

**MINUTES OF THE TWO HUNDRED AND EIGHTY-SIXTH MEETING OF
THE OFCOM BOARD HELD ON 21 JULY 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
Ben Verwaayen	Non-Executive Member

In attendance

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

Other Ofcom colleagues:

Melissa Tatton (items 6 & 10)
Yih-Choung Teh (items 6 & 10)
Iqbal Marikkar (item 6)
Simon Redfern (item 10)
David Clarkson (item 11)
Fergal Farragher (item 11)
Philip Marnick (item 11)
Helen Yu (item 11)
Cristina Data (item 11)

Item 1: Declaration of Members' Interests – oral

1. Church of England Racial Justice Commission: Melanie Dawes had been invited by the Archbishop of Canterbury to join his Racial Justice Commission as one of 12 Commissioners. The Commission would scrutinise the Church of England's policies, practices and culture in relation to racial justice. This was a voluntary, unpaid role, with a time commitment of 12-18 days a year for three years starting in September 2021. The Board congratulated Melanie on the appointment and **NOTED** that the new role would not give rise to a conflict of interest with her role as Chief Executive of Ofcom.

Item 2: Chair's Report

2. Recent Engagements: Maggie Carver reported on a recent meeting with ITN's Chief Executive, Deborah Turness and also the Editors of ITV News and Channel Four News.
3. Non-Executive Ofcom Board Appointments: The draft job specification for the current vacancy on the Ofcom Board and a note from the General Counsel which set out the legal position regarding appointments to both the Ofcom Board and the Content Board had been shared with Board Members via the Board Diligent portal. Maggie Carver provided an update on the recruitment process for the current vacancy on the Ofcom Board and on recent engagement with DCMS on this role. A Statutory Instrument (SI) was needed to commence the recruitment process for the Board Member for Northern Ireland, and the SI was expected to be laid shortly. Scottish Ministers had approved the extension of Bob Downes' term as Member for Scotland and consultation was now taking place with DCMS. *[Withheld from published minutes.]*
4. Channel 4 Corporation (C4C) Appointments: DCMS had confirmed that the recruitment process, which had been paused pending the appointment of an Ofcom Chair, could go ahead with the Interim Chair chairing the Recruitment Panel (the Panel would also comprise of the C4C Board Chair and two Independent Panel Members). A complication was the possible outcome of the Government consultation on the potential privatisation of Channel 4 leading to a change of ownership, with the prospect that new appointees might serve shorter terms and in different circumstances than otherwise envisaged. Previous applicants would be contacted to check that they wished to continue to be considered for the vacancies. DCMS had asked that a new desirable criterion be added for all three roles but more particularly the Finance and Strategy role, namely expertise and experience to help steer Channel 4 through privatisation in the event of that outcome. The Chair commented that, as part of the independent recruitment process Ofcom would run, consideration would need to be given to the request made by DCMS for this desirable criterion at the sifting stage, but also to the expertise Channel 4 needed currently. Jacqui Gregory advised that discussions on this were ongoing with DCMS officials and updated the Board on next steps.

Item 3: Minutes of the meetings held on 23 June 2021 and 8 July 2021 and Matters Arising – Board Minutes 284(21) and 285(21) and Note of Action Points

5. The minutes of the Ofcom Board meetings held on 23 June 2021 and 8 July 2021 were **APPROVED** for signature by the Chair as an accurate record.
6. A summary of progress against action points had been circulated. Status updates against each of the actions as set out in the summary were duly **NOTED**.

Item 4: Chief Executive's Report – Board Paper 64(21)

7. Melanie Dawes presented her report and provided an update on recent developments, including the following issues.
8. COVID-19 Pandemic: Melanie Dawes reported that two Members of the Senior Management Team had recently tested positive for COVID (although not related to attendance at Ofcom premises). The situation with the pandemic was still quite serious.

