

**MINUTES OF THE TWO HUNDRED AND NINTIETH MEETING OF
THE OFCOM BOARD HELD ON 15 DECEMBER 2021
VIRTUAL MEETING HELD VIA MICROSOFT TEAMS**

Present

Maggie Carver	Interim Chair* (not minute 10)
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*

*Maggie Carver left the meeting for discussion of minute 10 on which she was conflicted, and Ben Verwaayen chaired the meeting during her absence.

In attendance

Martin Ballantyne	General Counsel
Jacqui Gregory	Corporation Secretary
Jenny Leyland	Assistant Corporation Secretary
David Edwards	Committee Secretary (observing)

By invitation (item 3)

Richard Sharp	Chairman, BBC
Tim Davie	Director General, BBC
Clare Sumner	Director of Policy, BBC

Other Ofcom colleagues

Siobhan Walsh (items 2-3)
Melissa Tatton (item 11)
Jane Rumble (item 11)
Gavyn Dakin (item 11)
David Clarkson (item 12)
Huw Saunders (item 12)
Philip Marnick (item 13)
Martin Fenton (item 13)
Brian Potterill (item 13)
Luisa Affuso (item 13)
Sachin Jogia (item 13)
Yih-Choung Teh (item 13)

Item 1: Declaration of Members' Interests – oral

1. Maggie Carver considered that she was conflicted for part of the discussion on the Channel 4 Corporation Chair recruitment (minute no. 10 refers) and would recuse herself from that part of the meeting. The Board **NOTED** the declaration.

Item 2: Briefing ahead of the meeting with the BBC – Board Paper 113(21)

2. The Board had been provided with a briefing note (Board Paper 113(21)) which included background information and suggested areas of questioning to be covered during the discussion with the BBC. The Board highlighted issues to be raised during discussion ahead of the BBC representatives joining the meeting.

Item 3: Discussion with the BBC Board – oral

3. The BBC Chairman, Director General and Director of Policy had been invited to attend the meeting. In his opening remarks the BBC Chairman reflected on his experience since joining the BBC in February 2021; the strengthening of the Board through recent appointments; and some of the challenges that the BBC faced. The Director General gave a presentation setting out the BBC's strategy and provided an update on the BBC's delivery against its Strategy. The Director General also indicated areas where in future the regulatory framework might be simplified.

4. The Chair thanked the BBC representatives for attending the meeting and for a helpful discussion. The BBC Chairman and Director General welcomed the constructive criticism received from Ofcom and appreciated the professionalism of the interaction at executive and working level.

Item 4: Chair's Report – oral

5. Board Member for Scotland: Maggie Carver on behalf of the Board congratulated Bob Downes whose appointment for a second term as Ofcom Board Member for Scotland had been confirmed. Maggie Carver looked forward to her / the Board continuing to benefit from Bob's very valuable contribution.

6. Maggie Carver referred to her recent engagements which had included making a speech at the autumn conference of the Voice of the Listener and Viewer (VLV) and attending the official opening of Ofcom's Manchester office. Maggie Carver referred to a constructive meeting held on 30 November 2021 with the Chairs of Ofcom's National Advisory Committees. One of the issues discussed was the process to be followed if the Committees wished to provide responses to external consultations. The meeting agreed that responses to external consultations should not be submitted without appropriate permission and guidance from Ofcom executives. Following on from that discussion, formal guidance on the process to be followed would be provided to the Committees.

7. 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 advertisement for the Board Member vacancy currently on the Ofcom Board had closed on 8 December 2021 and DCMS were expecting to commence the sift stage shortly.

8. Channel 4 Corporation (C4C) Board Non-Executive Appointments/Reappointments – Board Paper 114(21): An update on the status of recruitment to the C4C Board had been provided as Board Paper 114(21). On 30 November 2021 approval had been received from the Secretary of State for the appointment of four new Members of the C4C Board, namely Sarah Sands, Tess Alps, David Kogan and Dawn Airey, and an announcement had been made on 6 December 2021 (the same day as their appointments took effect). The Telegraph had subsequently traced controversial tweets by Tess Alps which had not previously been brought to the attention of the Recruitment Panel as part of the due diligence undertaken by Saxton Bampfylde.

9. The Secretary of State had confirmed that she was not content to approve the reappointments of Tom Hooper and Althea Efunshile whose second terms on the C4C Board would expire on 31 December 2021. The Board **NOTED** that Maggie Carver would write to the Secretary of State, noting that the departure of Tom Hooper and Althea Efunshile would result in a lack of ethnic diversity on the Board which Ofcom was confident could be filled through a new recruitment campaign for two new C4C Board Members, such recruitment campaign to commence in the new year.

