

**MINUTES OF THE TWO HUNDRED AND SEVENTY-EIGHTH MEETING OF  
THE OFCOM BOARD HELD ON 9 DECEMBER 2020  
MEETING HELD VIRTUALLY VIA MICROSOFT TEAMS**

**Present**

Terry Burns	Chair
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
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:**

David Clarkson (minutes 29-31)  
 David Matthew (minutes 29-31)  
 Mark Bunting (minutes 32-34)  
 Katie Pettifer (minutes 32-34)  
 Richard Wronka (minutes 32-34)  
 Kate Davies (minutes 32-37)  
 Yih-Choung Teh (minutes 35-37)  
 Adam Baxter (minutes 38-39)  
 Sian Bundred (minutes 38-39)

**Declaration of Members' Interests – oral**

1. No new declarations of interest were notified.

**Chair's Introduction – oral**

2. The Chairman welcomed all to the meeting.
3. Ofcom Interim Chair: The Secretary of State had approved the appointment of Maggie Carver as Ofcom Interim Chair with effect from 1 January 2021 for a period of up to six months or until a new Chair was appointed. The letter from the Secretary of State said that

the DCMS Public Appointments Team would soon be launching a recruitment campaign to appoint a new Chair of Ofcom and it was hoped that they would be in post early in 2021.

4. Board events: Following a risk assessment undertaken in light of COVID-19 pandemic restrictions, it had been decided that the Board working lunch which was due to take place on 14 December 2020 would instead be a virtual meeting. The Board and certain Members of the Senior Management Team would be hosting a virtual Northern Ireland stakeholders meeting between 5pm and 7pm on 16 December 2020, which would comprise a “showcase” session with external speakers and a roundtable discussion with Northern Ireland stakeholders.

5. Channel 4 Corporation - Deputy Chair Appointment: The tenure of the current Channel 4 Deputy Chair was due to expire on 10 June 2021. In accordance with the revised Cabinet Office guidance, this had been drawn to the attention of DCMS in July 2020, following which various discussions had taken place with departmental officials. Given the need to allow enough time for DCMS to consider and consult with departmental Ministers and, where appropriate, the Cabinet Office and Government, the Board would be asked to approve by written resolution a recommendation to the Secretary of State for DCMS Chris Holmes’s reappointment as Deputy Chair of Channel 4.

6. Advisory Committee for Scotland Member’s Interest: The Code of Conduct for the Advisory Committees states (paragraph 3.14) that “Under no circumstances should Members, during their term of office, trade in investments in organisations that Ofcom regulates”. A case was put to the Board and the Board **AGREED** that an exception should be made to permit a member of the Advisory Committee for Scotland (ACS) to divest shares held in STV in full around March or April 2021, on an exceptional basis, due to personal circumstances. In the meantime, the Advisory Committee Member would be recused from any ACS business where STV was being discussed. The Board noted the “hold or divest” approach adopted by Ofcom and the thoroughness of the process of checking potential conflicts of interest during the appointment process for non-executives and executives. The Board also noted that there was a process in place for considering exceptions being made to what could appear to be rather draconian restrictions. The Board **ASKED** the Corporation Secretary to review the Codes of Conduct to see whether there were any restrictions relating to financial interests in the various Codes of Conduct which could be relaxed, appreciating that individual Members and Ofcom were required to maintain a reputation for impartiality, integrity and high professional standards and abide by the seven principles of public life (the “Nolan” Principles). Reference was made to the next review of interest declarations to be made in respect of Ofcom’s Non-Executive directors in 2021 which would take account of companies that Ofcom would be regulating as a result of potential new responsibilities in relation to online harms.

7. Tribute to Terry Burns: The Board noted that this was Terry Burns’ last Board meeting as Chair of Ofcom. On behalf of the Board and all at Ofcom, Maggie Carver expressed deep gratitude for everything Terry had done for the organisation and indeed for the communications sector. His intellect, diligence, love of evidence-based decision making, background in the media, in economics and in the Civil Service, his political nous and superior judgement, and his genial nature had all made Terry a hugely successful, much respected and popular Chair of Ofcom. Added to that, Terry had been a tower of strength for those Ofcom Chief Executives who had served during his tenure, as well as Ofcom colleagues more generally. He had guided Ofcom through a period of considerable change with major policy work on broadband, mobile, spectrum, public service broadcasting, cyber security and online harms. The past year had been particularly challenging with the COVID pandemic, albeit this had not deterred Ofcom, it successfully having switched to virtual working, including virtual Board and Committee meetings.