9. BT: Melanie updated the Board on a recent meeting with the Chief Executive of BT. In discussion the Board noted that, in light of the acquisition by Altice in June 2021 of a 12.1% in BT, the executive would be undertaking scenario planning of future potential developments and their implications, and what action Ofcom might need to take to clarify regulatory expectations of BT as the incumbent telecoms operator.
10. Consumer Issues: Melanie referred to a recent discussion with the new Chief Executive of Citizens Advice, and the indications that Government would extend the remit of Citizens Advice to include being the consumer champion for telecoms.
11. Broadcasting Issues: The Serota Review into BBC editorial standards had started, and Kevin Bakhurst updated the Board on a meeting with the Serota Review Panel that he had attended on 19 July 2021.
12. On 24 June 2021 Ofcom had published a consultation on the BBC's proposals to put BBC3 back on linear TV. On 30 June 2021 Ofcom had published a consultation on proposed changes Channel 5 wished to make to its news output. Ofcom's Periodic Review of the BBC and the consultation on the Operating Licence had just been published (21 July 2021). Government had announced plans to consult over the summer on strengthening the regulation of on-demand services like Netflix and Amazon Prime to bring it closer to the regime for traditional linear broadcasters such as the BBC, ITV and Sky. These proposals were intended to feature in a Media White Paper which was expected to be published later in the year.
13. In response to a question from the Board, Kevin Bakhurst provided an update on the approach being taken to monitoring GB News following its launch on 13 June 2021 to check that it was complying with the Broadcasting Code requirements to achieve due impartiality in its output.
14. Online Safety/Digital Regulation: The membership of the Pre-Legislative Scrutiny Committee for the Online Safety Bill had not yet been confirmed. Sessions were being arranged for the Board in the autumn to brief Members in more detail on the content of the Bill. There would also be a decision point for the Board in the autumn on Ofcom's regulatory strategy with regard to online safety. At the Chair's suggestion, Ofcom would be engaging external expertise to assist with stress-testing the proposed approach.
15. On 13 July 2021, Melanie had joined the Chief Executives of the Competition and Markets Authority (CMA), Information Commissioner's Office (ICO) and Financial Conduct Authority (FCA) at a Global Counsel panel event hosted by Peter Mandelson about the Digital Regulation Cooperation Forum (DRCF) and digital regulation. The main aim had been to demonstrate the genuine shared will to work together, and this had been achieved. An advertisement had been launched for someone at a senior level to run DRCF, accounting to all four CEOs and responsible for developing the agenda and leading some external engagement.
16. Corporate matters: The Government Spending Review was expected to be announced before the end of July, after which Ofcom would be asked by DCMS to provide input for their departmental return to the Treasury.
17. The results of the annual Ofcom colleague survey were due to be announced to the organisation on the day of this meeting. The survey result scores were down on the previous year but still remained strong. Melanie reflected on the fact that the survey had been

conducted in June 2021, when a number of internal announcements had been made regarding future hybrid working which were likely to have impacted the scores.

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

Item 5: Executive Director Updates – oral

19. Lindsey Fussell reported that the CMA had found that Cellnex’s proposed purchase of CK Hutchison’s UK passive telecoms infrastructure assets raised competition concerns. The CMA had announced that it would be referring the case to a Phase 2 investigation. The CMA had also announced that it was consulting on whether to launch a market investigation into Motorola’s Airwave network – the mobile radio network used by all emergency services in Great Britain. On 20 July 2021 the Department for Business, Energy and Industrial Strategy (BEIS) had announced a consultation on proposed reforms to competition and consumer policy which included giving enhanced powers to the CMA. The consultation was the BEIS response to the reforms recommended in the independent report on consumer policy by John Penrose MP which was published in February 2021.

20. Kevin Bakhurst referred to the publication on 15 July 2021 of Ofcom’s conclusions from the “Small Screen: Big Debate” work which had been well received, including by DCMS. The report set out recommendations to Government for urgent legal changes needed to secure the future of Public Service Media. The executive would work with DCMS to develop proposals for inclusion in the Media Bill which was due to be published later in the year.

21. Martin Ballantyne reported that the High Court had refused CGTN permission to judicially review Ofcom’s decision not to transfer CGTN’s broadcasting licence to another group entity, at the same time as Ofcom revoked the licence on grounds of political control. It was not yet known whether CGTN would apply for an oral hearing. Earlier in the day (21 July 2021) the Law Commission had published recommendations to address harms arising from online and to protect freedom of expression.

22. The Board **NOTED** the updates presented orally at the meeting.

Item 6: Board Forward Look against the Plan of Work 2021/22 – Board Paper 66(21)

23. Yih-Choung Teh introduced this item. Board Paper 66(21) provided a high-level summary of key elements of Ofcom’s work programme to the end of the current financial year. This reflected the programme that was set out in the Plan of Work 2021/22, overlaid with information from the Publications Lookahead and the priority project dashboard which was used to track delivery of projects on a monthly basis. Lindsey Fussell and Kevin Bakhurst provided further detail in oral updates.

