

**MINUTES OF THE TWO HUNDRED AND FORTY-NINTH MEETING OF
THE OFCOM BOARD HELD ON 27 FEBRUARY 2018**

Present

Terry Burns	Chairman
Sheila Noakes	Deputy Chairman
Sharon White	Chief Executive
Bob Downes	Member
Graham Mather	Member
Jonathan Oxley	Executive Member and Group Director, Competition
Nick Pollard	Member
Tim Suter	Member
Steve Unger	Executive Member and Group Director, Strategy, International, Technology and Economists

Apologies

Ben Verwaayen	Member
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In attendance

Alison Crosland	Group Director, Corporate Services Group (minute 12)
Kevin Bakhurst	Group Director, Content Media Policy (minutes 20-23)
Philip Marnick	Group Director, Spectrum (minutes 16-19)
Polly Weitzman	General Counsel
Steve Gettings	Corporation Secretary
Jenny Leyland	Assistant Secretary to the Corporation

Other Ofcom Colleagues

Declaration of Members’ Interests – oral

1. There were none to report.

Chairman’s Introduction – oral

2. The Chairman welcomed Bob Downes to his first Board meeting following his appointment as Board Member for Scotland with effect from 1 February 2018. It was hoped that the Board Member for Wales would be appointed by autumn 2018. The timing of the appointment of a Board Member for Northern Ireland was uncertain given the current position with the devolved government in Northern Ireland.

Minutes of the meeting held on 16 January 2018 matters arising – Board Minutes 248(18)

3. The minutes of the Ofcom Board meeting held on 16 January 2018 were **APPROVED** for signature as an accurate record. There were no matters arising. The Chairman asked that in future the minutes should record in greater detail the matters discussed at the Board, with more emphasis on the

discussions that had taken place in reaching the Board's position and any action points.

Chief Executive's Report – Board Paper 18(18)

4. Sharon White presented her report which included key developments since the last Board meeting. These included the following:

- 4.1 Market developments: Openreach had announced an acceleration of its full-fibre programme, planning to reach three million premises by the end of 2020 and 10 million premises by the mid-2020s. However, the latter commitment was contingent on action by Government and also by Ofcom on the regulatory side. Virgin had announced in its Quarter 4 results that it had reached 1.1 million premises as part of its 'Project Lightning', which was aiming to bring full-fibre and cable to four million premises.
- 4.2 Wholesale Local Access (WLA) Market Review: Ofcom's draft statement – for consultation with the European Commission - on the WLA Market Review was published on 23 February 2018, setting out a package of measures intended to encourage further investment in full-fibre networks.
- 4.3 Comcast bid for Sky: Earlier in the day Comcast had announced a potential takeover bid for Sky. The Competition and Markets Authority was due to publish final findings on the Fox/Sky deal on 1 May 2018 and the Secretary of State would then have until 14 June 2018 to decide on the proposed merger.
- 4.4 BBC: Reference was made to the Ofcom review to be published later in the year looking at the extent to which the BBC reflects the diversity of the UK in its programming. This would look at the links between off screen diversity and on-screen representation. The Board stressed that the present debate about the gender pay gap at the BBC was the responsibility of the BBC Board, not Ofcom.
- 4.5 Public Service Broadcasting (PSB): The Board was briefed on the key themes that Sharon White intended to cover in her speech on PSB at the Enders Conference on 8 March 2018. A document would be published to accompany the speech entitled "Public Service Broadcasting in the Digital Age: Supporting PSB for the next decade and beyond".
- 4.6 Royal Mail Competition Investigation: An update was given on Ofcom's investigation into Whistl's claim that Royal Mail abused its dominant position when setting 'access' charges payable by other postal operators. Reference was made to the length of time the investigation had taken to complete and the reasons for that.
- 4.7 Litigation Update: The Board was updated on a number of recent developments. Consideration was being given to how the current litigation culture might be changed. Sharon White and the Secretary of State for Digital, Culture, Media and Sport had jointly hosted a meeting of industry Chief Executives on 22 February 2018 to encourage a change of culture within the industry.
- 4.8 Corporate Matters: The ongoing refurbishment of Riverside House was currently on time and on budget. Reference was made to two new leadership training programmes which had been launched with high interest among colleagues.

Report from the Chairman of the Content Board – oral

5. Nick Pollard provided his report as Chairman of the Content Board. He updated the Board on the recruitment process for new Content Board Members for Northern Ireland and Scotland.

6. Matters discussed at the Content Board on 30 January 2018 had included a proposed

consultation on whether the rules set out in the Broadcasting Code on the use of a mandatory PIN system (or “digital watershed”) should be revised. The Board was also updated on the work being done on the review of PSB prominence on electronic programme guides (EPG).

Reports from other Non-Executive Members – oral

7. Graham Mather referred to a recent catch up meeting with Ofcom’s Group Director, Consumer (Lindsey Fussell) where they had discussed whether the proposed broadband USO of 10 Mbit/s would meet consumer expectations in the future.

8. A question was raised as to whether there would be a further discussion of Graham Mather’s report on his stakeholder interviews (circulated for the December 2017 Board meeting for initial discussion). Steve Gettings would discuss timing with the Chairman.

Government and Parliamentary Update (oral) and Brexit Update – Board Paper 19(18)

9-11. The Board was provided with an update on Ofcom’s Brexit work programme. *[Withheld from published minutes.]*

Budget and Work Programme 2018/19 – Board Paper 20(18)

12. The Interim Finance Director presented the proposals set out in Board Paper 20(18) for the 2018/19 budget. The Board provided comments as follows.