10. C4C Chair recruitment: The closing date for applications for the C4C Chair position had passed on 13 December 2021 and there was a strong field of applicants. As noted earlier in the meeting (min. no.1 refers) Maggie Carver considered herself to be conflicted for this part of the Board's discussion. She accordingly recused herself from the meeting at this point and Ben Verwaayen chaired the meeting in her absence. A sift meeting was due to be held on 21 December 2021.

11. Channel 4 Corporation Interim Chair: The Board **NOTED** the likelihood that there would be a need to appoint an Interim Chair for C4C as Charles Gurassa's term as C4C Chair would end on 27 January 2022. DCMS had asked about Ofcom's plans to appoint an Interim Chair. The Board **AGREED** that in the likely event that the Secretary of State did not approve a new permanent Chair of the C4C Board by 27 January 2022, Ofcom should proceed with proposed Plans A, B or C, as set out in paragraphs 2.10 and 2.11 of Board Paper 114(21) (Plan A would be executed first, followed by Plan B and then Plan C), and that the Corporation Secretary should confirm this to officials at DCMS and UKGI. The Board further **AGREED** that the Interim Chair should write to the Secretary of State recommending the appointment of either of two of the newly appointed candidates discussed at the meeting, subject to their confirming their willingness to act in such capacity.

Item 5: Minutes of the meeting held on 17 November 2021 and Matters Arising – Board Minutes 289(21) and Note of Action Points

12. The minutes of the Ofcom Board meeting held on 17 November 2021 were **APPROVED** for signature by the Chair as an accurate record.

13. 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 6: Chief Executive's Report – Board Paper 115(21)

14. Melanie Dawes presented her report and provided an update on recent meetings with the Secretary of State and with Ministers at DCMS.

15. Corporate Matters: With effect from 13 December 2021 the Government had introduced new COVID working from home guidance and Ofcom had responded to this by pausing the hybrid working trial. Melanie Dawes commented that the decision to invest in the Reunite programme over the summer had been beneficial in helping to make colleagues feel more comfortable about returning to office-based working and recognising the benefits of meeting in person rather than virtually.

16. The new People and Finance ICT System had gone live to the organisation on 13 December 2021. The Board recorded congratulations to all involved on this significant achievement.

17. Altice investment in BT: On 13 December 2021 the Board of BT Group had been notified that Altice UK had increased its interest in BT Group's voting share capital from 12.1 per cent to 18 per cent.

18. CityFibre Appeal: CityFibre had lodged an appeal in the Competition Appeal Tribunal challenging Ofcom's decision not to intervene in BT's recent Equinox fibre pricing offer. CityFibre was arguing that Ofcom's decision not to intervene was not based on a sound evidential basis, and Ofcom did not properly consult in reaching its final conclusions. CityFibre had asked the Tribunal to direct Ofcom to carry out further analysis of the Equinox pricing offer. In answer to a question from the Board, Lindsey Fussell provided an update on the Altnet views more generally.

19. Mobile Network Resilience: In answer to a question from the Board, Lindsey Fussell provided an update on the impact the power outages caused by Storm Arwen had had, particularly on the mobile side, where despite battery and generator back-ups, of the 600 mast sites affected about 20 per cent had not had power until mains electricity was restored. Government had since opened discussions on the issue of the level of resilience rural communities should have in order to maintain key services, and how that should be funded, which was an issue that Ofcom had been encouraging Government to focus on.

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

Item 7: Executive Director Updates – oral

21. Kevin Bakhurst referred to recent Ofcom publications in relation to the BBC. He referred to discussions with ITV about potential changes to the rules on advertising, with a piece of work having been commenced on that, which would include undertaking research into audience expectations. He reported on a meeting with Channel 4 to discuss their performance to date in 2021, including their current financial position. On 7 December 2021 Ofcom had published its statement on the regulation of advertising on Video Sharing Platforms and the designation of the Advertising Standards Authority (ASA) as the co-regulator for VSP controlled advertising. The Joint Scrutiny Committee on the Online Safety Bill had published its report on 14 December 2021. A copy of the report would be forwarded to the Board for information.

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

Item 8: Report from the Interim Chair of the Content Board – oral

23. Bob Downes referred to the recommendation under agenda item 16 at this meeting (min no. 53 refers) to appoint a new Content Board Member for Northern Ireland. A

recommendation on the appointment of a Content Board Member for Wales would be circulated to the Board via written resolution, ahead of the next Board meeting.