24. In autumn 2021 the regulation of Video Sharing Platforms (VSPs) would move to the implementation stage, with the publication of final guidance and priorities for the first full year of operation. The Board **ASKED** that consideration be given to how Ofcom would measure success in a way which was not too subjective, and which could help inform the approach to wider online harms regulation. In response to a question from the Board as to whether there was any slack in what looked like a busy programme of work for the remainder of the year, Melanie Dawes said that plans would need to be reviewed again in the autumn to take account of the latest position and any pressure points, including any continuing implications from the COVID-19 pandemic.

25. The Board **NOTED** the updates provided orally at the meeting and in Board Paper 66(21).

Item 7: Report from the Interim Chair of the Content Board – oral

26. Bob Downes reported on matters discussed at the meeting of the Content Board held on 6 July 2021. The Board **NOTED** that Peter Horrocks had not been called to give evidence to the Dyson Investigation and was therefore no longer potentially conflicted on matters relating to the BBC.

27. The Board **NOTED** the oral update.

Item 8: Reports from Non-Executive Members – oral

28. David Jones referred to the Welsh Government starting to look at online safety policy and suggested that it would be helpful if Ofcom could offer to share some of the thinking that the organisation had done on this topic.

29. Bob Downes referred in his update to the UK Government’s consultation on the future ownership of Channel 4 which had raised concerns in both Scotland and Northern Ireland, particularly with regard to the impact on the independent sector.

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

Item 9: Proposed Actions following the Board and Committee Evaluation Review 2020/21 – Board Paper 67(21)

31. Jacqui Gregory introduced this item. The intention had been to discuss the outcomes of the Board and Committee Evaluation Review which had been conducted in April/May 2021 with the new Ofcom Chair, but following the UK Government’s decision to re-run the recruitment process consideration had been given to the actions that could be taken forward now. The proposals were set out in the annex to Board Paper 67(21).

32. Angela Dean had volunteered to take on the role of Board Member for England which would include attending meetings of the Advisory Committee for England in an ex-officio capacity and liaising closely with the ACE Chair. The Chair proposed and the Board **APPROVED** Angela Dean’s appointment as Member for England with immediate effect.

33. The Board:

- **APPROVED** proposals for addressing a number of the outcomes arising from the internal Board/Committee Evaluation Review which was undertaken in April/early May 2021, as set out in the Annex to Board Paper 67(21); and
- **NOTED** that an update on status against the identified actions would be presented to the Board in the autumn.

Item 10: Ofcom’s Communications Strategy – Board Paper 68(21)

34. Simon Redfern presented this item. The aim of the new communications strategy was to reach more people through the channels Ofcom used to build audience trust and improve

knowledge of what Ofcom does, building on Ofcom's reputation as a trusted regulator. Board Paper 68(21) described the new approach and how it would be implemented. In response to a question from the Board, Simon referred to the approach being taken to engaging with the communications teams in organisations Ofcom regulates in order to build relationships. There would also be a regular focus on highlighting information of particular interest to each of the nations. Consideration was being given to the metrics to be used to evaluate the success of the new strategy. The Board asked that consideration be given to how the success of the strategy would be measured over time. The Chair suggested it would be worth considering undertaking some research on brand awareness amongst target audiences.

35. The Board welcomed and **NOTED** Ofcom's new communications strategy and congratulated Simon and his colleagues in the Communications team on the success of recent events.

Item 11: Ofcom's Telecoms Strategy – Board Paper 69(21)

36. Lindsey Fussell introduced this item. Board Paper 69(21) set out initial thinking on developing a strategy for telecoms. It took a broad view of the outcomes different types of consumers and businesses would want/need in the next five years and the key challenges to securing good outcomes for consumers and businesses. As part of the next steps on corporate planning, consideration would be given to what Ofcom's role should be in supporting the achievement of the outcomes identified, drawing on the work on potential regulatory models, and what that would mean for what Ofcom should do more or less of in future years.

