

**MINUTES OF THE TWO HUNDRED AND EIGHTY-NINTH MEETING OF
THE OFCOM BOARD HELD ON 17 NOVEMBER 2021
AT THE TITANIC HOTEL, TITANIC QUARTER, 8 QUEEN'S ROAD, BELFAST, BT3 9DT**

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)

Apology

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 (item 7)
Iqbal Marikkar (item 7) (attended virtually via Teams)
David Clarkson (item 8) (attended virtually via Teams)
David Matthew (items 8-9) (attended virtually via Teams)
Marina Gibbs (item 9) (attended virtually via Teams)
David Brown (item 9) (attended virtually via Teams)
Mark Bunting (item 10) (attended virtually via Teams)
Jay Harman (item 10) (attended virtually via Teams)
Jon Higham (item 10) (attended virtually via Teams)
Tania Van Den Brande (item 10) (attended virtually via Teams)
Melissa Tatton (item 11) (attended virtually via Teams)
Declan Costello (item 11) (attended virtually via Teams)

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. She referred to matters discussed at recent meetings with the Chairs of ITV and of the Financial Conduct Authority and with the incoming Chair of BT.

3. Non-Executive Ofcom Board Member Appointments: An update on Non-Executive Board Member appointments had been included in the action points note which had been provided ahead of the meeting. The advertising campaign for the current vacancy on the Ofcom Board was originally due to close on 10 November. DCMS had advised that the campaign was being extended until 24 November 2021 to allow time for additional outreach and networking with the aim being to attract a more diverse field. The recruitment for the new Ofcom Chair had gone live with the advertising campaign due to close on 29 November 2021 and interviews expected in December 2021. With regard to the appointment process for the Northern Ireland Board Member, the Secretary of State had signed the order in October 2021, which meant that the Statutory Instrument had come into force. DCMS lawyers had reviewed the draft Memorandum of Understanding from the Northern Ireland Executive and Ministerial approval was now awaited.

4. Channel 4 Corporation (C4C) Board Non-Executive Appointments/Reappointments: The Board discussed the current position regarding the Ofcom Board's recommendations on appointments and reappointments to the C4C Board which had been submitted for approval to the DCMS Secretary of State on 13 October 2021, a response to which was awaited. The Board also discussed the C4C Board Chair recruitment, which needed to commence imminently if Ofcom was to be in a position to make a recommendation for a new Chair to the Secretary of State in advance of Charles Gurassa's departure on 27 January 2022. The Board **AGREED** to proceed to commence the recruitment process for the C4C Chair position on 19 November 2021, as this would enable Ofcom to explore the extent of interest in the role, and to put forward options to the Secretary of State for her consideration as the current Chair's tenure came to an end. The Board considered being in a position to provide such options to the Secretary of State was likely to be in the best interests of C4C, for reasons of continuity and would properly discharge the role that Ofcom had been given by Parliament. In deciding to commence the recruitment process, the Board noted that depending on the timing of the Ofcom Chair appointment, and the outcome of the Government's privatisation consultation, the final interview stage for the C4C Chair appointment could be paused to allow time for the new Ofcom Chair to be involved if that was considered appropriate.

5. National Advisory Committees (NACs): Following previous Board discussion about whether there might be a need to review the remit of the NACs, the Chair provided an update on the position reached at a meeting held on 8 November 2021 involving each of the Board Members who represented the interests of the Nations and certain Executives. The primary role of the NACs was to provide advice to Ofcom, and a key objective was to ensure the process for the provision of that advice was as efficient and effective as possible. As the NAC Members were appointed by and paid fees by Ofcom, from an external perspective, it was likely that any views they expressed could be regarded as the views of Ofcom when responding to third party consultations. Therefore, it was considered that guidance be provided to the NACs that, if they wished to contribute to third party consultations, it would be helpful if they consulted Ofcom (via the relevant Nations Director and Ofcom Board Member) so that Ofcom could be made aware ahead of any consultation response submission being made, so that there were no surprises. This was particularly important on issues where Ofcom might have a statutory role in the process. It was expected that the focus of any such contributions should be on their

particular nation's perspective. A meeting between the NAC Chairs, the Chief Executive and Interim Chair had been arranged for 30 November 2021 at which the Chair and Chief Executive would discuss this matter with the Chairs of the NACs, following which a letter would be sent setting out clear guidelines. In response to a question raised by the Board, it was noted that a pre-meeting was taking place between the NAC Chairs and the Nations Directors on 23 November 2021.