24. David Jones had chaired the Content Board meeting held on 30 November 2021 in Bob Downes' absence and reported on matters discussed. These had included an update on Online Safety; the six-monthly report on key themes and emerging lessons from the Content Board's input to editorial work (which had been provided to the Board as Board Paper 125(21), minute no. 54 refers); and the BBC Studios review.

25. The Board **NOTED** the oral updates provided by Bob Downes and David Jones on the Content Board.

Item 9: Report from the Chair of the Risk and Audit Committee – oral – including the Strategic Risk Register (Board Paper 116(21)) and Annual Review of Ofcom's Resilience (Board Paper 117(21))

26. Angela Dean reported on matters discussed at the Risk and Audit Committee meeting held on 1 December 2021, including the key findings from the two Internal Audit reports received at that meeting which related to Cyber Security and to the People and Finance System (PFS) Replacement Project.

27. The National Audit Office was proposing a significant increase in the level of fees to be charged for the 2020/21 external audit due to the additional work needed following the introduction of the new PFS system. The Committee had asked the NAO to provide a more detailed breakdown of the proposed increase in fees in their report to the next meeting of the Committee in March 2022.

28. Angela Dean referred to the Strategic Risk Register, which had been circulated as Board Paper 116(21). The Risk Register had been reviewed by the Risk and Audit Committee at its meeting on 1 December 2021. There had been no changes made to the risk scores since the Committee last reviewed the risk register. The focus of discussion had been on the three risks for which the target risk score was currently above the risk appetite level. The Policy and Management Board (PMB) would review Ofcom's risk appetite statements in January 2022 ahead of the annual review by the Board in spring 2022.

29. Angela Dean referred to the annual review of Ofcom's Resilience (including Business Continuity Planning, Disaster Recovery and Crisis Management). A summary of the review had been circulated as Board Paper 117(21). The updated Operational Resilience Policy had been reviewed by the Risk & Audit Committee at the 1 December 2021 meeting. The Committee had approved the policy subject to additional text being added to the policy to clarify the process/who would be involved in identifying the fact that a major incident had occurred. Angela Dean undertook to check that the amendment had been made and that an appropriate communications plan was in place including alerting the Ofcom Chair or the Risk and Audit Committee if a major incident was identified. The policy would be shared with the Board for information.

30. In an update deferred from the last Board meeting (due to time constraints), Angela Dean reported that the Members of the Committee had met Ofcom's internal auditors (Deloitte) on 29 October 2021 to discuss the Internal Audit Plan for 2022/23 and as a result of that discussion, four areas had been added to the list of potential internal audits, namely

thought leadership; reputation and stakeholder relations; ethical culture; and travel and expenses.

31. The Board **NOTED** the oral update on the Risk and Audit Committee. The Board also **NOTED** the information papers on the Strategic Risk Register (Board Paper 116(21)) and the Annual Review of Ofcom's Resilience (Board Paper 117(21)).

Item 10: Reports from Non-Executive Members – oral

32. David Jones referred to an agreement reached by the Labour Government in Wales and Plaid Cymru which will 'Explore the creation of a shadow Broadcasting and Communications Authority for Wales'. Bob Downes referred to concerns in both Northern Ireland and Scotland that the BBC was failing to deliver on its "Across the UK" strategy. Angela Dean referred to concerns raised by the Advisory Committee for England which included lack of diversity on the C4C Board, and concerns about resilience following recent outages.

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

Item 11: Future Institutional Arrangements for the Phone-paid Services Authority (PSA) – Board Paper 118(21)

34. Board Paper 118(21) set out a proposal that Ofcom should absorb the regulatory functions and staff of the Phone-paid Services Authority (PSA) (currently the PSA regulates the Premium Rate Services (PRS) market on behalf of Ofcom). This followed a confidential approach from the leadership of the PSA to Ofcom earlier in the year, proposing such a move. Following an initial discussion with the Board in April 2021, the executive had undertaken further work to explore the proposal, including engaging with DCMS and seeking its support in principle, conducting full due diligence into people implications and impact, and reviewing in detail the operational implications with the PSA. The recommendation from the executive was to proceed with the proposal, for the reasons set out in Board Paper 118(21).

35. During discussion, the Board noted the headline numbers for potential cost savings based on the preferred absorption model and the potential impact on Ofcom staff, as set out in Board Paper 118(21). The Board **ASKED** the executive to share with Angela Dean, as Chair of the Risk and Audit Committee, the more detailed financial analysis that underpinned those estimates. Subject to Angela Dean being satisfied with that further information, the Board **AGREED** with the absorption proposal, as set out in Board Paper 118(21), including working to a provisional date of absorption of 1 April 2023, subject to further discussions with the PSA. This was also subject to DCMS approval and to Ofcom agreeing suitable funding arrangements with DCMS (ie, an increase in the spending cap to cover the additional duties). The Board **NOTED** that this proposal remained highly confidential and sensitive, as only a small number of Ofcom and PSA colleagues were aware of the absorption proposal.