37. Comments made during discussion were **NOTED** and included the following:

- The challenges and questions identified were the right ones.
- The definition of "consumers" needs to be broader than its usual sense as the issues being considered involved connectivity and would impact communities, cities and regions and their economic ability to develop.
- Slide 10 of the annex to Board Paper 69(21) set out a "Fixed and Mobile Value Chain" and identified a number of issues that were emerging which might require a new policy approach. It would be helpful for the next iteration of the strategy to include options for how the questions identified on slide 10 under the heading "security and resilience" might be addressed.
- Reference was made to the importance of achieving fairness of outcomes for consumers.
- Reference was made to considering the unexpected issues that might emerge, with a recent example being the Government's decision to remove Huawei equipment from the 5G network and the impact that had had.
- Reference was made to the increasing importance of the internet of things.
- Increasingly for consumers including small businesses the issue was about getting devices to work and knowing who to contact, rather than the provision of the telecoms services.
- Reference was made to potentially addressing some of the issues identified through Ofcom's media literacy work.
- Increasingly public health and other services were moving online. A question was posed about whether Ofcom had a role to play in helping relevant government departments understand the digital infrastructure and the way citizens interacted with it.

- Ofcom planned to issue a discussion document on the issue of Net Neutrality in the autumn and this was noted as a topic to come back to the Board for discussion in due course.

38. The Board **NOTED** the Telecoms Strategy, which formed part of the new Corporate Strategy cycle that included Cross Ofcom Strategy, sector strategies (including telecoms), three-year business plan and yearly plan of work.

Item 12: Spectrum Priorities: Meeting spectrum users' needs in an increasingly dynamic market environment – Board Paper 70(21)

39. Philip Marnick introduced this item. Board Paper 70(21) provided an overview of Ofcom's framework for making spectrum management choices, setting out:

- the changing market context for spectrum and the challenges this presented for spectrum management;
- the strategy used for meeting these challenges and managing spectrum in the future, which reflected Ofcom's duties and functions; and
- the framework used to make policy decisions to give effect to Ofcom's spectrum management strategy, with examples included of some current policy issues.

40. Following discussion, the Board **NOTED** the overview provided in Board Paper 70(21) of Ofcom's framework for making spectrum management choices.

Item 13: Appointment to the Advisory Committee for Northern Ireland – Board Paper 71(21)

41. The Board **APPROVED** the following four appointments/reappointments to the Advisory Committee for Northern Ireland (ACNI):

- the appointment of Michael Wilson and Angelina Fusco for three-year terms expiring September 2024; and
- the re-appointment of two current ACNI members - Alan Meban and John Ellison - for two-year terms, expiring September 2023.

42. The Board:

- **NOTED** that, following a competitive recruitment process, the Recruitment Panel had deemed six interviewees to be appointable. The four recommended appointees/reappointments were the highest scoring candidates and they were considered by the Panel to bring a rich blend of skills and experience to the ACNI.
- **NOTED** that Michael Wilson's appointment was subject to the resolution of a conflict of interest with an executive role he currently held.
- **NOTED** that shorter reappointment terms of two years had been proposed for the two existing ACNI members and three years for the two new ACNI members. This reflected previous extensions to existing ACNI member terms and would avoid all four terms expiring simultaneously.

Item 14: Appointment to the Advisory Committee for Scotland – Board Paper 72(21)

43. The Board **APPROVED** the appointment of Ashe Hussain to the Advisory Committee for Scotland for a period of three years from 1 September 2021 until 31 August 2024.

Item 15: Reappointments to the Communications Consumer Panel (CCP)/ACOD – Board Paper 73(21)

44. The Board **APPROVED** a recommendation being made to the Secretary of State for DCMS for the reappointment of Kay Allen and Richard Spencer as Members of the CCP/ACOD for further three-year terms until 30 November 2024.

Item 16: Times Newspaper Undertakings – Board Paper 74(21)

45. The Board **NOTED** the update provided in Board Paper 74(21) and:

- that DCMS had opened an ‘invitation to comment’ and were expected to shortly request formal advice from Ofcom into the request from News UK for release of the Undertakings pertaining to Times Newspapers Ltd;
- the likely questions that Ofcom would need to consider;
- the prospective timescales for completion of the work; and
- that Kevin Bakhurst would approve the final advice to the Secretary of State.

Item 17: Information Items

46. The Board **NOTED** the following information items without discussion:

- Finance Report – Board Paper 75(21)
- Board Work Programme/Forward Agendas – Board Paper 76(21)
- Publications Schedule – Board Paper 77(21)
- Minutes of the Content Board (meeting held on 4 May 2021)
- Minutes of the Communications Consumer Panel/ACOD (meeting held on 20 May 2021)
- Risk and Audit Committee (meeting held on 9 June 2021).

Item 18: Any Other Business

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

Item 19: Date of the Next Meeting

48. The next scheduled Board meeting will be held on 15 September 2021.