

**MINUTES OF THE TWO HUNDRED AND SIXTY-SEVENTH MEETING OF  
THE OFCOM BOARD HELD ON 20 NOVEMBER 2019 IN CARDIFF**

**Present**

Terry Burns	Chairman
Maggie Carver	Deputy Chair
Angela Dean	Non-Executive Member
Bob Downes	Non-Executive Member
David Jones	Non-Executive Member
Graham Mather	Non-Executive Member
Jonathan Oxley	Executive Member and Group Director, Competition
Tim Suter	Non-Executive Member
Ben Verwaayen	Non-Executive Member
Sharon White	Executive Member and Chief Executive

**In attendance**

Polly Weitzman	General Counsel
Jacqui Gregory	Corporation Secretary
Jenny Leyland	Assistant Secretary to the Corporation

Other Ofcom colleagues:

Katie Pettifer (minute 7)  
Nuala Cosgrove\* (minute 7)  
Adam Baxter\* (minute 7)  
Yih-Choung Teh (minutes 11-15 & 22)  
Guy Holcroft (minutes 11-13)  
Tony Close (minutes 14-15)  
Lindsey Fussell (minute 16)  
Selina Chadha\* (minute 16)  
Dave Clarkson (minutes 17-19)  
David Matthew (minutes 17-19)  
Marina Gibbs (minutes 20-21)  
David Brown\* (minutes 20-21)  
Kevin Bakhurst (minute 22)

\*joined meeting via Teams from Riverside House, London

**Declaration of Members' Interests – oral**

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

**Chairman's Introduction – oral**

2. Financial Authorities Framework: At the October 2019 meeting the Board approved the Corporate Governance Framework which included the Financial Authorities Framework (FAF). In light of Jonathan Oxley taking up his role as Interim Chief Executive at the end of November 2019, the following changes were proposed to the FAF which would apply during the period he was Interim Chief Executive:

- Purchase Orders and Supplier Contracts over £1m: Currently, Sharon White had authority to approve purchase orders and supplier contracts between £1m and £5m in value, with Jonathan Oxley approving (on behalf of the Board) anything over £5m. Given that Jonathan Oxley would be the only Executive Director on the Board from the end of November 2019, until a new Chief Executive was in place, it was proposed that Jonathan Oxley retain his current levels of authority for purchase orders and supplier contracts, with another Senior Management Team (SMT) Member (Polly Weitzman) being delegated Sharon White's current authority limits for the interim period.
- Corporate Services Related Contracts over £2.5m: Currently, Sharon White had authority to approve any Corporate Services related contracts between £2.5m and £5m in value, with Jonathan Oxley approving (on behalf of the Board) anything over £5m. As above, it was proposed that Jonathan Oxley should retain his current level of authority for Corporate Services related contracts, with another SMT Member (Polly Weitzman) being delegated Sharon White's current authority limits for the interim period.

3. The Board **AGREED** that Polly Weitzman should be delegated Sharon White's current authority limits as set out above.

**Minutes of the meeting held on 17 October 2019 and matters arising – Board Minutes 266(19) and note of action points**

4. The minutes of the Ofcom Board meeting held on 17 October 2019 were **APPROVED** for signature by the Chairman as an accurate record.

5. A summary of progress against action points had been circulated and the status updates against each of the actions were duly **NOTED**.

**Chief Executive's Report – Board Paper 90(19)**

6. Sharon White updated the Board on key developments since the last Board meeting. The following issues were discussed:

7. General Election, 12 December 2019: The Board was briefed on the process that would apply if complaints were received about the broadcasters' coverage of the forthcoming General Election, including the role played by the Election Committee. The Board was updated on the current understanding of the political parties' policy positions on issues that could have

implications for the communications sector. The Chairman requested that preparatory work should be undertaken on the implications for Ofcom, including possible legislative change needed in the event of alternative General Election outcomes, together with a plan (with timescales) of Ofcom's intentions pending any primary legislative changes being made to the Communications Act.

8. Government Mobile Deal and Ofcom's 700 MHz and 3.6-3.8 GHz Spectrum Auction: On 25 October 2019, the Secretary of State had announced that the Government had agreed, in principle, to a deal with the four Mobile Network Operators (MNOs) to improve 4G mobile coverage through a Shared Rural Network (SRN). The MNOs were investing £530m in the SRN with the potential for it to be matched by £500m of Government funding. The deal was subject to an agreement being signed between the Government and the MNOs after the General Election (which would include terms for funding) and, as such, some risks to this remained. On 28 October 2019, Ofcom had published revised proposals for the 700 MHz and 3.6-3.8 GHz auction. The original proposals had included coverage obligations, which given the MNOs' commitments, were no longer part of the auction design. Once consultation responses had been received, the Board would be asked to consider the options for moving ahead with the auction.

