

**PUBLICATION MINUTES OF THE TWO HUNDRED AND NINETY-THIRD MEETING OF
THE OFCOM BOARD HELD ON 6 APRIL 2022
HYBRID MEETING HELD AT RIVERSIDE HOUSE AND VIA MICROSOFT TEAMS**

Present

Maggie Carver	Interim Chair
Kevin Bakhurst	Executive Member and Group Director, Broadcasting & Online Content
Karen Baxter	Non-Executive Member
Melanie Dawes	Executive Member and Chief Executive
Angela Dean	Non-Executive Member
Bob Downes	Non-Executive Member (via Teams)
Lindsey Fussell	Executive Member and Group Director, Networks & Communications
David Jones	Non-Executive Member (via Teams)
Graham Mather	Non-Executive Member (via Teams)
Ben Verwaayen	Non-Executive Member

In attendance

Martin Ballantyne	General Counsel
Veronica Branton	Corporation Secretary
David Edwards	Committee Secretary (via Teams)
Michael Grade	Board Chair designate (observer)

Other Ofcom colleagues (via Teams)

Adam Baxter (item 5)
 Simon Leathley (item 5)
 Siobhan Walsh (item 5)
 Fergal Farragher (item 6)
 Tim Cross (item 6)
 Yih-Choung Teh (item 6)
 Helen Hearn (item 7)
 Peter Madry (item 7)
 Graham Plumb (item 7)
 Jacqui Gregory (items 9, 10 & 11)

Item 1: Declaration of members' interests – oral

1. No new declarations of interest were notified.

Item 2: Chair's report

2. The interim Chair welcomed Board Chair designate Michael Grade as an observer to the meeting. His appointment would begin on 1 May 2022. She also welcomed Karen Baxter, who was attending her first Board meeting following her appointment as the Board Member for Northern Ireland with effect from 28 March 2022, and Veronica Branton following her appointment as Corporation Secretary.
3. The Interim Chair thanked the other Board Members for the additional work they had taken on during the period without a permanent Chair, including Bob Downes who had acted as

Interim Board Member for Northern Ireland and as Interim Chair of the Content Board, David Jones as an Interim Member of the Content Board and Angela Dean as Board Member for England.

4. The Chair reported that she had met recently with Richard Sharp, Chair of the BBC, to discuss issues of mutual interest.

5. The Interim Chair invited Michael Grade to introduce himself to the Board. He thanked Maggie Carver for all she had done as Interim Chair during a period of some uncertainty.

Item 3: Minutes of the meeting held on 9 March 2022 and matters arising – Board Minutes 292(21) and Note of Action Points

6. The minutes of the Ofcom Board meeting held on 9 March 2022 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 27(22)

8. Melanie Dawes presented her report on recent developments. She updated the Board on various matters including developments in the telecoms market, spectrum-related publications, the revocation of RT's licence to broadcast, Ofcom's report on children and parents' media literacy, the Online Safety Bill, Channel 4, Royal Mail performance, and performance management within Ofcom.

9. The Board **NOTED** the oral report from the Chief Executive and Board paper 27(22).

Item 5: Review of the future of BBC regulation – Board paper 28(22)

10. Kevin Bakhurst introduced this item. Ofcom was required to publish a review of the extent to which the BBC was fulfilling its Mission and promoting each of the Public Purposes of the BBC to inform the Government's mid-term review in line with the Charter. Board Paper 28(22) set out for discussion proposed changes to the Operating Licence, competition framework and the BBC First complaints process. Whilst it was noted that some changes were within Ofcom's gift, others would be matters for decision by the Government. The review would build on last year's PSM review (Small Screen: Big Debate) and consider whether existing regulation remained fit for purpose for the remainder of the Charter period, in the context of significant market changes. The aim of the review was to ensure that regulation continued to hold the BBC to account for delivering services to all UK audiences, while allowing the BBC to transform and modernise its services to meet audience needs. For this to work, greater transparency from the BBC would be needed, particularly in competition assessments and complaints handling.

11. The Board:

- **AGREED** the broad proposals for making changes to the BBC's regulatory framework as summarised in Board Paper 28(22);
- **NOTED** the intention to publish a report setting out recommendations for the Government in June, alongside a consultation on changes to the BBC's Operating

Licence and revisions to Ofcom's Complaints Handling Determinations and the requirements on the BBC relating to potential serious editorial breaches;

- **NOTED** that there would also be a separate consultation on proposed changes to the competition framework in the summer/autumn; and
- **AGREED** to delegate final sign-off for the report and consultation documents to Kevin Bakhurst, following engagement with the Chair and Chief Executive on the overall positioning, and with the Nations' Board Members on impacts and handling in the Nations.

