

# Minutes of the 78th meeting of the Advisory Committee for England, hybrid at Riverside House and via Teams on 9 December 2021

## Present

Paula Carter	Chair
Aaqil Ahmad	Member
Emma Davison	Member
Matthew Littleford	Member
Alan Nunn	Member
Mark Smith	Member

## In attendance

Angela Dean	Ofcom Board Member for England
Richard Spencer	Consumer Panel Member for England
Amit Kamal	Next Gen NEDs observer
Robert McGruer	Ofcom Director for England
David Edwards	Assistant Corporation Secretary
Colleagues from Channel 4 (minutes 19 - 22)	
Colleagues from BBC England (minutes 23 - 27)	
A colleague from Openreach (minutes 28 -32)	
Other Ofcom colleagues	

## Introduction

1. The Chair welcomed Members and attendees to the 78th meeting of the Committee which would have a diversity and inclusion theme, taking part at Ofcom's London office or remotely via Microsoft Teams, and in particular Amit Kamal who was attending his first Committee meeting having accepted a one year placement as Next Gen NEDs observer on the Committee. Amit Kamal was introduced by the Chair, outlining his background as a civil servant at the Treasury and at DEFRA and his current role at Ofwat.

## Declaration of Members' Interests – Oral

2. In the context of Ofcom's current consultation *Listed Events Six Nations Rugby Union Championship 2022-2024* (closing date 7 January 2022), the Chair declared her membership of the Council of the Rugby Football Union (the national governing body for rugby union in England).
3. In the context of a number of agenda items with a broadcasting theme, Aaqil Ahmed made a general declaration concerning his work in broadcast media. He was also a member of the Council of the Advertising Standards Authority (ASA). [Referred to in minute 36]

**Minutes of the meeting held on 23 September 2021 and matters arising – Minutes 77(21)**

4. The minutes of the meeting held on 23 September 2021 were **APPROVED** for signature by the Chair as an accurate record. There were no matters arising from the minutes that were not covered by the meeting agenda.

**Ofcom Board update**

5. Members noted that the Ofcom Board’s 17 November meeting had taken place in Belfast, that the Board held a roundtable discussion with Fibrus (the alt-net that had won the contract to deliver the NI Executive’s £165m fibre broadband rollout: Project Stratum) and had met a number of NI stakeholders and members of the Ofcom Advisory Committee for Northern Ireland. It was noted that earlier in the week of the Committee meeting the Board had held a workshop on sustainability and climate change.

6. Angela Dean updated the Committee on recruitment, for the new Ofcom Chairman and to fill Board vacancies, and on recent issues discussed by the Board (minutes and notes of meetings being available on the Ofcom website), one being that if a telecoms network operator were to fail, currently there were no provisions for a supplier of last resort or a special administration regime. A Member of the Committee suggested that there could be a past model of intervention worth investigating (the case of Ionica which went into administration on 1998).

7. There was interest in a future Committee meeting on climate change, with members referencing the Dow Jones Sustainability Indices (launched in 1999 and a family of indices evaluating sustainability performance and providing benchmarks used by companies and investors). Members indicated that there was a broad range of organisations working on sustainability, the latter with the potential to give a company a competitive edge. Continuing the theme of sustainability, another Member highlighted a project he had been working on with the International Broadcasting Convention on the sustainable coverage of football matches, an example being cloud-based and shared coverage of an upcoming Premier League match. In the context of TV and film production, he further highlighted Albert Sustainable Production Certification and suggested that the Albert organisation be invited to talk to the Committee.

8. Other issues discussed briefly by the Committee included the importance of diversity in making appointments to the Ofcom Board (a DCMS responsibility) and to the Channel 4 Board (an Ofcom responsibility), and something that the Ofcom Board recognised; and resilience and network outages (TV and telecoms) and whether Ofcom’s reporting of outages was sufficiently transparent. A Member flagged the phasing out of 2G and 3G mobile networks and the importance of understanding the extent to which they were embedded in electricity and gas networks and implications for healthcare.

