

**MINUTES OF THE TWO HUNDRED AND EIGHTY-SEVENTH MEETING OF
THE OFCOM BOARD HELD ON 15 SEPTEMBER 2021**

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 (attended virtually via Teams)
Ben Verwaayen	Non-Executive Member (attended virtually via Teams but left the meeting during item 4 due to connection issues)

In attendance

Martin Ballantyne	General Counsel (attended virtually via Teams)
Jacqui Gregory	Corporation Secretary
Jenny Leyland	Assistant Corporation Secretary (attended virtually via Teams)

Other Ofcom colleagues:

Mark Bunting (items 7-8)
Joe Woolmer (item 7)
Melissa Tatton (item 8)
Andy Lynex (item 8)
Richard Wronka (item 8)
Simon Redfern (item 8)
Yih-Choung Teh (items 9-10)
James Key (item 9)
Iqbal Marikkar (item 10)

Item 1: Declaration of Members' Interests – oral

1. There were no new declarations of interest raised by Members at the meeting.

Item 2: Chair's Report

2. Opening remarks: Maggie Carver welcomed all to the meeting. [Withheld from published minutes] She also thanked those involved in organising the joint Ofcom Board/Content Board event held on 14 September 2021 which had gone very well.

3. Channel 4 Corporation (C4C) Non-Executive Director (NED) Appointments: Maggie Carver updated the Board on the current recruitment process, with the interviews now having been held. A paper setting out the recommendations for appointments to be put to the Secretary of State for DCMS would be circulated to the Board between meetings for approval by written resolution. The recruitment process was about to start for the C4C Chair role, as Charles Gurassa's current term would expire on 27 January 2022. As discussed during the Board call held on 1 September 2021 (minute no. 5 refers), the current tenures of two other C4C NEDs were due to expire at the end of December 2021. DCMS had asked for an indication of Ofcom's intentions regarding those two roles and also any interim arrangements if the new Chair was not in post by the end of January 2022. Maggie Carver suggested the way forward and the Board **AGREED**:

- that they were supportive of the reappointments of Tom Hooper and Althea Efunshile. The Board's formal approval of these two reappointments would be sought in the paper to be approved by written resolution; and
- that, on the basis that Ofcom hoped to be launching the C4C Board Chair recruitment very soon, any interim Chair, if needed would only be for a short period, in which case Ofcom was minded to propose the Deputy Chair for the Interim Chair role. If, however, it appeared likely that an Interim Chair would be needed for a longer period, then the Ofcom Board would like the flexibility to review this position at that point.

4. Non-Executive Ofcom Board Appointments: Jacqui Gregory provided an update on the DCMS recruitment process for the Ofcom Chair and the other current NED vacancy on the Ofcom Board. DCMS were engaging with the Northern Ireland Executive regarding the legislative changes which were needed to incorporate the Northern Irish role into the Ofcom Act 2002 before the recruitment process for the Board Member for Northern Ireland could commence. Scottish Ministers, having approved the extension of Bob Downes' term as Member for Scotland, were consulting the Secretary of State for DCMS on the recommendation.

Item 3: Minutes of the meeting held on 21 July 2021 and Matters Arising – Board Minutes 286(21), Note of a Board Call held on 1 September 2021, and Note of Action Points

5. The minutes of the Ofcom Board meeting held on 21 July 2021 and the note of the Board call held on 1 September 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**. The Board **NOTED** that the lease for the interim Manchester Hub had been signed on the terms previously advised to the Board.

Item 4: Chief Executive's Report – Board Paper 78(21)

7. Melanie Dawes presented her report and provided an update on recent developments, including the following issues.

8. Corporate Issues: Melanie Dawes reported on a gradual return of colleagues to office working. The hybrid working trial was due to commence on 11 October 2021. Upgrades to the technology in the offices were being undertaken ahead of that trial commencing. Melanie Dawes referred to her recent face-to-face meetings with the apprentices and with the

graduates respectively and her first face-to-face meeting with the Senior Leadership Team which was scheduled to take place on 12 October 2021. Three events had been arranged for the 100 plus new joiners who had started working at Ofcom after the COVID-19 pandemic restrictions were introduced.

