



Note of the 309th Meeting of the Ofcom Board, held on 15 November 2023

Members were welcomed to the 309th meeting of the Ofcom Board. Martin Ballantyne (General Counsel), Veronica Branton (Corporation Secretary) and Sharon Malley (Governance Manager) attended throughout.

Declaration of members' interests

1. No new declarations of interest were notified.

Minutes of the meeting held on 18 October 2023 and matters arising

2. The minutes of the Ofcom Board meeting held on 18 October 2023 were approved for signature as an accurate record, subject to two minor amendments.
3. A summary of progress against action points was noted.

Chair's report

4. The Chair updated the Board on his activities and said the recent all colleague event had been very successful and positive. He said Ofcom had been the subject of a significant amount of media attention following the launch of the first online safety consultation and that reporting had largely been straightforward and uncontroversial.
5. He hoped the appointments to the Board of Channel 4 Corporation would be confirmed shortly. Interviews for appointments to the Ofcom Board were being arranged following the open advertisement.
6. He had attended a positive meeting with the CEO and their counterparts from Vodafone and 3 at their request to hear their views on the proposed merger
7. The Board noted the report.

Chief Executive's report

8. Melanie Dawes presented her report updating the Board on her activities and key developments since the last Board meeting, including reaction to the online safety consultation, government plans to amend the Data Protection and Digital Information Bill in relation to online safety, the recent AI summit, the various reviews of regulators and the work of the Broadcast Standards team. The Board discussed in-contract price rises in telecoms contracts and Ofcom's annual report on the BBC.

9. The Board noted the report.

Report from the Chair of the People Committee

10. Ben Verwaayen updated the Board on the meeting of the People Committee held on 25 October 2023. He said Ofcom's ability to proactively manage people and transformation issues had improved markedly over the previous five years and paid tribute to Kerri-Ann O'Neill's leadership. He also updated the Board on the colleague survey findings, the appointment of a colleague to support discussion on the pay framework and advance progress on performance management, the position on recruitment and that the Committee had approved the remuneration arrangements of the new Broadcasting and Media Group Director.
11. The Board noted the update.

Plan of Work, Three-Year Plan and budget

12. The Board discussed papers on Ofcom's progress against the current Three-Year Plan and Plan of Work and the approach to the 2024/25 budget. These papers represented Ofcom's move towards more medium-term strategic planning and the closer alignment between strategic and budgetary planning. Ofcom was performing well against its priorities and had been agile in dealing with unexpected issues such as devoting more resources to Post. The process of developing and implementing the 3YP had been valuable and had helped Ofcom articulate its choices more explicitly. Work was now beginning on the next Three-Year Plan and the business planning work being was helping Ofcom to shape its future priorities.
13. The Board discussed the approach to the 2024/25 budget and noted that the draft budget would be considered by the Risk and Audit Committee in the new year and approved by the Board in March. It was agreed that the Board did not need to see the budget in draft in February on this occasion but it may be helpful for the Board to view budgets in draft form in future years if more significant changes were being proposed.
14. The Board noted the papers.

Media Bill update

15. The Board discussed a paper on the Media Bill, which had now been introduced to Parliament. It was noted that the Bill was expected to pass rapidly through the Committee stage and that Ofcom was engaging with Parliament to ensure it remained workable and proportionate. The Bill would have implications for Ofcom's remit and resources which would be worked through over the next 18-24 months.
16. The Bill would give Ofcom the duty to provide guidance on how Public Service Broadcasters (PSBs) and Regulated Television Selection Services agreed commercial terms when complying with new prominence requirements. Ofcom would consult on this guidance that would help set expectations.

17. The Board noted that the Media Bill aimed to level the playing field for PSBs but the fragmentation of media meant more measures were likely to be necessary in the longer term to support PSBs. Ofcom's report Small Screen Big Debate had called for more radical change in this area and the Media Bill was a positive outcome of Ofcom's work.
18. The Board noted the need for cooperation with international regulators in relation to the proposed Video on Demand Code. The Tier 1 providers within the Code would be determined by the Secretary of State, with reference to advice from Ofcom on relevant factors such as UK viewership. Ofcom would consult on a draft Code that would need to be tailored to video on demand services.
19. The Board noted that the future beyond the Media Bill was still uncertain, with platforms such as YouTube still largely unregulated for risks around inaccurate news. This would be fed into consideration of Ofcom's next Three-year Plan.
20. The Board noted the paper.