**Consumer Panel/ACOD update – ACE 17(21)**

9. Members noted recent Consumer Panel/ACOD activity and current priorities, as outlined in an update paper (minutes of Panel meetings were also available on the

Panel's website). This included recently published research findings on accessing digital communications in adult residential care and a think-piece on making communications services inclusive and accessible.

10. PSTN switch-off and migration to VoIP continued to be a concern, including insufficiencies in communicating migration to consumers and low levels of awareness and what it meant for individual consumers. The recent Storm Arwen was flagged (in relation to VoIP), resulting in a loss of power experienced by hundreds of thousands of people and for several days, it being noted that unlike the PSTN network, VoIP did not work during a power outage.

11. It was noted that the Panel's Communications Consumer Stakeholder Hub for England had met recently and discussions had focussed on customer service and the benefits of communications providers developing a Customer Charter. The next Hub meeting would be in January with a focus on postal services and it was noted that Ofcom had just published its *Review of Postal Regulation* consultation (on the same morning as the Committee meeting) and that any reduction in postal services had the potential to adversely affect vulnerable consumers. Ofcom's *Review of the telephony universal service obligation* consultation was also flagged, with potential implications for provision of public call boxes, locations where there was no mobile coverage being a particular concern. It was noted that Ofcom's Connected Nations 2021 report was being finalised and would include an England report.

#### **Public Policy update – ACE 18(21)**

12. Members had been provided with a paper to update them on key public policy developments since the last meeting. A number of issues were highlighted.

13. The Telecoms (Security) Bill had received Royal Assent on 17 November. It was now an Act of Parliament and, amongst other things, imposed a series of legal obligations on communications providers related to network security, with Ofcom gaining new monitoring and enforcement powers. It was noted that the Ofcom Chief Executive had met new ministers at DCMS and had discussed the breadth of Ofcom's work. In relation to broadcasting, Ofcom continued to advise DCMS on how to create a new public service media (PSM) framework, following Ofcom recommendations on PSM made in July. Following the recent DCMS consultation on the future of Channel 4, Ofcom had given evidence to a House of Lords Communications and Digital Committee Inquiry on this issue. Reference was made to the recent publication of the *Ofcom Annual Report on the BBC 2020-21* (including a performance assessment) and other BBC-related work including review of how Ofcom regulated the BBC. The previous day *Ofcom's annual Openreach monitoring report* had been published.

14. Turning to online safety (OS), Ofcom had been much engaged with both the Government and Parliament. It was noted that the Draft Online Safety Bill Joint Committee was expected to report the following day, on 10 December, and with publication due the following week. The coming months would be busy, ahead of the expected formal introduction of a Bill in the Spring with a focus on systems and processes. In relation to video-sharing platforms (VSPs), Ofcom proposals for the

regulation of advertising on VSPs had been published on 7 December. The Lords Communications and Digital Committee was holding an inquiry into the work of digital regulators and Ofcom had given evidence.

15. There was brief discussion about OS Bill priorities, a strong emphasis likely to be on the protection of children and with a specific code of practice in this area on the face of the Bill; and about redress, a super-complaint feature and not an individual complaints function. In drawing the item to a close the Chair commented that these were all matters of concern beyond England.

### **Diversity and Inclusion scene setting**

16. Members noted that, as an organisation, Ofcom had published its own diversity and inclusion strategy in 2021, setting out its ambitions for the next five years. In addition, for diversity in broadcasting (DiB) Ofcom had a specific legal duty to promote equality of opportunity in the sector and collected and published data to monitor the make-up of the TV and radio workforce. This work also included building relationships with broadcasters to influence attitudes and to drive change. It was further noted that for telecoms (nor postal services) Ofcom did not have a comparable duty but a large part of its consumer-focussed programme of work was geared towards understanding the different needs of consumers from an affordability and vulnerability perspective.

