

**MINUTES OF THE ONE HUNDRED AND SIXTY-NINTH MEETING OF THE OFCOM  
CONTENT BOARD HELD VIRTUALLY VIA MICROSOFT TEAMS  
ON TUESDAY 30 MARCH 2021**

**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
Stephen Nuttall	Member
Monisha Shah	Member
Kim Shillinglaw	Member
Janey Walker	Member

**Apologies:**

Sophie Morgan	Member
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**In Attendance:**

Ali-Abbas Ali	Director, Broadcast Competition
Adam Baxter	Director, Standards and Audience Protection
Kate Biggs	Director, Broadcast Policy and Commercial Broadcasters
David Edwards	Assistant Corporation Secretary
Other Ofcom colleagues attending for specific items	

**Introduction & Welcome**

1. The Chairman welcomed all present to the one hundred and sixty-ninth meeting of the Content Board. Members noted that this would be Janey Walker's last meeting. The Chairman thanked Janey for the very valuable contribution she had made to the work of Ofcom and to the Content Board.

**Members' interests**

2. Visionworks Production had been commissioned to work on a mental health audio project with the commercial radio broadcaster U105, funded by the Audio Content Fund. Angelina Fusco had been providing an oversight role. [Note: The project concluded on 31 March 2021.]
3. Tobin Ireland would be joining the board of Cyan Forensics on 1 April 2021. The company provided digital forensic tools to tackle harmful digital content, to clients including police forces and social media platforms.

**Minutes of the Content Board Meeting held 26 January 2021 – CB Minutes 168(21), Actions List and Matters Arising**

4. The minutes of the Content Board meeting held on 26 January 2021 were agreed as a true and accurate record for signature by the Chairman.

5. There remained an outstanding action to schedule a discussion about due impartiality.
6. There were no other matters arising.

**Chairman's update**

7. The Chairman reported on discussions at February and March 2021 Ofcom Board meetings and focussed on the main areas of work.
8. At its meeting in February the Ofcom Board had approved the Content Board's Annual Work Programme for 2021/22.
9. On 26 March Tim Suter took part in an Ofcom Board workshop on Freedom of Expression. At his request, the workshop would be re-run for the Content Board.
10. On 6 May 2021 elections would take place (to the Scottish Parliament; the Welsh Senedd; some local authorities in England and local referendums, including elections to the London Assembly and for a number of directly elected Mayors, and for Police and Crime Commissioners in England and Wales). The Chairman informed members that Ofcom's Election Committee, of which he was chair, would be convened if required.

**Broadcast & Online Content Group Policy updates – CB 4(21)**

11. Members had received a paper providing an update on key policy and project areas in the Broadcast and Online Content Group.
12. Members were updated further on a wide range of topics, including:
  - Online harms; as part of Ofcom's online harms programme, the process of recruitment had begun to fill a number of key roles and a member highlighted the importance of diversity and inclusion.
  - The Executive continued to engage with DCMS as the latter drafted the Online Harms Bill. Ofcom's regulatory approach continued to be developed, building on experience of the new regime for Video Sharing Platforms (VSPs), as did expertise in data and technology.
  - The regulatory regime was expected to be based on both legislation and Ofcom codes of practice (CoP) and members discussed a 'comply or explain' approach to CoPs.
  - Standards and Audience Protection; it was noted that an edition of ITV's *Good Morning Britain* had attracted an unprecedented number of complaints, largely about comments made by a presenter when discussing a television interview between the Duke and Duchess of Sussex and journalist Oprah Winfrey. An investigation had been launched requesting ITV's comments on how the content complied with Rule 2.1 (harm) and Rule 2.3 (offence) of the Broadcasting Code. The subsequent interview between the Duke and Duchess of Sussex and Oprah Winfrey had itself also attracted a substantial number of complaints.
  - There was brief discussion of issues including the so-called 'culture wars', the robustness of the Broadcasting Code and changing audience expectations.
  - It was further noted that Ofcom had published three recent 'not-pursued' decisions in relation to BBC content where Ofcom had provided guidance to the BBC and other broadcasters (these related to: complaints about use of the 'N-word' in a regional BBC news programme that had been repeated on the BBC News Channel; the BBC's 'resolved' finding concerning an edition of *Newsnight*, and about the BBC's broadcasting of the First Minister of Scotland's daily

Coronavirus update briefings).