Item 12: Migration to IP and Copper Retirement – Board Paper 119(21)

36. At the June 2021 meeting the Board had requested an update on the migration to voice services delivered over broadband (known as Voice over Internet Protocol or VoIP) and the decommissioning of the Public Switched Telephone Network (PSTN). Board Paper 119(21) provided an update on Communication Providers' (CPs) progress with the migration away from their traditional telephone networks, the challenges and issues arising from this migration, and Ofcom's programme of work to mitigate the risks to consumers.

37. Discussion focussed on the communications strategy and the CPs' role in delivering that. The Board **NOTED** that the National Advisory Committees and the Communications Consumer Panel had concerns about the potential impact on consumers during the migration to IP and asked that they should be kept informed of progress.

38. The Board **NOTED** the update provided orally and in Board Paper 119(21). A further update would be provided to the Board in mid-2022.

Item 13: Mobile Strategy and Mobile Spectrum Demand – Board Paper 120(21)

39. The executive was currently undertaking two complementary mobile projects with a view to publishing discussion papers in early 2022 setting out Ofcom's initial views and seeking stakeholder inputs.

40. The Mobile Strategy project was seeking to assess/explore the functioning of the competitive market and the potential impact of changes to the mobile value chain, to assess how well the market was likely to deliver future needs and, in light of this, what Ofcom's future approach to mobile markets should be. The narrative for this discussion paper had been provided at Annex A to Board Paper 120(21).

41. The Mobile Spectrum Demand Project was seeking to identify whether demand for wireless services would generate a need for further spectrum for mobile, beyond Ofcom's existing plans to make up to 6 GHz of millimetre wave (mmWave) spectrum available in the next few years. The narrative for this discussion paper had been provided at Annex B to Board Paper 120(21).

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

Mobile Strategy Discussion Document

- Overall, it was felt that the document should go out to consultation to encourage the widest possible response.
- The discussion document referred to wanting to see providers delivering against their Fairness Commitments, without the need for further regulatory intervention, so that Ofcom could take a more supervisory approach to consumer protection. A point was made in discussion about the priority that Ofcom would continue to give to consumer protection. Also, that it would be worth referring to the extent to which Ofcom already took a supervisory approach, eg, on pricing strategy.
- Reference was made to the potential impact of the evolution of technology on a global basis and how that might dictate what Ofcom could control in its own geography. The discussion document should seek to provoke responses on the global value chain and its future impact.
- It was suggested that some of the backward-looking material could be removed from the earlier part of the discussion document as it currently gave the document a rather defensive feel and the aim was to be forward looking.
- Reference was made to 5G and at what point mobile network operators would need to start to become software companies as the networks started to become software based and what different future models might look like.
- There was a misperception that Ofcom had an entrenched position against MNO consolidation. Each case would be considered on its merits and having regard to

developments in the sector, with the potential to go from four to three MNOs or fewer. It was suggested that this should be further unpacked in the drafting of the discussion document.

Mobile Spectrum Demand Discussion Document

- A key message was the need for mobile operators to densify their networks by creating new sites within a network to use available spectrum as efficiently as possible, rather than seeking additional spectrum, albeit in some scenarios it was possible that additional spectrum might potentially be needed. Densification would have cost implications with an impact on the return to be made on investment and it was suggested that this point should be recognised and the drafting made more open to invite responses back. Board Members were interested to know the cost effectiveness of densification.
- It was recognised that there might be a need to consider additional spectrum (for instance in high growth scenarios) but the provision of additional spectrum would have to be justified and the needs of other (non-mobile) spectrum users taken into account. However, on its own, additional spectrum was unlikely to negate the need for densification.
- Reference was made to the future role of the emerging wireless networks and finding a way to bring out and get engagement on that issue.

43. Subject to the comments noted in minute no. 42 being taken into account, the Board **AGREED** the proposed approaches for the Mobile Strategy Discussion Paper and Mobile Spectrum Demand Discussion Paper, as set out in Board Paper 120(21).

44. The Board noted that this would be Philip Marnick's last attendance at a Board meeting as he would be leaving Ofcom in January 2022. On behalf of the Board, Maggie Carver said how much the Board had appreciated the contribution Philip had made to Ofcom and wished him well for his new role.

