such cases, the agreement of the rest of the Board Members would normally be sought.
- 4.6 The main point of contact between Ofcom and DCMS or the relevant departments in devolved administrations on day-to-day matters will normally be the Chief Executive or other members of staff who are authorised to act on behalf of Ofcom.
- 4.7 Other than in the specific cases set out in the Act where the Secretary of State has power of direction to Ofcom, Ofcom is independent of Government. Ofcom will always remain sensitive to Government policy in the communications and postal sectors, but will exercise its duties only in accordance with its statutory powers.

## Public speaking or appearances on television, radio, online, in print

### On behalf of Ofcom

- 4.8 As a general principle, it will usually be the Chair or Chief Executive who speaks in public on behalf of Ofcom.
- 4.9 From time to time, other Members may also be asked to speak at stakeholder or industry events on Ofcom's behalf, and they should take particular care about any invitation to speak publicly, including speaking to journalists, in the capacity of a Member of Ofcom.
- 4.10 In any such instance, Members should consult the Secretary to the Corporation and the Communications Director as appropriate, and in all cases should not express views at variance from agreed Ofcom policy or give rise to the perception of political bias, partisanship or decision making.
- 4.11 Members should also avoid publicly stating their personal opinions on matters where Ofcom policy has not been determined, but is pending, or where Ofcom's reputation may be harmed.

### In a personal capacity on matters unrelated to Ofcom

- 4.12 Members are not restricted outright from access to the media in their personal non-Ofcom capacity, or in pursuit of a professional interest, for example as performers, experts, critics, or commentators. Appearances on television or radio, the production of television or radio programmes and the writing of online, newspaper or magazine columns/blogs or contributions to social media (e.g. Twitter, Facebook, LinkedIn and Google etc.) (together, the 'permitted activities') by Members is not prohibited outright.
- 4.13 Personal views may be expressed so long as the Member makes clear that he or she is speaking or writing in a purely personal capacity, and stating his or her own private opinion on matters outside Ofcom's range of responsibilities or on matters of public and political controversy that relate to them.
- 4.14 Where Members choose to express their personal views, we will rely on their good judgement; our expectation is that they should do this with caution. For example, comments which might be thought to have an adverse impact on Ofcom's reputation (noting that all comments or posts on social media should be considered to be in the public domain), and comments on Ofcom policy, should be avoided. So should expressions of opinion on matters of political or public controversy which could be thought to compromise the Board's reputation for impartiality on editorial or other decisions in the broadcasting sphere, or its objectivity in economic regulatory decision-making.
- 4.15 In support of the above, and specifically in relation to any proposed online, newspaper and magazine articles, Members will be invited to draw such articles to the attention of the Secretary to the Corporation and the Communications Director, and they should do the same regarding any proposal to appear on, or be involved in, the production of television or radio programming. This will enable a discussion about whether such engagement is acceptable.

## Attending conferences

- 4.16 All invitations to attend or speak at industry or stakeholder events should be referred first to the Chief Executive, or in his/her absence the Communications Director, for advice. Care must be taken to ensure there is appropriate Ofcom representation at events, and that Members are properly briefed in advance of attending.

## Gifts and hospitality

### Gifts

- 4.17 It is Ofcom policy not to accept, provide or receive gifts either from an individual or an organisation. If an individual or organisation insists on making a gift, and its value is greater than £10, it should be donated to a charity of Ofcom's choice. Gifts of less than £10 in value may be accepted.
- 4.18 All gifts with a retail value of more than £10 must be declared and recorded on the Gifts and Hospitality Register.