9. Ofcom had made its submission to DCMS regarding the Government spending review. Currently the Treasury was challenging DCMS on the proposed figures for funding the work on online safety, and particularly about whether spending could be delayed given the repeated delays to the parliamentary timescale.

10. Melanie Dawes updated the Board on the forthcoming departure of a member of the Senior Management Team which would be announced in the coming days, and also the appointment of the Chief Executive of the Digital Regulation Cooperation Forum.

11. Stonewall: Following completion of the annual review of Ofcom's contract with Stonewall, the decision had been announced at the end of August 2021 that Ofcom would continue to participate in the Workplace Equality Index but had withdrawn from the Champions Scheme. Melanie Dawes and Kevin Bakhurst provided an oral update on the reasoning behind the position taken and reiterated Ofcom's commitment to continuing to support LGBTQ+ colleagues.

12. Consumers: The forthcoming switch-off of the public service telephone network (PSTN) had featured in the media over the summer. This was primarily an issue for the communications providers. Ofcom was engaging with the industry, with a focus on ensuring that vulnerable customers were supported and protected. In response to a question from the Board, Lindsey Fussell reported that there were plans to undertake research into the consumer experience of engaging with new technology, and also into the experience of PSTN migration.

13. Broadcasting: Melanie Dawes referred to a virtual event to be held on 29 September 2021 - "Diversity and Inclusion in the UK" - which Board Members were welcome to join.

14. Online Safety: The pre-legislative scrutiny process for the draft Online Safety Bill had commenced. The Board had seen a letter dated 13 September 2021 which had been sent to the Chair of the Digital, Culture, Media and Sport Committee and the Chair of the Draft Safety Bill Joint Committee, setting out Ofcom's perspective on the legislation. (The letter had been published.) Ofcom had been engaging with the Joint-Committee and Melanie Dawes was due to give formal evidence in early November 2021.

15. Bilsdale Transmitter Mast: On 10 August 2021 the Bilsdale transmitter mast in North Yorkshire had caught fire, leaving around 600,000 homes without any terrestrial TV service. Arqiva had planned largely to restore TV services in the area by 28 August using a temporary disaster recovery mast, but commercial negotiations with the relevant landowner had stalled. Arqiva were going through the Courts to secure access but were still awaiting approval from the Parks Authorities. The incident had revealed that Arqiva's contingency plans were not adequate and had also raised the question of future potential vulnerabilities. Kevin Bakhurst was due to meet Arqiva later on the day of this meeting to discuss the issues of concern. Martin Ballantyne advised that Ofcom had limited formal legal powers but nevertheless would use its convening powers to seek to ensure that Arqiva delivered what was needed.

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

Item 5: Executive Director Updates – oral

17. In response to a question from the Board regarding recent price increases for communications services and affordability issues, Lindsey Fussell referred to the annual report “Pricing Trends for Communications Services in the UK” which had been published in July 2021 and the report due to be published in the autumn on “Helping Customers to Get Better Deals”. Ofcom had been clear about a willingness to see higher prices to allow for returns on investment in order to improve services, but Ofcom would continue to monitor for excessive pricing. The focus would be on protecting consumers who were vulnerable in some way and those who found it challenging to engage with the market.

18. New switching rules for providers of landline, broadband and mobile services would come into force in April 2023. A consultation had been undertaken on the process that residential landline and broadband customers would use to switch from that date. The final decision which was due to be published shortly would confirm a gaining provider led process.

19. Lindsey Fussell provided an update on the progress of the Telecoms Security Bill through Parliament and the likely timetable for Royal Assent. Ofcom would then have two years before making the first report to the Secretary of State. The proposed regulatory approach would be brought to the Board before the end of 2021.

20. Kevin Bakhurst referred to current areas of work in relation to the BBC including the annual report, the review of the operating licence and the competition assessment of the BBC’s proposal to bring back BBC Three as a linear terrestrial television channel in January 2022. Ofcom’s decision to approve Channel 5’s request for a licence variation in relation to its new provision requirements would be published shortly. Kevin Bakhurst referred to a recent visit to Sky to see a demonstration of the successor to the Sky Q box which was due to be launched on 11 October 2021.