- China Global Television Network (CGTN) enforcement activity was continuing.
- BBC Operating Licence; the Executive had begun discussion on Ofcom's approach to a new Operating Licence and expected to publish a call for inputs in the coming months. A Content Board discussion on the future of the BBC's Operating Licence would take place in due course.
- Ofcom's covid-19 response; Ofcom would be publishing a note to broadcast licensees in April, to update them on how Ofcom had reflected the changing situation in its regulatory approach.
- Advertising of products high in fat, salt or sugar (HFSS); it was noted that the Government has proposed the introduction of further restrictions on the advertising of HFSS products, to cover TV, on demand and online platforms.
- Media Ownership Rules review; work was underway to examine where Ofcom should recommend changes to the existing rules to DCMS.

#### **Video Sharing Platforms (VSP) update**

13. Members were updated on Ofcom's work to regulate UK-established VSPs. On 24 March a 10-week consultation was published on draft guidance for VSP providers on protection measures for harmful material. Three VSP research reports had also been published.
14. It was noted that the Content Board sub-group on Online Harms/VSPs had provided useful input as the Executive's work progressed, on matters including the tone of the guidance; on what VSPs were required to do and Ofcom's expectations; and on issues of supervision and robust enforcement.
15. The Chairman commented that there was much activity in the Online Harms/VSP space and requested that relevant articles/reading material be shared with Content Board members.

#### **Future of Public Service Media – Small Screen: Big Debate – CB 5(21)**

16. It was noted that members had received a letter from John McVay, Chief Executive of Pact (the trade association representing independent TV, film and digital producers), in relation to Ofcom's call for evidence on PSBs and the UK production sector, and a copy of Pact's response to the call for evidence. Members were briefed on the Executive's thinking in relation to the issues raised in the letter and its discussions with Pact. It was noted also that there were independent producers that were not part of Pact.
17. Ofcom's SS:BD consultation had closed on 16 March 2021 and members had been provided with a summary of the 90+ responses received.
18. In discussion members raised a number of issues, including tax breaks and contestable funding; recognition that commercial successes would help independent producers (indies) to support PSB values; new ideas from respondents on the approach to reform of PSB; links between the BBC programme and PSB Review, including the BBC Studios Review; clarity in relation to an accountability framework to 'future proof' and refresh the PSM system; and whether there was a need to review the Terms of Trade between indies and the BBC, to reflect on-demand services for example.
19. In relation to PSM prominence and availability, the Executive suggested a separate session and further discussion with interested members.
20. The SS:BD team would return to the Content Board in May with an

indication of PSB/PSM recommendations, expected to be published in a statement in July. The Executive would also arrange a session, for interested members, on how PSM in the nations and regions would be address in recommendations.

**Market position of BBC Sounds – CB 6(21)**

21. Following a call for evidence, the Executive had undertaken an analysis of the radio and audio market and of the impact of BBC Sounds.
22. In discussion, issues raised by members included whether BBC Sounds could impact negatively, over time, on innovation and new entrants and whether monitoring was required; and the difficulty for commercial providers to make a return when competing with the large volume of ad-free material on Sounds. It was noted that Sounds also faced challenges, eg from streaming services like Spotify and Amazon Music, and as Sounds evolved it could be a spur to innovation.
23. In late April, Ofcom would consult on its analysis, setting out its provisional views that it was not minded to carry out a formal review into the impact of BBC Sounds on competition; and that the BBC needed to be more transparent and engage better with third parties when planning changes to services.

**BBC Studios review update – CB 7(21)**

24. Members were updated on Ofcom’s review of the interaction between the BBC Public Service (Public Service) and BBC Studios (Studios), the Executive’s analysis to date and on stakeholder responses to both a call for evidence and a consultation to assess Studios’ changes to its lines of business, both published in October 2020.
25. Issues discussed by members included targets for programming put out to tender to indies; whether interaction between the Public Service and Studios created the risk that the latter was able to operate in ways that competitors could not; BBC governance arrangements and overlaps in the membership between BBC boards/executive committees; advantages conferred by integration of production, distribution and transmission and by the BBC brand; and a need for clear reporting lines, regardless of integration, and for detailed financial data.
26. The Executive expected to bring its findings to the Content Board in due course.