### Hospitality

- 4.19 The problems and advantages associated with the acceptance of hospitality vary widely across the industries subject to regulation by Ofcom.
- 4.20 There should be a presumption against accepting offers of hospitality from those organisations that Ofcom regulates. The burden falls to the Member to explain why an offer of hospitality should be accepted.
- 4.21 Members and senior colleagues should seek the advice of the Chairman, Chief Executive or Secretary to the Corporation, and should consider the following broad guidelines which may be of help in assessing the relative merits of accepting an invitation:
- i) **Category 1:** Event-based hospitality that presents networking opportunities with Ofcom's stakeholders, and which might therefore inform or promote the work of Ofcom, may be acceptable. An example would be attendance at an industry awards dinner.
  - ii) **Category 2:** Work-related hospitality from a single stakeholder or licensee is acceptable where it can clearly be seen to be of value to Ofcom's work and to the wider industry in question. A working lunch may be an example.
  - iii) **Category 3:** Hospitality that benefits the recipient personally should be politely declined if it is difficult to justify the benefit to Ofcom, or if there is a risk of perceived bias or malign comment. An example would include invitations by Ofcom stakeholders to cultural or sporting events, such as the offer of tickets to the BBC Proms, or to the FA Cup final, or to a concert at the O2 Arena.

## Register of gifts and hospitality

- 4.22 Ofcom will keep a publicly-available register of gifts and hospitality in which, for purposes of accountability and consistency, all relevant hospitality received or given by Board Members and senior colleagues should be logged.
- 4.23 This register is published on the Ofcom website. Members are required to inform the Secretary to the Corporation of all hospitality and gifts given or received.
- 4.24 The Secretary to the Corporation is able to give Members advice on relevant offers of gifts and hospitality. Those that are accepted by Members should be drawn to the attention of the Secretary, who will regularly update the register of gifts and hospitality. This process is not intended as a censoring mechanism; it is primarily to ensure an appropriate level of Ofcom representation at events or functions, and also to ensure that there can be no suggestion of actual or perceived bias towards any particular stakeholder.

## Political activities

- 4.25 To comply with Ofcom's status as independent of Government, it is inappropriate for any Member to engage in active politics.
- 4.26 This includes membership of the House of Commons, the Scottish Government, Welsh Assembly, Northern Ireland Assembly or the European Parliament; seeking adoption or selection as candidates or prospective candidates for those bodies; membership of local authorities; being candidates for election to local authorities other than parish councils; acting as a party spokesman in the House of Lords (however, taking a party whip and engaging in debates in areas outside the scope of Ofcom's activities are acceptable); active political campaigning in support of a political party; and making a donation or donations to a political party in a calendar year in excess of £7,500.
- 4.27 Members are asked, if in doubt, to consult the Chairman.

## Dealing with stakeholders during purdah periods

- 4.28 Members and senior colleagues should avoid visiting and/or socialising with stakeholders during 'purdah' periods – that is, where a significant decision involving or affecting that stakeholder is imminent.

## 5. Other matters

### Criminal and civil liability

- 5.1 Although any legal proceedings initiated by a third party are likely to be brought against Ofcom as a corporate entity, in exceptional cases proceedings (civil or, in certain cases, criminal) may be brought against the Chairman or other individual Members. For example, a Board Member may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party. A Member may also be liable for breach of confidence under common law or under insider dealing legislation if he or she misuses information gained by virtue of his or her position.
- 5.2 However, individual Members who act honestly, reasonably and in good faith and without negligence will not have to meet any personal civil liability that is incurred in execution or purported execution of their Ofcom duties. Ofcom will indemnify Members against claims in these circumstances.

### Concerns about malpractice

- 5.3 If a Member wants to raise a concern about malpractice, they should in the first instance raise their concerns with the Chair or Deputy Chair as appropriate.

### Security policy

- 5.4 Board Members are asked to read and comply with Ofcom's Security Policy. This policy covers a number of areas, including acceptable use of information systems, information security, retention and disposal of information, dealing with third parties and premises security.

### Exit restrictions

- 5.5 On termination of office, Members must return to Ofcom all property (including, but not limited to, documents and software, credit cards, computer equipment, keys and security passes) belonging to Ofcom.

### Expenses

- 5.6 Travel and other expenses are recoverable only if the expenditure is reasonably and necessarily incurred on behalf of Ofcom in accordance with Ofcom's expenses policy.
- 5.7 A laptop and printer will be supplied to those Members who need them for receipt of Ofcom papers and related work. These remain the property of Ofcom.

## **Data protection**

- 5.8 For the purposes of the Data Protection Act 1998 (as amended), Members give their consent for all purposes to the holding, processing and accessing of personal data about them held by Ofcom.