21. Martin Ballantyne provided an update on a forthcoming court case.

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

Item 6: Reports from Non-Executive Members – oral

23. [Withheld from published minutes]

24. Bob Downes reported on matters discussed by the Content Board at a short catch up meeting held on 7 September 2021. He asked that in the not too distant future, once the new Manchester office was appropriately staffed, a Content Board meeting should be held there.

25. Bob Downes reported on current issues in Northern Ireland including the Northern Ireland Protocol and the impact particularly on parcel delivery, and in Scotland the concerns about the potential impact of changes to the future ownership of Channel 4.

26. In his update on current issues in Wales, David Jones referred to the Welsh Government having started to focus on the Online Safety Bill and its implications.

27. Angela Dean having been appointed at the 21 July 2021 Board meeting as Board Member for England had met the Chair of the Advisory Committee for England and was due to attend her first meeting of the Committee on 23 September 2021.

28. Graham Mather was due to meet the Chair of the Communications Consumer Panel/ACOD and would update the Board on matters discussed at the next meeting.

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

Item 7: Video-Sharing Platforms (VSP): Ofcom’s Plan and Approach - Board Paper 79(21)

30. On 6 October 2021 Ofcom would publish a paper (Annex 1 to Board Paper 79(21)), which would set out Ofcom’s approach to regulating VSPs and the five priorities for the year ahead. Its audience was intended to be broad, providing an opportunity to land some key messages about Ofcom’s VSP/Online Safety approach with media, Parliamentarians and key observers of the debate; while also talking directly to industry to be clear about the regulatory priorities and where services should focus their efforts. Board Paper 79(21) provided an update on consultations and publications issued to date. Since the launch of the online notification portal 18 notifications had been received. Guidance for VSP providers on measures to protect users from harmful content had been published in draft in March 2021 and a final version would be published alongside the statement on Ofcom’s Plan and Approach.

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

- The Board asked that consideration be given to the internal and external measures that would be used to assess Ofcom’s performance in delivering the five priority areas which had been identified to be addressed in the year ahead. This should set a baseline against which to measure in future. The Board asked to see that framework in due course, noting its potential relevance for measuring the effectiveness of the wider online safety regulation.
- One of the priorities identified for the coming year was “Protections for under-18s: we will work with VSPs popular with children to ensure that they are providing an age-appropriate experience”. The Board commented that clarity was needed about what was meant by “material that might impair the physical, mental or moral development of under 18s” in order to be able to measure delivery against that priority. The Board noted the intention to work closely with other regulators to co-ordinate efforts in this area.
- The Board asked about the new consumer complaints form which was given a soft launch in July 2021. So far, 15 complaints had been received about a variety of services, not all of which were in the scope of the regulation, with a mix of content and process complaints. The aim was to encourage users to complain to the platforms in the first instance, and then to Ofcom if that process failed.
- Ofcom had a good working relationship with the Information Commissioner’s Office (ICO), but there was further work to be done to determine precisely where the boundaries lay between Ofcom’s and the ICO’s respective responsibilities, where they would work together or have different roles.

32. The Board **APPROVED** the VSP Plan and approach document provided in Annex 1 to Board Paper 79(21).

Item 8: Preparing to Regulate Online Safety – Board Paper 80(21)

33. Board Paper 80(21) provided an update on the work being done to prepare for Ofcom regulating online harms. A number of sessions had been planned with Board Members in order to share a detailed understanding of the legislation itself, the harms Ofcom would be expected

to address, and initial views on the approach to be taken to achieving the policy objectives set out by Government. Board Paper 80(21) included an update on the legislative progress of the Online Safety Bill, and an annex which set out Ofcom's Online Safety Communications Strategy.