Item 3: Minutes of the meeting held on 20 October 2021 and Matters Arising – Board Minutes 288(21) and Note of Action Points

6. The minutes of the Ofcom Board meeting held on 20 October 2021 were **APPROVED** for signature by the Chair as an accurate record.
7. 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**.

Item 4: Chief Executive's Report – Board Paper 99(21)

8. Melanie Dawes presented her report and provided an update on recent developments, including speculation about a potential takeover of BT by Altice and possible scenarios if that were to come to fruition. Melanie Dawes reported on recent meetings with Vodafone and with Royal Mail.
9. BBC: On 29 October 2021, Sir Nicholas Serota had published his review of the BBC's editorial processes, governance and culture, which the BBC Board had commissioned following Lord Dyson's Panorama report in May 2021. The report contained 10 recommendations for how the BBC could improve in areas of impartiality, editorial standards and whistleblowing. Ofcom had welcomed the report and would be working to ensure that the BBC took full account of its findings. Some of the themes would be picked up in Ofcom's annual report on the BBC's performance which was due to be published in December 2021.
10. Online Safety: On 1 November 2021, Melanie Dawes and Richard Wronka had given evidence to the Joint Scrutiny Committee for the Draft Online Safety Bill.
11. Digital Regulation Cooperation Forum (DRCF): Gill Whitehead had taken up her appointment as Chief Executive of the DRCF on 14 November 2021.
12. Government Spending Review: Following completion of the Government spending review, work was being done to identify both cost pressures and efficiencies in preparation for setting the 2022/23 budget within the new cap. The Board would see the draft budget and three-year business plan at the 9 February 2022 Board meeting.
13. The Board **NOTED** the report from the Chief Executive.

Item 5: Executive Director Updates – oral

14. Lindsey Fussell reported that the Telecoms Security Bill was due to receive Royal Assent imminently. The next step would be for the Codes of Practice setting out the detailed requirements to be laid before the House of Commons. An update on Ofcom's readiness to implement the Telecoms Security Requirements (TSR) would be provided to the Board early in 2022. Lindsey Fussell referred to the news announced earlier on the day of the meeting that

the Consumer Prices Index (CPI) had risen by 4.2 per cent in the 12 months to October 2021, and the implications of that for the level of annual price increases to be announced by the telecommunications operators in the coming months.

15. Kevin Bakhurst referred to a number of forthcoming publications relating to the BBC. The Chairman and Director General of the BBC were due to attend the next Ofcom Board meeting on 15 December 2021 meeting.

16. Martin Ballantyne reported that RT had decided to seek permission direct from the Supreme Court to appeal the judgement by the Court of Appeal which had dismissed RT's appeal of the Divisional Court's judgment which upheld Ofcom's decision that seven programmes on RT were in breach of the due impartiality rules in the Broadcasting Code, and Ofcom's decision to impose a statutory sanction of £200k. The High Court had granted permission for SCML's claim for a judicial review of Ofcom's sanction decision, which imposed a financial penalty of £125k on SCMA following Ofcom's finding of five due impartiality breaches on the CGTN service.

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

Item 6: Reports from Non-Executive Members – oral

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

Item 7: Ofcom Plan of Work

Item 7.1: Review of Delivery Against the Plan of Work 2021/22 – Board Paper 101(21)

19. The Board had been provided with a summary of the main activities and associated strategic outcomes for the first half of 2021/22 across policy, programmatic, and operational work. Annex 1 to Board Paper 101(21) contained a detailed table setting out (i) progress in delivering priority projects; and (ii) how far those projects were expected to deliver the desired strategic outcomes. The paper also included an overview of key lessons learnt from the review of the first half of 2021/22, which would be considered in formulating the Plan of Work for 2022/23.