Maggie commented that, since she had joined the Board in 2018, she had noticed how Ofcom had grown into a more forward-looking organisation, confidently striding into the future. In responding to the tribute Terry referred to how much he had enjoyed his time as Chair of Ofcom and key to that had been the endless challenge and interest of the subject matters coming before both him and the Board. He considered his time as Ofcom Chair to have been time well spent and he valued how well the Board had worked together and the quality of the discussion at Board meetings.

#### **Board & Committee Evaluation Review Proposals for 2020/21 – Board Paper 93(20)**

8. The Board considered the proposed approach to be taken for the Board and Committee Evaluation Review for 2020/21. Following discussion, it was **AGREED** that, given a new permanent Chair was to be appointed in early 2021, an externally facilitated Board and Committee Evaluation Review in March 2021 was unlikely to add any value and that, instead, a light touch and internally led review be conducted for 2020/21. The Board acknowledged that, for 2021/22, once the new Chair was established in post, it might be appropriate to consider a more substantive externally facilitated review.

#### **Minutes of the meeting held on 18 November 2020 and Matters Arising – Board Minutes 277(20) and Note of Action Points**

9. The minutes of the Ofcom Board meeting held on 18 November 2020 were **APPROVED** for signature by the Chair as an accurate record.

10. 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 95(20)**

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

12. Fibre Investment: Melanie's fibre investment speech to the FTTH Fibre Summit had been broadcast on 3 December 2020. The speech confirmed the continuity in Ofcom's approach and the investment case for full fibre. Several investor briefings were also being held.

13. Public Service Broadcasting (PSB): Since the last Board meeting in November, Ofcom had published the Diversity in Broadcasting Report, the Third Annual Report and Performance Report on the BBC, and more recently, on 8 December 2020, the "Small Screen: Big Debate" Consultation on the Future of Public Service Media. The Board recorded congratulations to all colleagues involved in producing what had been some substantial work.

14. Online Harms and Digital Regulation: The Government's full response to the Online Harms consultation had begun its internal cross-Government clearance process and was likely to be published in mid-December. The DCMS Spending Review settlement for 2021/22 was understood to include less than half the amount the Department had requested for online harms work. Discussions were ongoing with DCMS to understand the implications for Ofcom with regard to the set-up funding for online harms regulation during 2021/22. Reference was made to Government wishing to apply spending controls to all Arm's Length Bodies in central government, which would include Ofcom. The Board noted that Ofcom would need to engage

with that process. The Board further noted the importance of Ofcom having enough resources to deliver its responsibilities effectively and to retain its position as an independent regulator.

15. On 27 November 2020, the Government had announced the establishment of a Digital Markets Unit (DMU) and allocated funding for it to the Competition and Markets Authority (CMA). This formed part of the Government's response to the CMA's market study on online advertising. On 8 December 2020, the Digital Markets Taskforce, led by the CMA but in partnership with the Information Commissioner (ICO) and Ofcom, had published its advice to Government on how the DMU should be set up, and how it should work with other regulators. The European Union was expected to publish their Digital Strategy before the year end.

16. Radio Sector: The Board was updated on a recent meeting with the Radiocentre and on issues of concern to them. DCMS had established a working group to look at the future of the radio and audio industry, with a report expected during 2021. The working group would look at the scope for further deregulation of the industry as part of that review.

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

#### **Executive Director Updates – oral**

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

19. Lindsey Fussell reported that the Telecoms Security Bill had been introduced into Parliament on 24 November 2020 and the legislation was expected to come into force in October 2021. Preparations for taking on the new responsibilities for Ofcom under that legislation would be an area of focus for Ofcom's Networks and Communications Group in the coming months.

20. Bob Downes referred to the percentage of households who relied on mobile handsets and did not have a landline and for whom mobile had become a utility. He expressed a concern about the varying approaches taken in different parts of the UK during the COVID-19 pandemic with regard to whether mobile phone shops could remain open. Lindsey Fussell undertook to look into the matter and to provide Bob Downes with a status update.