34. Following a discussion which focussed on the communications strategy, the Board thanked the executive for a comprehensive update and:

- **NOTED** the sequence of discussions with the Board which had been planned in order to involve Members in the process of formulating Ofcom's Online Safety regulatory strategy.
- **NOTED** the legislative progress and process for pre-legislative scrutiny of the Online Safety Bill.
- **NOTED** the process for development of Ofcom's regulatory strategy and sequence in which the Board would be engaged.
- **NOTED** the Online Safety communications strategy as set out in the Annex to Board Paper 80(21).
- **NOTED** the update from the Online Safety Programme Board.

Item 9: Ofcom's Broadcasting Strategy – Board Paper 81(21)

35. The Board was invited to comment on the slides in the annex to Board Paper 81(21), and particularly the final section which discussed how Ofcom's priorities and approach to broadcasting strategy might need to change over the next 10 years through an exploration of likely industry developments, new methods of regulation and some upcoming priorities.

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

- On slide 10, the content creators identified should include STV.
- A request was made for the next iteration to include some numbers to support the assumptions and a timescale for the likely pace of change.
- It would be helpful to do some scenario planning looking across the next 10 years and having regard to potential market developments. This might involve using external resource. It was suggested that consideration should be given to what Ofcom might do differently depending on the scenario, and what the thresholds and triggers might be. Consideration of the scenarios would involve having regard to risk appetite.
- It would be helpful to have a timeline for when issues might be addressed, either because they were priority issues or the most easily achieved. Also, to indicate where Ofcom could address issues independently and where action was needed by others, for example, options for helping to protect the UK's creative economy.
- It was suggested that one issue it might be beneficial to pursue as a near term priority was exploring the potential to extend the 'broadcaster first' complaints model beyond the BBC.
- An issue for further reflection as part of the Strategy Day was how far to move down the track of setting priorities across the sectors Ofcom regulates, given that currently the sector strategies were at different stages of development and that decisions taken would have resource consequences.

37. The Board **NOTED** the Broadcasting Strategy, which formed part of the new Corporate Strategy cycle that included Cross Ofcom Strategy, sector strategies, three-year business plan and yearly plan of work.

Item 10: Outline Plan for the Board Strategy Day on 20 October 2021 – Board Paper 84(21)

38. The Board was invited to comment on the outline plan for the Board Strategy Day to be held on 20 October 2021, as set out in Board Paper 84(21).

39. During discussion the Board welcomed the proposed focus on the approach to Online Safety. The Board asked that following on after that there should be a high-level discussion ranging across all the sectors, allowing time for the Board to do some blue-sky thinking. The executive was asked to provide some provocative questions to prompt that discussion. The executive could then reflect on the discussion at the Strategy Day and the implications for the Three-Year Plan.

40. Subject to the comments made in discussion, the Board **NOTED** the outline plan for the Board Strategy Day.

Item 11: National Advisory Committee for Wales Recruitment– Board Paper 82(21)

41. The Board **APPROVED**:

- the following appointments to the Advisory Committee for Wales (ACW):
 - Sian Doyle and Thomas Crick for three-year terms expiring in October 2024;
 - Angharad Evans for a two-year term, expiring in October 2023;
 - Aled Eurig as an additional member of the Committee for a two-year term ending in October 2023; and
- the holding of one candidate in reserve; in the event of his being recommended for appointment, prior approval would be sought from the Ofcom Board.

Item 12: Information Items

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

- Total Facilities Management: Contract Re-tender Update – Board Paper 83(21)
- Annual Health and Safety Update – Board Paper 85(21)
- Quarterly Performance Update – Board Paper 86(21)
- Board Work Programme/Forward Agendas – Board Paper 87(21)
- Publications Schedule – Board Paper 88(21)
- Minutes of the Communications Consumer Panel/ACOD (meeting held on 17 June 2021)
- Minutes of the Content Board (meeting held on 6 July 2021)
- Minutes of the Advisory Committee for England (meeting held on 24 June 2021)
- Minutes of the Advisory Committee for Northern Ireland (meeting held on 8 June 2021)
- Minutes of the Advisory Committee for Scotland (meeting held on 16 June 2021)
- Minutes of the Advisory Committee for Wales (meeting held on 15 June 2021).

Item 13: Any Other Business

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

Item 14: Date of the Next Meeting

44. The next scheduled Board meeting will be held on 20 October 2021.