9. The BBC Annual Report and the Review of News and Current Affairs: On 24 October 2019, Ofcom had published the Annual Report on the BBC and the review of BBC News and Current Affairs which had been considered at the Board's October 2019 meeting. The Board was updated on the BBC's initial reaction to the publications, following a meeting held on 4 November 2019 with the BBC's Director General and Group Managing Director.

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

#### **Ofcom Plan of Work 2020/21 – Board Paper 91(19)**

11. The Board reviewed the draft Ofcom Plan of Work 2020/21 which was proposed for consultation. The plan set out nine themes, which had evolved from those set out in the 2019/20 plan to reflect progress made and the specific associated projects for 2020/21. The plan also summarised important programmatic work. The intention was to return to the Board for approval of the final plan, reflecting consultation responses received and with the associated budget, ahead of publication of the Plan of Work in March 2020. The Board would also be provided with a three-year business plan which would include looking at the resources and skills required and where Ofcom might need to do less in certain areas in order to prioritise other activities. The Board **NOTED** that, depending on the outcome of the General Election, there might be implications for the proposed Plan of Work for 2020/21 necessitating some re-working of the current draft, thereby resulting in the publication date being deferred from December 2019 to January 2020. This would include checking whether the Statement of Strategic Priorities (SSP) to which Ofcom had to have regard when exercising its regulatory functions was supported by the incoming Government.

12. In discussion, it was suggested that some reference should be included in the draft plan to climate change issues. Under the "Fairness for customers" theme, reference was made to "making data work for consumers", and a request was made for an explanation to be included in the document of what was meant by that. Under the "Supporting UK broadcasting" theme it was

suggested that there should be some acknowledgement of the content which was currently unregulated. Under the theme “Better mobile and broadband - wherever you are” the opportunity should be taken to help allay health fears about 5G. The theme about Ofcom’s relationship with the EU and beyond should be described as a continuing rather than a new relationship.

13. Subject to the comments noted above and any further changes needed in light of the General Election outcome, the Board **AGREED** the draft Ofcom Plan of Work 2020/21 for publication for consultation.

#### **Future of Online Programme: The Plan for 2020 - Board Paper 92(19)**

14. There continued to be a high level of uncertainty about the future shape of online regulation in the UK. This had been prolonged by the announcement of the General Election to be held on 12 December 2019. However, recent changes to European law meant that Ofcom could expect to receive some new online-related powers in the nearer term, although subject to possible change depending on the Brexit outcome. This included new powers to regulate video-sharing platforms (VSPs) through the revised Audio-Visual Media Services Directive (AVMSD). Separately, through the revised European Electronic Communications Code (which sets out Ofcom’s ex-ante regulatory framework for electronic communications), there was an expectation that some of Ofcom’s existing regulatory powers would be extended to certain ‘over-the-top’ messaging and communications services like WhatsApp. Given this context, Board Paper 92(19) set out a proposed work programme for 2020, with the primary focus being on planning to ensure preparedness for new powers.

15. Following discussion, the Board **AGREED** the proposed approach, as set out in Board Paper 92(19). A request was made for a Board briefing on regulatory requirements in the context of VSPs, with a demonstration of some of the VSPs, eg, TikTok and Tumblr.

#### **Consumer Update: Universality – Board Paper 93(19)**

16. The Board discussed and **NOTED** the update provided in Board Paper 93(19) and the oral update provided at the meeting on the progress made against the consumer policy priority set out in the 2019/20 Annual Plan, “Better broadband and mobile – wherever you are”. The paper provided an overview of the universality work, including how it interacted with the UK Government’s new broadband strategy (although noting that might be subject to change, depending on the outcome of the General Election). A request was made by the Board for some further work be done to seek to establish, not just where the properties were located which were not expected to have a broadband connection after delivery of the USO (because to connect them would be too expensive), but also in so far as possible the household income of the affected properties, perhaps using a proxy such as house value.