17. As a prelude to discussions with Channel 4, BBC England and with Openreach, Members were briefed in more detail on both Ofcom's diversity and inclusion strategy and its diversity reporting for the broadcast sector. In relation to the former, there were targets related to the Ofcom workforce and for boards, advisory committees and panels to make them more representative of UK society and work related to recruitment, performance management and progression, culture and leadership. The Next Gen NEDs programme was an example of initiatives to broaden representation on boards and committees and was a collaboration with a number of other regulators. In addition, diversity and inclusion were important strands of the significant recruitment underway and anticipated as Ofcom took on the regulation of online safety. In relation to DiB, Ofcom's recent *Five-year review: Diversity and equal opportunities in UK broadcasting*, published in September, showed that change was not happening quickly enough, that workforces were now more representative but that there was more to be done, particularly in terms of retaining diverse staff and enabling them to progress to senior positions. Ofcom planned to increase its efforts to work with industry to support a fully inclusive, sustainably diverse broadcasting sector. It would launch a call for inputs in the Spring regarding the information it collected from broadcasters, in order to review and provide updated guidance on what data to collect and how to collect it.

18. Before moving on to discussion with Channel 4, a Member emphasised the need to include the independent production sector (which was not covered by Ofcom's statutory duties on equality of opportunity), in addition to broadcasters, and that the exercise should be less about diversity and more about equality and inclusion.

#### **Channel 4**

19. Colleagues from Channel 4 joined the meeting to discuss its work in response to the diversity of England, onscreen and in relation to its supply chain.

20. Members noted initiatives including the *Black to Front* project, which had included a day of programming on 10 September 2021 featuring Black presenters, actors, writers and experts, contributors, and programme-makers; the *Momentum* project, a nationwide mentoring and training programme for 60 Black filmmakers and content creators across six cities in the UK; the *Emerging Indie* programme; Channel 4's 2021 Inclusion Festival that took place on 18 November and had explored challenges facing the TV industry, people's experiences of exclusion and the changes needed to make television more inclusive and accessible to under-represented groups; work with the Sir Lenny Henry Centre for Media Diversity; work in Bristol in partnership with creative talent and the local production sector, with events and funding to help ensure that Channel 4 content represented and authentically portrayed a wide range of voices, backgrounds and experiences; initiatives to develop offscreen disabled talent and to build relationships with disabled-led indies. It was further noted that Channel 4 now had circa 400 roles based out of London; had continued to invest in *4Skills*, including apprenticeships, training schemes and industry talent schemes; and was increasing its understanding of the make up of its workforce.

21. Issues raised and discussed by the Committee included the barriers to improving diversity in the broadcasting sector, effective promotion of opportunities and the ability to access and reach talent being enablers; the extent of diversity amongst the top earners and people in senior roles and a need to drive equality and inclusion from the top; the importance of including creative diversity and disability leads in commissioning teams; diversity targets and glide paths to reach them; the backgrounds and make up of the companies that Channel 4 worked with; publication of 2021 Census data, due in 2022, and what this would say about ethnicity and religion in England and how it would be reflected in Channel 4 plans and initiatives; and portrayal and the extent to which Channel 4 output represented/reflected the different regions of England.

22. The Chair thanked Channel 4 for its contribution to discussion and it was noted that data/figures would be provided in response to some of the questions raised in the meeting.

#### **BBC England**

23. Colleagues from the BBC joined the meeting to discuss activities in England and issues related to diversity.

24. In an introduction to the item Members noted the extent (40 stations in major cities and counties) and recent activity of BBC local radio in England, including the *Make a Difference* campaign during the covid pandemic to help people keep in touch which had included *Give a laptop*, that led the public to donate thousands of old laptops and tablets for use by schoolchildren, and *Kit the Nation*, that saw 61,000 items of sports kit donated to schools and clubs with hundreds of companies and charities involved and all working closely with local BBC radio stations. BBC England output also included local

news on BBC One in 14 regions, the 6.30 pm edition being one of the most watched programmes on British TV. BBC England also commissioned many programmes that went out regionally, with local people and places being reflected back to themselves, and also on the main network. *We are England* was a new regional current affairs format to be launched in 2022 and would pick up audiences that had enjoyed *Inside Out*. In addition, BBC England was responsible for a large proportion of UK news articles on the BBC website and these were written largely in the place where the story had taken place.

25. In relation to diversity, activity included programming for different communities; community journalists were based at local radio stations; the *New Voices* scheme of open auditions across BBC local radio stations to get stories heard, to attract new and diverse talent, to help overcome barriers to joining the BBC and as an open door to other opportunities at the corporation.