20. During discussion, issues discussed and **NOTED** included the following:

- The challenges of recruiting to fill roles ahead of Ofcom taking on additional responsibilities.
- The need to provide an increased focus on deprioritising some work in order to manage resources – either stopping or rescheduling planned work and also using more automation where appropriate. That focus would come through in the three-year business plan which the Board would see at the 9 February 2022 Board meeting.

21. The Board **NOTED** the update provided in Board Paper 101(21).

Item 7.2: Ofcom Plan of Work 2022/23 – Board Paper 100(21)

22. The proposed Plan of Work for 2022/23 followed broadly the same structure as for 2021/22. The proposed key themes and projects were set out in Board Paper 100(21).

23. Comments made during discussion were **NOTED**, including the following:

- In relation to the risk of the misuse of private data over networks, there was a need to think about the end to end value chain, where the risks might lie and who was responsible for addressing those risks. Reference was made to the value of engaging with the DRCF on this issue. The Network Resilience Strategy would be brought to the Board in the New Year.
- The draft narrative for the media section referred to “increasingly strident voices” and a question was posed as to whether that reference was appropriate looking to the future.
- The draft circulated with the papers for the meeting proposed changing the current theme of “Fairness for customers” to “Empowering and protecting consumers”. A request was made by the Board to consider retaining the reference to “Fairness for customers”.
- The Plan of Work should include reference to the work that was being done on developing sectoral strategies, and the work Ofcom was taking forward in partnership with others, including through the DRCF.
- Depending on developments over the next few weeks, it might be appropriate to include reference to work relating to the Media Bill.
- Given recent incidents involving the Bilsdale transmitter fire and loss of subtitling due to the problems at Red Bee Media, it was suggested that the reference to “internet we can rely on” should be broadened to “services we can rely on”.
- It would be helpful in considering the Plan of Work and the long list of projects it encompasses to have an indication of the governance route, and to highlight which issues were expected to include Board level consideration.
- In preparation for taking on additional responsibilities including for online safety consideration had been given to how the work would be managed and a restructuring of the organisation had been undertaken in 2020. As part of the three-year business planning process, consideration should be given to whether further organisational changes were needed to deliver the work in prospect.
- The Plan of Work should refer to a strategic approach being taken to determine the issues in which Ofcom should involve itself and those which it should not.

24. Following discussion, the Board **NOTED** the structure for the 2022/23 Plan of Work consultation and Strategic Themes, as set out in Board Paper 100(21). The draft Plan of Work would be published for consultation in December 2021.

Item 8: Wholesale Fixed Telecommunications Market Review 2021-26: Update – Board Paper 102(21)

25. The objectives of the package of decisions published by Ofcom on 18 March 2021 in the Wholesale Fixed Telecommunications Market Review 2021-26 Statement were to support investment in full-fibre networks from BT and alternative network providers, whilst protecting consumers during the transition from a copper to a fibre-based infrastructure. Board Paper 102(21) provided an update on developments in the market since the publication of the Statement.

26. During discussion, the Board **NOTED** that, if a network operator were to fail, currently there were no provisions for a supplier of last resort or a special administration regime. Whilst Government was responsible for changing the legislation in this area, Ofcom could recommend

a change and would ultimately be responsible for implementing it. This was **NOTED** as an issue to be scheduled for future Board discussion.

27. The Board:

- **NOTED** the update provided in Board Paper 102(21) and orally on the deployment of gigabit capable networks, future build plans and investor sentiment, since the publication of the Wholesale Fixed Telecommunications Market Review 2021-26 Statement on 18 March 2021; and
- **NOTED** the future approach to the work of the Openreach Monitoring Unit (OMU) in recognition that stakeholder concerns now went beyond the BT Commitments.

Item 9: Strategic Approach to Regulating Postal Services for the Five-Year Period (2022-2027) and Annual Monitoring Report 2021 – Board Paper 103(21)

28. Board Paper 103(21) provided the Board with an update on Royal Mail's financial position and set out the proposed approach to regulating the postal sector for the period 2022-2027.