Item 14: Governance in Ofcom

Item 14.1: Roles and Responsibilities in Running Ofcom – Board Paper 121(21)

45. Alongside the regular annual review of Ofcom Governance, and in anticipation of a new Chair and new NED appointments to the Ofcom Board, Board Paper 121(21) provided for reference an overview of the respective main roles and responsibilities for the leadership of Ofcom, summarising the roles of the Board, including the Chair, the Chief Executive, and the wider executive of Ofcom. It also incorporated the material contents of the paper presented to the Board earlier in the year on decision-making.

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

- The role of the Board in decision making and the extent to which that was delegated to the executive with the Board's focus being increasingly on consideration of strategy, the culture of the organisation and maintaining oversight. The role of the Chief Executive should highlight her oversight of management and decision making in Ofcom, as well as leadership; and
- The description of the Chief Executive's role at Annex 3 to Board Paper 121(21) should include reference to the Chief Executive and two other Group Directors

being members of the Ofcom Board and to the Chief Executive being supported by the Senior Management Team.

47. The Board **NOTED** the content of Board Paper 121(21) and **APPROVED** the description of the Chief Executive's role, as recently revised by the Chair, and set out in Annex 3 to Board Paper 121(21), subject to taking account of the comments recorded in minute no. 46.

Item 14.2: Review of the Corporate Governance Framework – Board Paper 122(21)

48. As a matter of good governance best practice, an annual review was undertaken of Ofcom's Corporate Governance arrangements, including the Delegations of Authority Framework. As part of the review of Ofcom's Corporate Governance arrangements, a review had been undertaken of the Ofcom Board Committees, to ensure that these remained appropriate and fit for purpose. The People Committee had undertaken an extensive review of its terms of reference in September 2021, to make it more strategically focused, with changes to the terms of reference having been approved by the Board on 28 September 2021.

49. In addition to reviewing the Delegations of Authority (Annex 4 to the Corporate Governance Framework), a review had also been undertaken of the Financial Authorities Framework (Annex 9 to the Corporate Governance Framework). The changes to the Financial Authorities Framework had been reviewed by the Risk and Audit Committee on 1 December 2021 and were recommended to the Board for approval.

50. The Board:

- **APPROVED** the proposed revisions to the Corporate Governance Framework attached as an Appendix to Board Paper 122(21) which incorporated Ofcom's Delegations Authority Framework, the Terms of Reference of Board Committees, Matters Reserved for the Board and the Financial Authorities Framework (the latter having been recommended for approval by the Risk and Audit Committee on 1 December 2021); and
- **NOTED** that a further review of Ofcom's Corporate Governance arrangements would be undertaken once there was greater legislative clarity about Ofcom's role in online safety regulation.

Item 15: Modern Slavery Statement – Board Paper 123(21)

51. While not a mandatory or a statutory requirement for Ofcom, it was considered good practice to voluntarily publish an annual Modern Slavery Statement in accordance with government guidelines.

52. The Board:

- **APPROVED** Ofcom's first Modern Slavery Statement relating to the financial year ending March 2021 for publication (Annex 1 to Board Paper 123(21)); and
- **NOTED** that the Chief Executive would be asked to sign the Modern Slavery Statement on behalf of the Board.

Item 16: Appointment to the Content Board: Member for Northern Ireland – Board Paper 124(21)

53. The Board **APPROVED** the appointment of the Content Board as the Member for Northern Ireland for a three-year term to run from 1 May 2022 until 30 April 2025.

Item 17: Information Items

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

- Key Themes and Emerging Lessons from the Content Board’s Input on Editorial Standards Work - Board Paper 125(21)
- One Ofcom Update – Board Paper 126(21)
- Finance Report – Board Paper 127(21)
- Board Work Programme/Forward Agendas – Board Paper 128(21)
- Publications Schedule – Board Paper 129(21)
- Minutes of the National Advisory Committee for Northern Ireland (meeting held on 9 September 2021)
- Minutes of the Communications Consumer Panel/ACOD (meeting held on 21 October 2021).

Item 18: Any Other Business

55. Recruitment process for the Corporation Secretary: Jacqui Gregory would be leaving Ofcom in early 2022. Martin Ballantyne provided an oral update on the recruitment process for the new Corporation Secretary, advising that he had been a member of the Selection Panel. The Board would be asked to approve the Panel’s recommended candidate by way of written resolution between meetings, this being a Board Reserved Matter.

56. Jenny Leyland: Jenny Leyland would be retiring in February 2022 and this was her last Board meeting. On behalf of the Board, Maggie Carver thanked Jenny for her outstanding contribution to Ofcom.

Item 19: Date of the Next Meeting

57. The next scheduled Board meeting will be held on Wednesday, 9 February 2022.

Approved: _____
Interim Chair