

**MINUTES OF THE TWO HUNDRED AND EIGHTY-THIRD MEETING OF
THE OFCOM BOARD HELD ON 26 MAY 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:

- Yih-Choung Teh (items 10 and 13-14)
- Iqbal Marikkar (item 10 and 14)
- Kate Biggs (item 11)
- Vikki Cook (item 11)
- Siobhan Walsh (item 11)
- Andy Lynex (item 12)
- Simon Redfern (item 12)
- Richard Wronka (item 12)
- Kate Davies (item 13)
- Melissa Tatton (item 12 and 15)
- Declan Costello (item 15)
- Gaucho Rasmussen (item 16)
- Sophie Mackie (item 16)

Item 1: Declaration of Members' Interests – oral

1. No new declarations of interest were notified.

Item 2: Chair's Introduction – oral

2. The Chair welcomed all to the meeting.
3. Dyson Report on the BBC/Tim Suter: The Board **NOTED** that, following publication of the Dyson Report into the conduct of the BBC, with regard to the Martin Bashir Panorama interview with Diana, Princess of Wales on 20 November 1995, Tim Suter - Ofcom Board

Member and Chair of Ofcom's Content Board, had taken the decision in the best interests of Ofcom to remove himself from these critical roles with effect from 28 May 2021. The Board recorded appreciation for Tim's contribution to Ofcom in both roles. The Chair described how events had unfolded following the publication of the Dyson Report. Following discussion, the Chair undertook to reflect on any lessons that could be learned from the experience and to consider putting in place a procedure to be followed should a similar situation arise in the future, including scenario planning and appropriate timing for the involvement of the full Board, ahead of any announcements being made and/or action taken. The Chair undertook to consult Board Members between meetings and submit a proposal to the next Board meeting in June. The Board commended the way that the Chair had handled what was a very difficult situation and noted the importance – as reflected in the outcomes of the Board/Board Committee Effectiveness Review (item no.9 refers) of maintaining a cohesive Board whilst encouraging robust challenge and debate.

4. The Board **NOTED** that Melanie Dawes had written to the Director-General of the BBC on 24 May 2021, welcoming the BBC Board's announcement earlier that day that Sir Nick Serota, as the Corporation's Senior Independent Director, would lead a Board review into the effectiveness of the BBC's editorial policies and governance. The letter had strongly suggested that the Review should take independent advice from editorial experts, including those who had worked at other broadcasters, with the expectation that the Review would be published to ensure transparency. The letter had highlighted changes to the BBC's regulation and governance arrangements since the 1990s, including Ofcom becoming the BBC's independent regulator in 2017. As the designated body for receiving whistleblowing complaints in the broadcasting sector, Ofcom looked forward to engaging with Sir Nick's review. Immediately prior to the letter being sent, the Chair had called the BBC's Chair to advise him of the letter's content.

5. On next steps, Ofcom was due to undertake the first periodic review of the BBC and the proposed approach to be taken to that review would be on the agenda for the Board's next meeting on 23 June 2021.

6. Interim Chair and Member of the Content Board: The Board **APPROVED**, with immediate effect, the appointment of Bob Downes as Interim Chair of the Content Board and Interim Chair of the Election Committee. The Board also **APPROVED** the interim appointment of David Jones as a Member of the Content Board. In response to a suggestion made by the Board, it was further **NOTED** that Ofcom would be taking into account the broadcasting expertise on the Content Board in the forthcoming recruitment for new Members.

Item 3: Minutes of the meeting held on 28 April 2021 and Matters Arising – Board Minutes 282(21) and Note of Action Points

7. The minutes of the Ofcom Board meeting held on 28 April 2021 were **APPROVED** for signature by the Chair as an accurate record.

8. A summary of progress against action points had been circulated. Jacqui Gregory highlighted that the closing date for receipt of applications for the three non-executive vacancies on the Channel 4 Corporation (C4C) Board had passed, with 356 applications having been received, spread evenly over the three roles. The Chair commented that several other NED terms on the C4C Board were due to expire in the coming months and there would be a need to engage with DCMS on the approach to be taken, bearing in mind DCMS's earlier request for the shortlisting of applicants not to take place until the new Ofcom Board Chair was

appointed so that he/she could be involved in this process. Status updates against each of the actions as set out in the summary were duly **NOTED**.