Part 5 age assurance consultation – overview

21. The Board discussed a paper on Ofcom's proposed approach to the publication of Ofcom's Part 5 guidance on age assurance for providers publishing pornographic content. The scope of the guidance was limited to commercial porn providers, such as Porn Hub, with platforms that carried user-generated content such as Only Fans being covered by the child protection policy due in summer 2024. Ofcom aimed to keep the regulations for the two types of platform as consistent as possible.
22. The Board noted that consumers might be concerned by the privacy aspects of providing personal data to comply with age assurance policies and that Ofcom was working closely with the ICO on this.
23. Ofcom was also working closely with stakeholders to prepare them for the new regime. The Board discussed the approach to monitoring and enforcement as well as how success would be measured. It was noted that regimes in other jurisdictions had failed because they had been too prescriptive which was why Ofcom was adopting a principles-based approach. It was agreed that a paper on the supervisory and enforcement aspects of the wider Online Safety regime should be brought to the Board in Spring 2024. It was not yet possible to be specific on the timing of enforcement and the consultation exercise would provide more data to support decisions on this.
24. The Board noted that the main aim of the regime was to prevent children from accidentally stumbling upon pornographic material and focused on putting some friction in the system to help with this. There was recognition that those who wanted to view pornographic material would look for ways of circumventing the regime and providers would be expected not to collude with this, for example by avoiding the promotion of the use of VPNs.
25. The Board noted that the approach to supervision and enforcement would be intelligence-led, informed by liaison with stakeholders and by interrogating the information they were required to publish. Ofcom would need to make decisions about

which cases to prioritise for enforcement. It was noted that in addition to the regime under the Online Safety Act, children could be protected through improved media literacy and the work of the Children’s Commissioner. The Board noted that the Online Safety Act regime represented one of many steps in protecting children and that age assurance was only one element of the range of actions needed to create safe environments for children online. Protection of children needed to be seen as a whole, and not just about preventing access to harmful content.

26. The Board noted report.

Ofcom’s international engagement in technical standards

27. The Board discussed a paper on the growing importance of international discussion around technical standards and Ofcom’s engagement on the global stage to deliver the strategic priorities in the Three-Year Plan. International technical standards spanned many areas of Ofcom’s work including telecoms, interoperability and spectrum. In recent years there had been reduced investment by the telecoms industry in standards bodies on the grounds of cost and some autocratic states, including through their state-controlled enterprises, had begun to take a more active role. Standards were important for Ofcom’s work but also engaged national security issues and Ofcom was liaising with the Government on this. Although relevant to Ofcom’s strategic priorities, Ofcom’s formal role on technical standards in the ITU was often under ministerial direction rather than as an independent regulator. Ofcom also monitored discussions in other industry-led standards bodies.

28. The Board noted the paper.

Appointment of the Chair of the Communications Consumer Panel and ACOD Chair

29. The Board approved the proposed recommendation to DSIT of the Chair of the Communications Consumer Panel and the Advisory Committee for Older and Disabled People for a three-year term ending on 31 May 2027.

Reappointment to the Board of MG ALBA

30. The Board approved the proposed recommendation to Scottish ministers of the reappointment of a member to the Board of MG ALBA for a term of four years from 1 January 2024. The Board noted that Ofcom would be recruiting up to four additional Board members in the coming months due to terms coming to an end.

One Ofcom six-monthly programme update

31. The Board noted the One Ofcom six-monthly programme update.

Information items

32. The Board noted the following information items:

- Non-executive member updates
- Monthly performance update
- Board work programme and publications schedule
- Minutes of the Communications Consumer Panel (21 September 2023), Advisory Committee for Scotland (27 September 2023), Advisory Committee for England (5 October 2023), and Advisory Committee for Northern Ireland (10 October 2023)

Any other business

33. The Board was advised on the outcome of the Competition Appeal Tribunal judgement on whether Sky's pay TV service was an electronic communications service.

Date of the next meeting

34. The next Board meeting would be held on 13 December 2023.