

**MINUTES OF THE ONE HUNDRED AND SIXTY-SEVENTH MEETING OF THE OFCOM
CONTENT BOARD HELD VIRTUALLY VIA TEAMS,
ON TUESDAY 24 NOVEMBER 2020**

Members Present:

Tim Suter	Chairman
Dekan Apajee	Member
Jonathan Baker	Member
Kevin Bakhurst	Executive Member
Rachel Coldicutt	Member
Maggie Cunningham	Member
Bob Downes	Member
Aled Eirug	Member
Robin Foster	Member
Angelina Fusco	Member
Anna-Sophie Harling	Member
Peter Horrocks	Member
Tobin Ireland	Member
Sophie Morgan	Member
Stephen Nuttall	Member
Monisha Shah	Member
Kim Shillinglaw	Member
Janey Walker	Member

In Attendance:

Adam Baxter	Director, Standards and Audience Protection
David Edwards	Assistant Corporation Secretary
Caroline O'Dwyer	Senior Standards Executive
Other Ofcom colleagues	

Introduction & Welcome

1. The Chairman welcomed members taking part in the one hundred and sixty-seventh meeting, in particular six new members: Dekan Apajee, Rachel Coldicutt, Anna-Sophie Harling, Peter Horrocks, Tobin Ireland and Kim Shillinglaw. Their appointments were announced by Ofcom that morning.

Members' interests

2. Having been involved in an earlier investigation as a BBC Executive, the Chairman informed members that he expected to be called to give evidence to the BBC's independent inquiry into how Martin Bashir's Panorama interview with Princess Diana had been obtained in 1995.
3. In addition, Ofcom had received a complaint about the interview, suggesting that there was a legal case for it to investigate the matter. Responding to the complainant by letter, Ofcom had said that although the case raised important and serious issues it did not believe that Ofcom had a locus to investigate. A similar letter was sent to the Director General of the BBC. Both letters had been published on Ofcom's website. The Chairman stated that he did not believe that there remained a potential conflict of interest on his part but invited members to raise this matter with Ofcom's Corporation Secretary or with Kevin Bakhurst, should they have any concerns. Regarding a further potential conflict of interest, Peter Horrocks informed members that whilst working at the BBC he had been Martin Bashir's editor.

The Chairman and Peter Horrocks undertook to recuse themselves from any further Content Board discussion of the Panoram interview and any matter associated, should that arise.

4. Angelina Fusco declared that she had been appointed as the Chair of the Board of Dart Centre Europe.
5. Monisha Shah declared that her brother, Dr Samir Shah, had been appointed as an expert member on the PSB Advisory Panel, as announced by DCMS.

Minutes of the Content Board Meetings held on 6 October 2020 – CB Minutes 166(20), Actions List and Matters Arising

6. The minutes of the Content Board meeting held on 6 October 2020 were agreed as a true and accurate record for signature by the Chairman (there remained an outstanding action to schedule a discussion about due impartiality).
7. There were no other matters arising.

Chairman's update

8. The Chairman reported on discussions at the 18 November 2020 Ofcom Board meeting and focussed on the main areas of work.
9. The Board meeting had been followed by a workshop on Video-Sharing Platform regulation, which would be repeated at the Content Board meeting.

Broadcast and Online Content Updates - CB 18(20)