#### **Fixed Telecoms Review: Consultation Proposals – Board Paper 94(19)**

17. Board Paper 94(19) set out proposals for inclusion in a proposed consultation on how from 2021 onwards Ofcom would regulate broadband and leased lines markets. The aim was to promote investment and competition in full fibre networks. The Board noted the recent

announcement by the Labour Party of its intention, if elected, to deliver free broadband to all individuals and business by 2030, which would involve bringing broadband relevant parts of BT into public ownership. Depending on the outcome of the General Election, the present approach set out for the Fixed Telecoms Review, which was based on a competitive market, might need to be revisited.

18. Subject to the caveat noted in the preceding paragraph, the Board **AGREED** that a consultation should be published on Ofcom's approach to regulation for broadband and leased line markets from 2021 onwards. In particular it would propose:

- Area 1 (competitive areas of the UK) – to identify the existing Central London Area for leased lines as competitive but no other areas. If during the course of the five years from 2021 other areas became competitive, there were regulatory powers which potentially allowed Ofcom to modify the regulation.
- Area 2 (potentially competitive areas) – pricing flexibility for high broadband speeds, indexation of prices for the anchor product (40/10) in real terms, and prohibit BT from targeting competitors through geographic discounts.
- Area 3 (non-competitive areas) – if BT makes credible commitments to deploy fibre on sufficient scale, Ofcom would also index prices in real terms from the outset (ie, 2021) to provide cost recovery upfront. If no commitments were forthcoming, Ofcom would set cost based (lower) prices for copper products and if subsequently BT did deploy fibre allow prices to rise to cover the additional costs. In Area 3 Ofcom would also require BT to offer dark fibre in the area.

19. The Board **REQUESTED** that, whilst the team should be ready to publish the consultation document as planned in December 2019, it was likely that the timing of the publication would be deferred to January 2020, given the uncertainty of the General Election. The Board **AGREED** that consideration be included given at the 18 December 2019 Board meeting to (i) whether a different approach was needed given the outcome of the General Election; and (ii) the appropriate timing for publication. The final document would be approved for publication by the Interim Chief Executive and General Counsel.

#### **Update on the Financial Sustainability of the Postal Universal Service – Board Paper 95(19)**

20. Since Board Paper 95(19) was written, Royal Mail on 13 November 2019 had won a High Court injunction against the Communications Workers Union to stop planned postal strikes. The paper included a number of scenarios for the future sustainability of the postal universal service, including a scenario involving industrial action being taken.

21. Each year Ofcom publishes an Annual Monitoring Report (AMR) on Royal Mail. The AMR was factual and backward looking, setting out trends in the letters and parcels markets and the financial performance of the Reported Business. The Board **REQUESTED** sight of the executive summary of the draft AMR for 2018/19 at the 18 December 2019 Board meeting (with the full AMR to be made available in the Board Reading Room on the Diligent Portal), along with a covering note which provided an update on any developments made since the November 2019 meeting and any other considerations which might affect the decision to be taken on the timing of publication of the AMR 2018/19, as planned in December 2019.

**Strategy Discussion on Public Service Broadcasting – Board Paper 96(19)**

22. Board Paper 96(19) provided background material for the Board’s strategy discussion on Public Service Broadcasting (PSB). This session would help inform Ofcom’s forthcoming PSB Review and its nationwide ‘Small Screen: Big Debate’ programme. During discussion a number of comments were noted by the team for consideration.

**Appointments to the Board of MG Alba – Board Paper 97(19)**

23. The Board:

- **APPROVED** the appointment of Lisa Annette, Rhoda Macdonald, Ceit-Anna MacLeod and Iain Macmillan as members of the MG ALBA Board from 1 January 2020, each for terms of four years.
- **NOTED** that, in line with the provisions of the Scotland Act 2016 (“the 2016 Act”), the appointments were subject to final approval by Scottish Ministers.

**Information Items**

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

- Monthly Finance Report – Board Paper 98(19)
- Board Work Programme/Forward Agendas – Board Paper 99(19).

**Any Other Business**

25. Sharon White: The Board noted that this was Sharon White’s last Board meeting as her last working day with Ofcom was 27 November 2019. The Chairman thanked Sharon for the way she had led the organisation, noting that she had had some remarkable achievements, using her analytical skills to work through projects in ways that really made a difference in terms of outcomes. She had managed to challenge peoples’ work in a constructive way and had brought them along with her, respecting other peoples’ views, with a willingness to listen. That approach had worked around the Boardroom table as well. The Chairman wished Sharon well for the future and said that she would be missed at Ofcom. Board Members concurred with the Chairman’s comments and wished Sharon all the very best in her new role.

**Date of the Next Meeting**

26. The next scheduled Board meeting will be held on Wednesday, 18 December 2019.