Item 4: Chief Executive's Report – Board Paper 40(21)

9. Melanie Dawes presented her report and provided an update on recent developments, including the following issues.
10. Fibre investment: The appeal window for the Access Review had passed, with no appeals having been lodged. This was a huge achievement for those colleagues in Ofcom who had been working on the review over the past few years.
11. Ofcom Technology Officer: The Board was advised of a new appointment to be announced shortly.
12. Channel 4 Corporation (C4C): DCMS were planning a consultation on the remit and future ownership of C4C which was expected to be launched in the next few months.
13. External engagement: Melanie Dawes reported on recent meetings with the Federal Trade Commission (FTC); the Federal Communications Commission (FCC); the Senior Vice-President of the Google Global Board; and the Chief Executive of Royal Mail.
14. The Board **NOTED** the report from the Chief Executive.

Item 5: Executive Director Updates – oral

15. Kevin Bakhurst referred to current standards and fairness and privacy cases on which decisions would be published shortly.
16. Lindsey Fussell referred to the CMA's decision to approve the Virgin Media and O2 merger, with an unconditional clearance. Lindsey Fussell also referred to recent trading results announced for BT, Vodafone and Royal Mail, and the announcement on 25 May 2021 that Royal Mail had re-joined the FTSE 100. In discussion, reference was made to the continuing importance of Royal Mail improving its operational efficiency.
17. Martin Ballantyne referred to the Court of Appeal's decision to dismiss Royal Mail's appeal to overturn Ofcom's finding that Royal Mail had abused its dominant position by discriminating against Whistl. It was understood that Royal Mail would be seeking to appeal the decision directly to the Supreme Court. CGTN had issued a claim for judicial review of Ofcom's decision refusing to transfer its broadcasting licence when the decision was taken to revoke that licence on grounds of political control.
18. The Board **NOTED** the updates presented orally at the meeting.

Item 6: Report from the Content Board - oral

19. Bob Downes reported on matters discussed at the meeting of the Content Board held on 4 May 2021. The Board **NOTED** the oral update.

Item 7: Report from the Chair of the Risk and Audit Committee – oral

20. Angela Dean reported on matters discussed at the meeting of the Risk and Audit Committee held on 11 May 2021. The main focus for discussion had been three internal audit reports, one of which had an ‘amber’ rating. The internal audit areas of focus for the first half of 2021/22 had been agreed as being (i) Programme Management Implementation; (ii) Cyber Security; (iii) and a readiness assessment for implementation of the People and Finance System Replacement (PFS). The Board **NOTED** that Ofcom had been successful in achieving ISO27001 information security certification.

21. In discussion, the Board **NOTED** that cyber security was now on the Strategic Risk Register and would be an issue the Board would want to focus on. A briefing session on cyber security was being arranged for the Senior Management Team and would also be made available to the Board. A Board workshop session on potential security risks had been scheduled for later in the year (October 2021).

22. Angela Dean reported on a periodic DCMS meeting of the Chairs of the Audit Committees of Arm’s Length Bodies.

23. The Board **NOTED** the oral update provided by Angela Dean.

Item 8: Reports from Non-Executive Members – oral

24. David Jones updated the Board on (i) a meeting with the newly appointed Head of BBC Wales; (ii) the relaunch of Spectrum Internet with the new name Ogi and their plans for investment, and ambitions to become Wales’ largest independent Telecoms supplier challenging BT, Sky and Virgin; and (iii) the Election outcome in Wales, and the establishment of a new Climate Change Department with a broad remit including telecoms and digital infrastructure, transport and planning.

25. Bob Downes updated the Board on political developments in Scotland and Northern Ireland, and an issue that had arisen in relation to MG Alba.

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

Item 9: Board and Committee Evaluation Review – Board Paper 41(21)

27. Jacqui Gregory introduced this item. Board Paper 41(21) set out the outcomes from the internal Board/Committee Evaluation Review which had been undertaken in April /early May 2021 and highlighted the recommended top priorities for the new Chair and the Board over the next 12 months.

28. Following discussion, the Board **NOTED** that, given the delay to the appointment of a new Ofcom Chair, Maggie Carver would review proposed actions resulting from the Review (some of which were already in train) with Melanie Dawes and Jacqui Gregory over the summer and consider how to progress the actions. The Board would be kept informed of plans.