29. Following discussion, the Board **AGREED** the recommendations as set out in Board Paper 103(21), namely:

- A strategic approach to postal market regulation, which aimed to achieve the objectives of a sustainable universal service that meets users' needs and a competitive parcels market that delivers good outcomes for customers.
- The high-level narrative and approach for the regulation of post for the next five-year period (from 2022-2027), including:
 - o stability in Ofcom's regulatory approach to give Royal Mail the certainty and commercial flexibility which provided the best opportunity for it to transform its business;
 - o strengthen Ofcom's approach to holding Royal Mail to account on efficiency performance; and
 - o support for end to end competition in the parcels market but with new targeted interventions where necessary to protect customers.
- The proposed positioning in the Annual Monitoring Report (AMR), particularly in regard to Royal Mail's financial sustainability, as summarised in Board Paper 103(21).

30. The Board **NOTED** that these proposals would be published in a consultation on the Review of Postal Regulation in December 2021, alongside the Annual Monitoring Report 2021. The Board **AGREED** to delegate final sign-off of the document to Lindsey Fussell, Luisa Affuso and Martin Ballantyne.

Item 10: Online Safety Regulatory Strategy – Board Paper 104(21)

31. Board Paper 104(21) and its annexes set out the key strategic processes and frameworks to be used to make decisions in Ofcom's online safety regime once it was up and running, including where it was intended Ofcom should focus efforts and interventions. The paper also

provided an initial hypothesis about the specific areas that might be targeted in the early years of the regime, and explained how the strategy would inform next steps, particularly around operational planning, external engagement and building an evidence base to support the regime when it was in operation.

32. Comments made during discussion were **NOTED**, including the following:

- The analysis identified (in no particular order) five of the most prominent harms which were currently the focus of attention. There was consensus during discussion that addressing the protection of children online should be a key priority, without neglecting other forms and sources of harm. Government and Parliament would play a key role in defining priority harms.
- Comments were noted about the difficulty of being effective in addressing disinformation.
- In prioritising activity consideration should be given to what was likely to succeed in making an impact in the areas of greatest harm, noting that this would be an iterative process based on evidence gained over time.
- The strategic approach suggested that the initial focus would be on supervisory engagement on high-reach, high-risk services. This would be combined with the deployment of systems to identify, monitor and address harm in the long tail. Comments were made that it would be important in considering priorities to keep in mind the harms that might emerge from the smaller players, particularly bearing in mind their user base (eg, where that might be children) and their attitude to identifying and mitigating risks and also potentially criminality.
- There was some discussion of the approach to engaging with services operated by software companies not primarily concerned with content. It was noted that currently the Online Safety Bill included a requirement for platforms to undertake a risk assessment, including taking account of the user perspective.
- Consideration would be given to the right time to publish an externally facing version of the strategy.
- The executive was working on the overall operating model and organisational design for the Online Safety Group and that would be shared with the Board in due course.
- Reference was made to the importance of developing the evidence base.
- Reference was made to the importance of learning from the experience of others around the globe through collaboration, and examples were given of the engagement that was already taking place.
- A paper on Ofcom's media literacy strategy approach was due to be published in December 2021.

33. The Board:

- **NOTED** the strategic approach described in Board Paper 104(21), the attached slides (Annex 2) and the full strategy document (Annex 1), and the key frameworks that the executive proposed to use to drive future decision-making in the Online Safety regime, based on the “Strategic Choice Framework”; and
- **APPROVED** the documents referenced in the preceding resolution as the basis for further work and operational planning, recognising that the strategy would continue to evolve in response to changes in the draft Bill and as more was learnt about harms and in-scope companies’ responses to them.

Item 11: Project Diamond Contract Award Recommendation (Procurement of ICT Services Contract) – Board Paper 105(21)

34. 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). The Ofcom Board had been briefed on the project at the Board meeting held on 26 May 2021, when the Board agreed to delegate all pre-contract award scrutiny to the Risk and Audit Committee (RAC), with the formal decision for the contract award to be presented to the Ofcom Board for approval. (In accordance with Ofcom’s Corporate Governance Framework, approval of any contract value in excess of £5,000,000 was a Board reserved matter.)