10. Members had received a paper providing an update on key policy and project areas in the Broadcast and Online Content Group.
11. Members were updated further and discussed a wide range of topics, including:
 - Online harms regulation; the Government's response to its White Paper was expected to be published before the end of the year, with a Bill in the Spring and much to be ironed out in the parliamentary process; the business case to allow Ofcom to regulate online harms had been agreed but funding would not be released by the Government until Ofcom was named as the regulator; it was noted that the Government was intending to provide protections for journalistic content on platforms, an area likely to require Ofcom's close involvement. There would be a fuller Content Board discussion following publication of the Government's response.
 - Diversity in broadcasting; Ofcom's combined TV and radio report, along with three interactive tools, would be published the following day; it was noted that the social class and geographic background of TV and radio workers would be a particular focus of the report and a strong call would be made for broadcasters to be accountable for the delivery of real change (a third focus was critical under-representation, of disabled people at all levels and in the diversity of crucial decision-makers, addressing the under-representation of Black colleagues in particular).
 - BBC work areas; Ofcom was currently analysing evidence and information provided by respondents to its recent *Market position of BBC Sounds call for evidence*.
 - Ofcom expected to publish its third BBC annual report and performance assessment the following day, concluding that the BBC had continued broadly to deliver on its remit whilst challenges remained; these included serving all UK audiences, meeting diversity targets, the increasing pressure to transition to more online services, and the need to

transparently explain how it will deliver its priorities and how it measures the impact of its activities; it was noted that the BBC Board, responsible for overall governance; had an important oversight role.

- Standards and Audience Protection; complaint volumes remained high and driven by a range of factors, with significant numbers related to offensive content related to race and also a steady number Coronavirus-related broadcast content.
- On 3 November 2020, Ofcom imposed a £20,000 financial penalty on Islam Channel, a religious TV channel, for serious breach of rules in broadcasting a programme that included anti-semitic hate speech.
- China Global Television Network (CGTN) enforcement activity was continuing.
- It was noted that two research projects were being launched, one on audience expectations of channels aimed at ethnic minority communities in the UK and the other to understand current public attitudes towards offensive language broadcast on both television and radio.
- Licensing; in the context of the covid-19 pandemic, Ofcom was continuing to work with licensees to offer maximum flexibility and support in relation to compliance with programming commitments, requests for information and licence fees.

Small Screen: Big Debate - CB 22(20)

12. Members discussed and commented on the draft executive summary/ overview text for the Small Screen: Big Debate consultation on the future of public service media (PSM).
13. A range of issues were raised by members, including the importance of the terms of trade between public service broadcasters and independent producers; the weighting of the various PSM challenges; the opportunities presented by PSM media and what the longer-term meant; competition as a positive and a driver for innovation; PSM definition and the scope of provision; and funding and the consequences of changes to the BBC licence fee.
14. It was noted that the full consultation document would be reviewed and approved by the Ofcom Chairman, Tim Suter (as Chairman of the Content Board), the Chief Executive Melanie Dawes and Kevin Bakhurst. (Publication was planned for 8 December 2020 and members would receive the consultation in advance for information.)

BBC Studios Review – CB 23(20)

15. Ofcom had published a call for evidence on 9 October 2020 (the deadline for responses being 4 December), launching a review of BBC Studios and given developments in the media landscape and in BBC Studios over the past few years. In addition, Ofcom had commissioned and published a report from Mediatique on the state of the markets in which BBC Studios operated.
16. Members were given an overview of the review and it was noted that Ofcom was seeking stakeholder views, in particular on three main areas: operational separation between BBC Studios and the Public Service; the supply and pricing of goods and services between BBC Studios and the Public Service; and the commercial rate of return earned by BBC Studios.
17. In response members raised a number of issues. These included the importance of transparency and accountability, since BBC Studios operated channels and distributed content on behalf of the BBC; the limited extent to

which BBC Studios appeared to be producing content for third parties; whether the BBC should own production and its impact on the creative industries or whether, like Channel 4, the BBC should commission all of its programming from independent producers; the impact of BBC Studios on commissioning; and the growth of streaming services and IP ownership in that environment.