Item 10: Ofcom Strategy: Horizon Scanning Insights - Board Paper 42(21)

29. Yih-Choung Teh introduced this item. In preparation for future Board discussion of Ofcom’s sectoral strategies, Board Paper 42(21) looked at likely developments in the sectors

Ofcom regulates and in the macro-environment over the next few years and how that might impact the way Ofcom operates.

30. Areas referred to during discussion were **NOTED** including:

- The potential impact of changes in the political and economic environment.
- The likelihood of rising inflation and its potential impact on the supply chain and labour markets.
- Consumer detriment, eg, the impact of a rise in scams.
- The need to be ready for the possibility of making the wrong judgements because technological change was hard to predict.
- Decisions to be taken on where resource should be focused on newly identified priorities and the talent and skills needed, and also on what areas to move away from in order to free resource.
- Digitisation of markets and public services and its implications.
- Communications services increasingly being seen as a utility and the implications that might have for the regulatory approach.
- The prospect of increasing public scrutiny.
- The need to have regard to sustainability and the carbon footprint.
- The impact on regulation of the emergence of global players and the need for international cooperation to address that.
- Questions about how content was regulated on different platforms and the implications for enforcement.
- A suggestion regarding looking back at the horizon scanning undertaken, say, five years previously, to see what was foreseen at the time, what had actually happened, and where there were gaps and what could be learned from that.
- The importance of focusing on network resilience.
- Increasing integration and the implications for regulatory approach and outcomes.
- Scenarios for unforeseen catastrophic events that might raise significant issues (with an example given of the Grenfell Tower fire which brought to light failures of regulatory oversight of what was happening in the construction industry).

31. The Board **NOTED** the summary of the likely high-level landscape in which Ofcom would implement its future strategy, and the broad challenges that it was likely to face as that landscape, and Ofcom's role within it, evolved.

Item 11: Future of Public Service Media – Small Screen: Big Debate – Board Paper 43(21)

32. Kevin Bakhurst introduced this item. The objective of the Small Screen: Big Debate ('SS:BD') programme of work was to ensure that, in a rapidly changing media landscape, audiences would continue to receive the benefits of Public Service Media ('PSM') in the future. Board Paper 43(21) set out the executive's emerging thinking for recommendations to be included in a statement which was planned for publication in July 2021. The statement would make recommendations to the UK Government, to help inform the development of legislation.

33. Areas covered during discussion included:

- The high-level principles of what the PSM must deliver. This included a discussion about trusted and accurate news and the importance of transparency, diversity and impartiality in delivering that.

- The threats to PSM’s future viability posed by the increasing emergence of global players. A question was posed as to whether, given that context, the proposals were radical enough.
- The approach to ensuring prominence and wide availability of PSM content.
- The importance of retaining flexibility in the new PSM framework and of focusing on audience outcomes.
- The importance to the UK economy of the creative industries and the role PSM plays, and the evidence that underpins that.

34. Following discussion, the Board **NOTED** the update provided in Board Paper 43(21) and the intention to provide the Board with the draft executive summary of the statement for review at the next Board meeting, on 23 June 2021.

Item 12: Preparing to Regulate Online Harms - Board Paper 44(21)

35. Kevin Bakhurst introduced this item. The draft Online Safety Bill had been published on 12 May 2021. Board Paper 44(21) provided updates on the reaction to the Bill; Ofcom’s approach to external communications; and the work of the Online Harm Programme Board (now renamed Online Safety Programme Board to reflect the Bill title). An oral update was provided covering ongoing engagement with external stakeholders.

36. The Board **NOTED** the update provided orally and in Board Paper 44(21).

Item 13: Digital Markets Update – Board Paper 45(21)

37. Kate Davies introduced this item. The UK Government was developing plans for a ‘Digital Markets Regime’ (DMR), which would apply to the largest internet platforms¹ with substantial and enduring market power. Many firms and services likely to be in scope of the new regime either sat squarely in, or were closely related to, the communications sector. Regulatory action under the new regime was therefore likely to interact with Ofcom’s existing or future sectoral regulation. As a result, extensive coordination would be necessary to secure regulatory coherence and good outcomes for citizens and consumers in online communications. Some of this could be delivered through Ofcom’s work with the Digital Regulation Cooperation Forum (DRCF). However, there were specific questions around how best to deliver coherence across competition regimes in the context of the new DMR. As discussed at the December 2020 Board, the Executive view was that ‘joint powers’, ie, concurrency, as proposed by the CMA-led Digital Markets Taskforce, was the best mechanism to secure this coherence. The Government was developing a consultation on the DMR (expected to be published in the next couple of months) and, as part of this, had been considering a range of coordination mechanisms, and the Executive had been developing the analysis of the different options to support this work.