21. Martin Ballantyne provided an update on a current litigation case.

22. The Board **NOTED** the oral reports provided by the Executive Directors.

#### **Report from the Chair of the Content Board – oral**

23. Tim Suter reported on matters discussed at the Content Board meeting held on 24 November 2020. This had been the first meeting involving the six new members whose appointments had been approved at the 21 October 2020 Ofcom Board meeting. The Content Board on 24 November 2020 had provided comments on the preface to the "Small Screen: Big Debate" consultation document. There had also been some discussion of the approach being taken to the regulation of Video Sharing Platforms. The Content Board had also agreed the paper which was for discussion later in this meeting on key themes and emerging lessons from the Content Board's input to editorial standards work (minute nos. 38-39 refer).

24. The Board **NOTED** the oral update provided by Tim Suter on the Content Board.

**Report from the Chair of the Risk and Audit Committee – oral and Board Papers 95(20) and 96(20)**

25. Angela Dean reported on matters discussed at the Risk and Audit Committee meeting held on 2 December 2020. The Committee had received a briefing on Ofcom’s work on cyber security. During a private session with the internal auditors, Deloitte, the Committee had agreed that Deloitte should undertake an internal audit of Ofcom’s approach to cyber security and its resourcing, with a final report to be reviewed by the Risk and Audit Committee at the June 2021 meeting. The Committee had approved the Internal Audit Plan for the second half of 2020/21 and had an initial look at the areas to be covered in the 2021/22 Internal Audit Plan. The Committee had approved a paper setting out the proposed approach and governance milestones for the 2020/21 Ofcom Annual Report and Accounts. The aim was to make the report shorter than last year; to continue to improve the approach to the accessibility and readability of the online content; and to advance Ofcom’s reporting on outcomes.

26. Angela Dean referred to the Strategic Risk Register, which had been circulated as Board Paper 95(20). The Risk Register had been reviewed by the Risk and Audit Committee at its meeting on 2 December 2020. The Policy and Management Board (PMB) would review Ofcom’s risk appetite statements in January 2021 ahead of the annual review by the Board in spring 2021. PMB would also consider the alignment of risk appetite and risk targets within the risk registers. The Board welcomed the additional columns which had been included in the latest iteration of the Strategic Risk Register. Following discussion, including reference to the potential implications of Brexit for security issues and the supply of information, the Board **NOTED** the Strategic Risk Register, as set out in Board Paper 95(20).

27. The Board **NOTED** the annual update on the status of Major Incident, Business Continuity Planning and Crisis Management (“Resilience”), as set out in Board Paper 96(20). The paper had been reviewed and noted by the Risk and Audit Committee at its meeting on 2 December 2020. The Committee had also approved an updated Resilience Policy.

28. The Board **NOTED** the oral update on the Risk and Audit Committee.

**Wholesale Fixed Access Telecoms Market Review 2021-2026: Final Decisions – Board Paper 97(20)**

29. Introducing this item, Lindsey Fussell provided the context that this was a significant moment as the programme of work on the Wholesale Fixed Access Telecoms Market Review (WFATMR) had had its genesis in the 2016 Digital Communications Review which had recognised the strength of the case for full fibre investment. The last of the consultations relating to the WFATMR had closed on 8 December 2020. The final key policy decisions which Ofcom expected to set out in its final statement, as approved by PMB on 26 November 2020, were set out in Board Paper 97(20). The final statement was due to be published in March 2021.

30. The Board discussed the approach to be taken to reflecting in the statement the reassurance provided to the investment community in Melanie Dawes’s speech to the FTTH Fibre Summit (minute no. 12 refers). The Board was updated on and discussed the current perspectives of the key market players and investor sentiment. The Board also discussed the potential future impact on retail prices. Lindsey Fussell and the team undertook to have a separate discussion with Bob Downes and David Jones on the implications of the WFATMR for the devolved administrations.

31. The Board **NOTED**:

- the key decisions that Ofcom expected to set out in a statement, as agreed by PMB;
- the key risks and outstanding issues;
- the plan to publish that statement in March 2021, setting out decisions on relevant markets, where there was a finding of significant market power (SMP), remedies and SMP conditions;
- that PMB had delegated final sign-off of the document to Lindsey Fussell, Luisa Affuso and Martin Ballantyne; and
- the intention to bring a further paper to the Board in February 2021, in advance of final publication, focusing on progress made by key market players and investor sentiment at that stage.