Key themes and emerging lessons learned from the Content Board's input on editorial standards work – CB 24(20)

18. Members were invited to note the content of the draft update to be provided to the Ofcom Board in December on key themes and emerging lessons from Ofcom's editorial standards work between 1 April 2020 and mid-November 2020. These updates were intended to inform the Ofcom Board of ongoing activity and to seek views on any proposed changes going forward. It was further noted that a draft Content Board plan of work for 2021/22 would be discussed at the next Content Board meeting in January 2021.
19. It was noted that the Ofcom team had been handling very high volumes of complaints and some concern was expressed about whether the team had adequate resources to deal with the workload, and it was agreed that prioritising would be a factor here. It was noted that complaint numbers could be driven by social media campaigns and large amounts of complaints in such cases were not necessarily indicative of instances of potential harm.
20. Members provided feedback in response to the draft Ofcom Board update. A member suggested that it would be useful to understand both the demographics of the people that complained to Ofcom and their views about the quality of Ofcom's decisions. On this point, it was noted that delays could be the result of various factors, including language translations and cultural analysis, consideration of representations from licensees and a need for due process. Another member raised the length of time taken to carry out some investigations and whether there was scope to expedite cases. In relation to Ofcom's ability to expedite investigations, that was possible and had been undertaken with respect to potentially harmful content about the Coronavirus pandemic.
21. Due impartiality was raised and, as mentioned under matters arising, a substantive discussion would take place at a future meeting and, ahead of that, consideration by the Chairman and Kevin Bakhurst would be given to framing the discussion. Referring to future online harms regulation, a member queried the viability of the existing broadcast standards approach to complaints and suggested that a culture change could be required in Ofcom. Recalling the research project on the audience expectations of minority ethnic communities, referred to earlier, a member commented that the research could reveal audience reactions to hate speech and to incitement. The Chairman confirmed that there was value in Ofcom publication, when required, of reasoned 'not pursued' decisions and he suggested also that the Content Board could return to the issue of state-sponsored channels on another occasion.
22. On behalf of the Content Board, the Chairman requested that thanks be conveyed to the Ofcom team engaged in editorial standards work.

Adult Participation in Programmes – CB 25(20)

23. Members were updated on Ofcom's Participants in Programmes review, arising in part from concerns raised in April 2019 by the Content Board

about whether broadcasters should be required to take due care concerning the welfare of participants appearing on TV or radio, eg in reality TV programmes.

24. It was noted that there had been extensive stakeholder engagement, with a range of experts, major broadcasters, and people with first-hand experience of taking part in TV programmes, all as part of the earlier consultation process. In addition, a Content Board sub-group had assisted the review and would review Ofcom's Statement prior to publication, due in early December 2020. The Statement would make clear that new provisions would come into force in early 2021.

VSP Update/workshop – 26(20)

25. Members were briefed on Ofcom's approach to the regulation of Video-Sharing Platforms (VSPs), providing a recap on the nature of VSPs; the measures that platforms were required to take to protect users from harmful content, including minors; and on how Ofcom would hold services to account. It was a limited regime that came into force on 1 November 2020, covering only a certain set of harmful content and VSPs **established** in the UK, but Ofcom would be able to take learnings and skills forward into its thinking on future online harms regulation.
26. It was noted that Ofcom was now moving into phase two of VSP implementation, focused on continued policy development for guidance and industry engagement. Ofcom's latest assessment suggested that a handful of services would be in scope of the regime and a supervisory approach was being **adopted** in terms of engagement with VSPs.
27. Members were taken through a case study on what potential enforcement activity would look like during the current early period of VSP regulation. Attention then turned to Ofcom's team and operating model for VSP regulation, including coordination between online harms policy and enforcement teams and collaboration with other colleagues in Ofcom.
28. There was discussion about the role that members might play in VSP regulation and the expertise that they could bring to bear, for example in the supervisory stage of Ofcom's work or to reinforce the independence of enforcement processes. The role of the Content Board would be determined in due course.

Information items

29. The following information items were noted:
- Minutes of the Ofcom Board (22 September and 21 October 2020)
 - Minutes of the Communications Consumer Panel/ACOD (17 September and 15 October 2020)

Any Other Business

30. There was no other business.

Date of the Next Meeting

31. The next meeting of the Content Board was scheduled to take place on 26 January 2021.