38. Following discussion, the Board **AGREED** the recommendation set out in Board Paper 45(21) that Ofcom should pursue a concurrency regime with the DMU as the preferred option.

39. In parallel to the work on the DMR, DCMS had asked Ofcom to work with the DMU to consider how a code under the new regime would govern the relationships between platforms and content providers, such as news providers. The Board **NOTED** the update on this area of work provided in Board Paper 45(21).

¹ Likely ‘GAFAM’; Google, Apple, Facebook, Amazon and Microsoft

Item 14: Review of Delivery Against the Plan of Work 2020/21 – Board Paper 46(21)

42. Iqbal Marikkar introduced this item. Board Paper 46(21) provided a report on Ofcom's activities, delivery, and associated outcomes for 2020-21 across policy, programmatic, and operational work. The paper also included a summary of key lessons learnt from the review of 2020/21.

43. During discussion, the Executive team undertook to provide further information to Bob Downes outside the meeting on the process that was used to consider whether projects should be prioritised or deprioritised. The Board **NOTED** the report provided orally and in Board Paper 46(21).

Item 15: Re-procurement of ICT Services (Project Diamond) – Board Paper 47(21)

44. Melissa Tatton introduced this item. Project Diamond was a re-procurement exercise for ICT Services, to be awarded to a single provider for up to six years from 1 May 2022 (four years, with a potential extension of two years). Board Paper 47(21) set out the approach being taken to the re-procurement exercise.

45. Following a brief discussion, the Board **AGREED TO DELEGATE** all pre-contract award scrutiny to the Risk & Audit Committee, with the formal decision for the contract award to be presented to the Ofcom Board for approval. The Board **NOTED** that, in accordance with Ofcom's Corporate Governance Framework, approval of any contract value in excess of £5,000,000 (which this contract would be) was a Board reserved matter.

Item 16: Ofcom's Approach to Enforcement – Board Paper 48(21)

46. Gaucho Rasmussen introduced this item. Over the last four years, Ofcom had established a cross-cutting enforcement function that supported the majority of Ofcom's policy areas. This centralised function sat alongside the separate specialist enforcement teams in Spectrum and Broadcasting Content. Board Paper 48(21) provided an update for the Board on the plans that were in place to ensure Ofcom continued to have a highly effective enforcement function that was able to meet future needs and the strategic priorities for the next three years.

47. In discussion comments were made about the need to balance the new and welcome enforcement approach and its increased focus on policy input and advocacy, with maintaining an appropriate level of focus on old-style enforcement to address such issues as scams. It was too soon to know the appropriate long-term structure for enforcement of online safety issues, and the current approach retained as much flexibility as possible in this regard. In answer to a question from the Board, Gaucho Rasmussen said that Ofcom had established an open and constructive dialogue with the NCSC and they would alert Ofcom to emerging threats to network security, but Ofcom would be accountable for enforcement and would need to build the appropriate technical expertise to do that.

48. The Board **NOTED** the update provided orally and in Board Paper 48(21).

Item 17: Information Items

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

- Quarterly Performance Update - Board Paper 49(21).

- Board Work Programme/Forward Agendas – Board Paper 50(21).
- Minutes of the Communications Consumer Panel/ACOD (meeting held on 18 March 2021).
- Minutes of the Content Board (meeting held on 30 March 2021).
- Advisory Committee for England (meeting held on 11 March 2021).
- Advisory Committee for Northern Ireland (meeting held on 23 February 2021).
- Advisory Committee for Scotland (meeting held on 24 March 2021).
- Advisory Committee for Wales (meeting held on 9 March 2021).

Item 18: Any Other Business

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

Item 19: Date of the Next Meeting

51. The next scheduled Board meeting will be held on 23 June 2021.