26. Issues discussed by the Committee included the extent of cultural diversity at the BBC and the importance of data to measure that and audiences, the latter to determine whether communities were being adequately served and with the example of Leicester, home to BBC Radio Leicester and a city where 50% of the population was from an ethnic minority; funding issues for community and commercial radio; and engagement with local democracy, an issue that came up when the Chair had met metropolitan mayors and in a context of greater reliance on the broadcast of music, mis- and dis-information online and financial pressures on broadcasters. Members noted that the *Local Democracy Reporting Service* had created over 100 new journalism jobs based in newspapers and was funded by the BBC, to help fill a gap in the reporting of local democracy issues across the UK. A Member raised the wider BBC diversity agenda, ambition, the pace of change and targets (the latter had been described as critical by Tim Davie, BBC Director-General).

27. The Chair thanked BBC England for its contribution to discussion and it was noted that data/figures would be provided in relation to diversity.

### **Openreach**

28. The Committee received and discussed a presentation from Openreach, the company owned by BT that maintained cables, ducts, cabinets and exchanges that connected many homes and businesses in the UK.

29. The presentation covered the journey to build a more diverse and inclusive Openreach, to fully represent the communities it served and where its employees were fully accepted for who they were and valued for their contribution. Topics covered included the *Open to everyone* initiative and publication, steps taken to review strategy and policies and to consult people in the company (networks for gender equality, neurodiversity, pride, ethnic diversity, Muslims, armed forces, Christians and a network of allies).

30. Openreach goals were to be inclusive, where everyone felt that they belonged and had a voice; fair, where people were given the support and training they needed to succeed; open, where everyone understood what was being aimed for and how Openreach was progressing; leading by example, where leaders in Openreach were role models; and to be influential, as a business that made positive changes. Regarding the

latter, Openreach had ambitions for an industry code in this area. In addition, there were six enablers to underpin its goals: career progression and opportunity; representative recruitment (the *Watch Me* campaign to attract women applicants was highlighted); education and literacy; inclusive policies and processes; allyship, community and voice; and transparency and ambition. In turn, Openreach had set and published recruitment targets to be achieved by 2025, in relation to women and ethnic diversity (as an organisation Openreach was also focusing on supporting colleagues with disabilities). Openreach aimed for diversity and inclusion as a maturity model on a journey towards an integrated and sustainable business. Other initiatives included educational measures to aid mobility and career progression in the company, eg support to attain maths and English GCSEs and for degree courses.

31. Members welcomed Openreach’s approach, its frank assessment of diversity and inclusion in the company and the steps it was taking to effect positive change. Issues discussed included the company’s recent annual engagement survey, showing high levels of engagement, sense of inclusion and an intent to stay with Openreach expressed by women whilst people from ethnic minorities were less likely to feel included and less likely to stay than their white colleagues. Members noted that Openreach had a large (predominantly male) legacy workforce with many employees with long years of service, hence an emphasis being on new recruits and backfill as drivers for change in the makeup of the company. A Member raised the importance of a diverse Board and leadership.

32. The Chair thanked Openreach for its contribution to discussion and noted the positive steps it was taking, none of which were regulatory requirements.

### **Diversity and Inclusion conclusions**

33. Members reflected on the issues raised in the three preceding agenda items with external presenters. Issues discussed included the question of when “enough would be enough”, ie at what point would initiatives no longer be required to achieve or maintain diversity and inclusion; the need to go beyond broadcasters and include indies and freelancers, in terms of monitoring and in conversations about best practice; use of Ofcom’s soft powers to encourage and effect change; activity related to Workplace Disability Passports, to allow individuals to provide detail about the impact of any disability or health condition(s) alongside any existing workplace adjustment(s) in place; and the shortcomings of using language and acronyms like BAME and LGBTQ+. A Member flagged the work of Linguistic Landscapes, a company that analysed language patterns and awareness and related data to solve business problems.

19. It was noted that Ofcom planned to suspend the annual diversity report in 2022 (although it would still require broadcasters to collect this data), while the team comprehensively reviewed Ofcom’s DiB strategy. A Member flagged that Ofcom needed to be mindful of how this would be received externally. In relation to language and terminology, it was noted that consistency and use of terms in wide circulation was necessary for data comparison purposes.