**BBC Three BCA – CB 8(21)**

27. Members were briefed on BBC plans to relaunch BBC Three as a linear television channel in January 2022. As a new service, this would be a ‘material change’ under the terms of the Agreement (between the SoS and the BBC) and the BBC was required to conduct a public interest test (PIT). Ofcom must also consider whether the BBC’s proposal was material and, if so, undertake a competition assessment.
28. Members noted that two particular drivers of the proposal were to reach 16-34 year-old audiences who watched but were light users of broadcast TV and to build awareness and change perceptions of what iPlayer and the BBC had to offer more generally.
29. Issues discussed by members included the impact on other channels, including Channel 4 and the need for this to be considered as part of the PIT; audience groups and substitution; public value aspects of the proposal; and EPG implications. It was noted that the Executive expected to receive the BBC’s final proposal in June.

**Update on Ofcom's response to Channel 4's Statement of Media Content Policy 2020/2 – CB 9(21)**

30. Members were briefed on the Executive's approach in conducting this year's review of Channel 4 Corporation's (C4C) annual Statement of Media Content Policy (SMCP). The intention was to look at the most prominent areas of C4C's remit but with a particular focus this year on its strategy for connecting with younger audiences and the implementation of the *4 All the UK* programme in the nations and regions. It was noted that C4C continued to be innovative and had responded positively to the covid-19 pandemic.
31. A member queried how spend in the Nations and Regions was affected by the impact of the Covid-related reduction in the overall content budget. The Executive would be considering this in its response as well as the roll out of the *4 All UK programme* over the past year. C4C was required to meet a quota of 35% spend on commissions for the main channel on productions outside London, which it routinely exceeded, and had voluntarily committed to increasing this proportion to 50% by 2023.
32. Other issues raised by members included financial viability and pressure on advertising revenues; C4C purposes; alternative voices, including new production voices; and value in looking ahead, ie beyond an annual assessment. It was noted that Channel 4, in its response to the SC:BD consultation, had held up the SMCP as a good example of a flexible way of holding a broadcaster to account. That raised the question of whether it was a model to apply to other providers of PSB/PSM.
33. The Executive expected to provide the Content Board with its draft response to the SMCP in time for the next meeting.

**Online Nation 2021 research – CB 10(21)**

34. Ofcom planned to publish its Online Nation 2021 report at the end of May. There would be core chapters on key metrics about how the UK adult population accessed the internet, what they were doing online and their attitudes to and experiences of using the internet; and in relation to industry, to track key metrics and market developments. The context of covid-19 would be a consideration, as would online harms. In general reporting in the publication would be neutral.
35. Issues raised by members included whether there were nations aspects to consider; citizen activity online, eg to access government services, and balancing online goods with online harms; advantages, learnings and changes in attitude with respect to online provision of education and health care during the pandemic; value in making international data comparisons; and equality and diversity, whilst being noted that relevant usage data was not currently available.

**Information items**

36. The following items were noted:
  - Diversity in broadcasting information – CB 11(21);
  - Accessibility of television and on-demand – CB 12(21);
  - Minutes of the Ofcom Board (9 December 2020 and 10 February 2021); and
  - Minutes of the Communications Consumer Panel/ACOD (10 December 2020 and 21 January and 18 February 2021).

**Any Other Business**

37. A member commented that the agenda had included a number of papers related to the BBC (plus a paper on Channel 4) and wondered about the cumulative effect on the PSB landscape and any associated risks. It was noted that emerging and evolving issues in relation to the regulatory/licensing framework could have unintended consequences. The Chairman commented that the Ofcom Board would be discussing broadcasting strategy (at its meeting in June). He suggested a similar discussion for the Content Board and would confer with the Executive about that.

**Date of the Next Meeting**

38. The next meeting of the Content Board was scheduled to take place on 4 May 2021.