12.1 Government has asked Ofcom to take on additional responsibilities for delivering a broadband universal service obligation and for cyber-security. Discussions were ongoing with DCMS and Treasury about an increase in Ofcom’s budget cap to meet the additional costs this work would involve. The executive was asked to reflect on how the funding for the additional work would be raised if the agreement on the cap came after March 2018 when the budget for 2018/19 was finalised and the tariffs set based on that budget.

12.2 The draft budget for the costs of the refurbishment of Riverside House. *[Withheld from published minutes.]*

12.3 The proposed central contingency was £460k. It was mentioned that this was a low figure.

12.4 A request was made that in future the draft budget proposals should be presented in a way that sets out the work that Ofcom must do and areas where there is discretion to decide not to do something.

13. The Board would be asked to approve the budget at the 20 March 2018 meeting.

Dark Fibre Statement – Board Paper 21(18)

14. In November 2017 Ofcom published a consultation setting out proposals to impose on Openreach a restricted dark fibre access remedy (limited to services at and below 1Gbit/s) covering the period to 31 March 2019. This consultation was discussed at the Board meeting in November 2017. Consultation responses and engagement with stakeholders had revealed less interest than anticipated in a restricted dark fibre product, with telecoms providers largely interested in a dark fibre service which would be available at higher bandwidths. Some of the interest expressed was linked to the availability of a future unrestricted dark fibre product.

15. The Board **APPROVED** the recommendation not to impose a dark fibre remedy at this time, noting that the statement would make clear that Ofcom believes that a future dark fibre remedy

consistent with industry requirements could be an important part of Ofcom's action for promoting competition.

Award of 2.3 GHz and 3.4-3.6 GHz Spectrum by Auction – Board Paper 22(18)

16. Earlier in the day Ofcom had published the names of the six companies who had qualified to take part in the 2.3 GHz and 3.4-3.6 GHz spectrum auction. The Board was provided with an update on the auction, aims, design, operational readiness and the timetable.

Mobile Coverage Update – Board Paper 23(18)

17. The Board considered a paper which set out proposals for 700 MHz coverage obligations prior to a consultation on them being issued in March 2018. The paper also set out next steps for further improving mobile coverage throughout the UK including options for further public subsidy.

18. During discussion reference was made to the Scottish Government's 4G Infill Programme and the team confirmed that they had a good working relationship with the 4G Infill Programme team. Reference was made to the potential revenue trade-off between conditions imposed in a licence award to achieve coverage obligations and the level of auction receipts. A point was made about the importance of decisions being based on a robust cost benefit analysis.

19. General Counsel advised on the legal position in relation to Ofcom's statutory duties including ensuring the optimal efficient use of spectrum and encouraging the wide availability of services for the benefit of consumers and citizens. Ofcom was not required to have regard to maximising revenues generated by spectrum auctions. The team was asked to ensure ahead of publication of the proposals for 700 MHz coverage obligations that the Treasury was aware of what was proposed.

BBC Scotland Competition Assessment – Board Paper 24(18)

20. The Board was updated on the competition assessment being undertaken in respect of the BBC's proposals for a new television channel in Scotland, and the provisional view reached that the public value of the proposal justified any adverse market impact. The Board noted general observations to be made to the BBC, as set out in the paper. These included that the BBC's assessment could have taken greater account of the knock-on effects of the launch of the new service and that, in the interests of transparency the BBC should have published a non-confidential version of its market impact assessment alongside its final proposals.

BBC Commercial Activities: Proposal to Merge BBC Studios and BBC Worldwide – Board Paper 25(18)

21. Introducing the paper, it was noted that Ofcom's role in relation to the BBC's commercial activities is determined by the Charter and Agreement and is to regulate competition issues concerning the boundary between the UK Public Service and the commercial activities. A number of potential competition concerns had been identified resulting from the BBC's proposal to merge BBC Studios and BBC Worldwide. The principal concern was that there could be a loss of transparency over the financial flows and in reporting financial performance. To address these concerns before the merger takes place Ofcom was seeking voluntary commitments from the BBC; to be agreed with Ofcom and published before the BBC could proceed with the merger.

22-23 [Withheld from published minutes.]

Board Forward Agendas – Board Paper 26(18)

<p>24. The Board reviewed the latest iteration of the Board forward agendas plan and were content.</p>	
<p><u>Sector Briefing: The Role of Public Service Broadcasting News in an Evolving Landscape – Board Paper 27(18)</u></p>	
<p>25. The Board discussed a briefing on the role of public service broadcasting news in an evolving landscape.</p>	
<p><u>Delegated Authorities Framework: Broadcast Licensing Decisions – Board Paper 28(18)</u></p>	
<p>26. The Board APPROVED the proposed changes to the Delegated Authorities Framework, as recommended in Board Paper 28(18).</p>	
<p><u>Information items</u></p>	
<p>27. The following information papers were noted without comment:</p> <ul style="list-style-type: none"> - Update on the Sustainability of the Universal Postal Service – Board Paper 29(18) - Arqiva Update – Board Paper 30(18) - Management Information Report – Board Paper 31(18) - Minutes of the Advisory Committee for England (27 September 2017); Advisory committee for Northern Ireland (5 October 2017); Advisory Committee for Scotland (14 September 2017); Advisory Committee for Wales (26 September 2017); Nations Committee (17 October 2017); Risk and Audit Committee (16 October 2017); Ofcom Spectrum Advisory Board (29 January 2018); CCP/ACOD (14 December 2017); Content Board (12 December 2017). 	
<p><u>Any Other Business</u></p>	
<p>28. There was none.</p>	
<p><u>Date of the Next Meeting</u></p>	
<p>29. The next scheduled Board meeting will be held on Tuesday, 20 March 2018.</p>	