### **Members' open session**

34. The Chair had attended a recent and annual meeting with the chairs of the other Ofcom National Advisory Committees (NACs), the Interim Chairman of Ofcom and the Chief Executive. The Chair reported that advice from the NACs was appreciated by Ofcom and that matters discussed had included NAC responses to external, ie non-Ofcom, consultations, and the need to keep Ofcom informed on a 'no-surprises' basis; Ofcom priorities when recruiting future members of the NACs; and the current priorities for each of the Committees.

35. A Member had provided input in a recent discussion with Ofcom about the 2022 Review of Postal Regulation and supported the approach being proposed. A slide deck had been provided to members for information. It was noted that this was the first review since 2017, that much had changed in the interim including continued decline in letter volumes and issues affecting vulnerable consumers were an element of the review.

36. Ofcom planned to consult shortly as part of the Review and Members had a brief discussion about postal services, noting that a number of large companies, Amazon and others, had their own delivery services. A Member queried whether this could be distorting competition but another countered that companies like Hermes, offering low-priced parcel delivery services, could be having a positive effect. Another Member flagged the growing problem of parcels being stolen from doorsteps and queried whether delivery standards were sufficient to tackle this. The Chair queried how visible theft was in analysis of postal complaints and it was noted that postal services had complaint processes but a Member suggested that there could be issues about accountability and outcomes. Another Member suggested that there could be issues related to the advertising of delivery targets and suggested that the ASA be invited to talk to the Committee.

37. A member had provided input to Ofcom in a recent discussion about the Connected Nations 2021 report and reported that there were a number of interventions taking place in rural areas and that a strong incentive was VoIP migration.

### **BBC Studios Review**

38. Ofcom's role was to ensure that BBC Studios did not, as a result of the relationship with the BBC Public Service, distort the market or gain an unfair competitive advantage. The purpose of the item was to discuss details of Ofcom's proposed findings from its review of that interaction that it planned to publish in January/February. The review had previously been discussed with the Committee in March 2021, when an update of stakeholder responses and analysis to date had been provided. It was noted that in relation to separation between the Public Service and BBC Studios, Ofcom had found that the BBC had appropriate processes and measures in place.

39. In relation to the supply and pricing of goods and services, two concerns had been identified. Although the BBC had some processes in place to support compliance in this area, they were not as robust as they ought to be. In addition, there was a concern about



the level of revenue from secondary content sales that was being returned to the Public Service as the IP holder compared to when third parties licensed this content on behalf of the Public Service and BBC Studios licensed content on behalf of third party producers. The Review team had written to the BBC setting out these concerns and was awaiting a response before publishing the findings.

40. Issues discussed by the Committee included whether third parties had offered evidence of an impact on competition and it was noted that stakeholders were not yet aware of the outcome of Ofcom's findings; and the materiality of secondary content sales, which Members noted could reduce the rate of return reported by BBC Studios. The Committee further noted that if the BBC did not change its processes, Ofcom could be required to take enforcement action.

#### **Future agendas**

41. Members **AGREED** that it would be useful to continue the practice of holding an annual agendas planning session in the New Year. [Subsequently arranged for 20 January 2022]. Sustainability and climate change, network resilience and the suggestion of dialogue with the ASA had come up earlier in the meeting and Members confirmed interest in inclusion in future agendas along with other telecoms topics, partly to balance a predominance of broadcasting issues at past Committee meetings. Online safety was also proposed as a subject for the Committee to return to and the Chair suggested that this should be with an England focus, if that was possible.

#### **Information Items**

42. Post Review – ACE 20(21): The paper was noted.

43. Telecoms, Broadcast & Postal Complaints (England) – ACE 21(21): The paper was noted.

#### **Any Other Business**

44. It was noted that on 24 January 2022 Ofcom would be hosting a virtual event as part of the consultation process for its proposed 2022/23 Plan of Work. There was no other business.

#### **Date of the Next Meeting**

45. The next scheduled Committee meeting would be held on 3 March 2022.