35. The Board **NOTED** that the evaluation of the tender submissions had been completed. The recommendations set out in Board Paper 105(21) had been considered and endorsed by the Operations Board (meeting held on 2 November 2021); the Policy and Management Board (meeting held on 4 November 2021) and the Risk and Audit Committee (meeting held on 9 November 2021). Angela Dean, Chair of the Risk and Audit Committee, summarised the key areas that the Risk and Audit Committee had focused on at the meeting on 9 November 2021 and confirmed that the Committee was fully supportive of the recommendations as set out in Board Paper 105(21).

36. The Board:

- **APPROVED** the recommendation set out in Board Paper 105(21) to award the contract to Coforge for the provision of ICT Services following a competitive tender process. The Board **NOTED** that Coforge was the incumbent supplier.
- **NOTED** that Ofcom would be committed to a four-year initial term. The contract allowed for an optional two-year extension at Ofcom’s discretion. The contract therefore had a maximum term of six years.
- **NOTED** that the contract also included the ability (on a non-exclusive basis) to award project work, as set out in Board Paper 105(21). The Board would approve the level of project expenditure each year as part of the annual budget approval process. It was not anticipated that all of this project budget would be spent with Coforge as the contract did not guarantee exclusivity for this work. The contract also included a sum as set out in Board Paper 105(21) to provide headroom to deliver yet un-scoped projects to meet future Online Safety or Telecoms security requirements.

- **NOTED** that overall, the maximum potential value of the contract was £44m (excluding VAT) over six years.

37. The Board thanked Melissa Tatton, Declan Costello and the team for the huge amount of detailed work that had been done throughout the procurement process.

Item 12: National Advisory Committee for Northern Ireland: Extension of Chair and Member – Board Paper 106(21)

38. The Board:

- **APPROVED** the extension of Carrie Matchett as Chair of the Advisory Committee for Northern Ireland for a further three months until 31 July 2022; and
- **APPROVED** the extension of Phil Flanagan as a Member of the Advisory Committee for Northern Ireland for a further seven months until 31 July 2022.

Item 13: Board and Committee Effectiveness Review Outcomes 2020/21 and Proposals for 2021/22 – Board Paper 107(21)

39. The Board:

- **REVIEWED** and **NOTED** the status of identified actions arising from the 2020/21 Board Evaluation Review undertaken, as set out in the Annex to Board Paper 107(21);
- **AGREED** that the Board and Committee Effectiveness Review for 2021/22 should comprise a similar external review to that conducted for 2018/19 and 2019/20, with questions to be set by the Interim Board Chair (with the assistance of the Corporation Secretary and with input from the Chief Executive) with Lintstock Review Service being engaged for (i) the distribution and collation of questionnaire responses; (ii) follow up interviews; and (iii) the preparation of a report of key recommendations arising from their analysis of the responses received;
- **AGREED** that, in accordance with the proposal submitted by Lintstock Review Service, follow-up interviews with Board Members (each for 30 minutes) be conducted by Lintstock to delve deeper into responses provided by Members to the questions referred to in the above recommendation; and
- **AGREED** that the 2021/22 Board Effectiveness Review should be undertaken in January/February - rather than April/May 2021 as proposed in the paper – to provide a resource for the incoming Ofcom Chair.

Item 14: Information Items

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

- Tackling Nuisance Calls and Scams: Explaining Ofcom’s Strategy – Board Paper 108(21)
- Enforcement Team Update – Board Paper 109(21)
- Quarterly Performance Report – Board Paper 110(21)

- Board Work Programme/Forward Agendas – Board Paper 111(21)
- Publications Schedule – Board Paper 112(21)
- Minutes of the Communications Consumer Panel/ACOD (meeting held on 16 September 2021)
- Minutes of the National Advisory Committee for England (meeting held on 23 September 2021)
- Minutes of the National Advisory Committee for Scotland (meeting held on 14 September 2021)
- Minutes of the National Advisory Committee for Wales (meeting held on 22 September 2021)
- Minutes of the Risk and Audit Committee (meeting held on 6 October 2021)
- Minutes of the Content Board (meeting held on 5 October 2021).

Item 15: Any Other Business

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

Item 16: Date of the Next Meeting

42. The next scheduled Board meeting will be held on 15 December 2021.