**Online Harms External Engagement and Regulatory Strategy – Board Paper 98(20)**

32. The Government’s full response to the Online Harms White Paper consultation was expected to be published in mid-December, confirming Ofcom as the new online harms regulator and setting out the Government’s final policy positions on the shape and nature of the regime. As noted earlier in the meeting (minute no. 14 refers), there was currently uncertainty about Ofcom’s funding for online harms work in 2021/22. Ofcom was likely to receive significantly less funding in 2021/22 than envisaged in the outline business case agreed with DCMS and HMT, and discussions were ongoing with DCMS to understand the implications of that. Ofcom had received a pre-publication draft of the Government’s full response and the Board was updated on key issues and on Ofcom’s external engagement plan.

33. Issues covered during Board discussion included Ofcom’s plans for media literacy work in the context of online harms; the risks to be aware of during the pre-legislative period; the need to have regard to the approach being taken in Europe and internationally; the relationship between Westminster legislation on the online harms framework and devolved responsibilities, for example, child protection; the need to be clear that unlike with broadcasting regulation, Ofcom would not respond to individual complaints in relation to online harms; and the “safety by design” approach that companies would be encouraged to adopt.

34. The Board **NOTED** the update provided in Board Paper 98(20) and orally at the meeting.

**Digital Regulation Cooperation Forum and Digital Markets – Board Paper 99(20)**

35. The Digital Regulation Cooperation Forum (DRCF) was established in July 2020, with a membership comprising the CMA, the ICO and Ofcom. Board Paper 99(20) provided an update on developments since then. This included the recent decision to step up joint working between the CMA, the ICO and Ofcom through the Forum and the request received from the Secretary of State for input from the DRCF on how it could support inter-regulatory cooperation and on whether legislation was needed to deliver on its goals.

36. During discussion, issues raised included the need to avoid being too UK focused; a need for clarity about the problem Government was seeking to solve, for example, the issue being companies’ behaviour and potential economic harms rather than there being a “digital market” that could be defined; the value of economies of scale; whether a distinction could be made between “digital markets” and “online harms” when the underlying concern was addressing potential consumer harms; the role of the newly established DMU within the CMA; the extent of

Ofcom's role in the DRCF; the risk that by the time legislation was laid the world would have moved on given the fast pace of change; and how the three regulators within the DRCF would work together, where appropriate, for example to avoid duplication, whilst focusing on their respective responsibilities.

37. The Board **NOTED** the update provided in Board Paper 99(20) and orally at the meeting.

**Key Themes and Emerging Lessons from the Content Board's input on Editorial Standards Work – Board Paper 100(20)**

38. Board Paper 100(20) provided an update on key themes and emerging lessons from the Content Board's editorial standards work between 1 April 2020 and mid November 2020. The paper reviewed trends in recent complaints figures, with comparisons over time; and identified the key trends shown by the complaints Ofcom had received and from Ofcom's broadcast standards enforcement work in general. During discussion, an update was provided on the changes being made to the process for dealing with complaints handling to make it more streamlined and efficient.

39. The Board **NOTED** the update provided in Board Paper 100(20) and orally at the meeting.

**Review of the Corporate Governance Framework, including Delegations, Matters Reserved to the Board, Committee Terms of Reference the Financial Authorities Framework – Board Paper 101(20)**

40. The Board:

- **APPROVED** the proposed revisions to the Corporate Governance Framework attached as an Appendix to Board Paper 101(20), which incorporated Ofcom's Delegations Authority Framework, the Terms of Reference of Board Committees, Matters Reserved for the Board and the Financial Authorities Framework (the latter having been recommended for approval by the Risk and Audit Committee on 2 December 2020); and
- **NOTED** that a further review of Ofcom's Corporate Governance arrangements would be undertaken once there was greater legislative clarity about Ofcom's role in online.

**Information Items**

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

- Board Work Programme/Forward Agendas – Board Paper 102(20).
- Minutes of the Communications Consumer Panel/ACOD (meeting held on 15 October 2020).

**Any Other Business**

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

**Date of the Next Meeting**

43. The next scheduled Board meeting will be held on Wednesday, 10 February 2021.