Item 6: Approach to consumer protection – Board paper 29(22)

12. Lindsey Fussell introduced this item, beginning by explaining the background to the approach to consumer protection set out in Board Paper 29(22). Ofcom's 2016 Strategic Review of Digital Communications had introduced a greater emphasis on consumer protection, with new rules on providers followed by a further set of voluntary fairness commitments. The market was changing significantly in response to further developments in technology, and the paper outlined a more strategic approach to achieving consumer outcomes over the next 3-5 years, with consumer protection work repositioned around three pillars.

13. Members **NOTED** Board paper 29(22) and the three-pillar approach to reposition Ofcom's consumer protection work and the feed into the Three-Year Plan.

Item 7: Broadcast incident reviews – update – Board paper 30(22)

14. Helen Hearn introduced this item. Board Paper 30(22) summarised two reviews undertaken in response to the fire at the main Bilsdale TV and radio transmitter on 10 August 2021 and separately the release of fire suppressant gas at Red Bee Media's Broadcast Centre on 25 September 2022, which resulted in interruptions to TV access services provided by some PSBs and disruption to Channel 4 until November 2022. The paper considered what could be done to avoid incidents of this kind. The Board had also received a report by Deloitte on Arqiva's response to the Bilsdale incident.

15. A range of possible enforcement options were under consideration. Ofcom had met with Arqiva and had received a report commissioned by Arqiva which noted that the company had previously downgraded its risk assessment of a serious mast failure and had deprioritised work to develop detailed disaster recovery plans for its sites. Related to the Red Bee incident, a formal investigation was underway into Channel 4's failure to meet its subtitling quota on the Freesat platform. The two reviews were expected to be published in May.

16. The Board:

- **NOTED** the proposed conclusions, set out in Board Paper 30(22), following the two major (but unrelated) broadcast incidents at the Bilsdale transmitter and in the Red Bee Broadcast Centre;
- **NOTED** the proposed recommendations;
- **NOTED** the proposals to publish two reports on the incidents and consult on strengthening requirements in Ofcom's technical codes; and
- **NOTED** the report by Deloitte on Arqiva's response to the Bilsdale incident.

Item 8: Annual litigation update – Board paper 31(22)

17. Martin Ballantyne introduced this item. In his annual report to the Board, as General Counsel, Martin had provided an update on judgments in the past year, ongoing cases, new cases brought in the last year and potential future litigation.

18. The Board **NOTED** the update on litigation as outlined in Board paper 31(22).

Item 9: Advisory Committee/Content Board reappointments – Board paper 32(22)

19. At the previous meeting, the Board had requested that the recruitment for two Advisory Committee for England Members be paused pending further discussion about Ofcom's process for Advisory Committee and Content Board reappointments. It was noted that such appointments were for the Ofcom Board to decide. Jacqui Gregory joined the meeting for this item, highlighting the 2026 diversity targets for Ofcom's Non-Executive Director (NED) population as set out in Ofcom's Diversity & Inclusion (D&I) Strategy, where good progress had been made in terms of gender balance, disability and ethnic minority representation.

20. The Board was invited to review and discuss options for Advisory Committee and Content Board reappointments, as outlined in Board Paper 32(22), and to determine the approach going forward; and to decide, in the light of this, whether to proceed with the recruitment for the two Members of the Advisory Committee for England (the first terms of two existing Members were due to come to an end on 31 May 2022).

21. Having considered the options, including Ofcom D&I targets for making its Boards and statutory Advisory Committees representative of the UK (and the relevant adult populations for the respective nations); the administrative burden in recurring recruitment to Ofcom appointed NED roles and the challenges in attracting diverse and able candidates; the Board:

- **AGREED** that while Ofcom was right to consider and remain aware of Government guidance on public reappointments, as an independent regulator it was for the Board to decide its approach to appointments for which it was responsible;
- **AGREED** that Non-Executive Director appointments to the four Advisory Committees and Content Board would be made for three-year terms, with the possibility of a second three-year term¹, without the respective NED needing to formally re-apply provided that it was agreed by the respective committee and the Board that it was right for Ofcom for them to serve a second term;
- **AGREED** that the Interim Chair would write to the two Members of the Advisory Committee for England, referred to above, advising them of the Board's review and changes to the process for appointments and confirming their reappointment for second terms. This would result in their no longer needing to formally apply for second terms and the current recruitment underway for these two roles ceasing; and
- **NOTED** the content of Board paper 32(22).

Item 10: Appointment to MG ALBA (Gaelic Media Service) – Board paper 33(22)

¹ To be approved by the Board and which would be subject to satisfactory performance informed by the Advisory Committee Chair/ Content Board Chair and others, the continued need for the relevant skillset and the relevant Advisory Committee/Content Board Member wishing to serve for a second term.

22. The Board **APPROVED** the appointment of Calum MacLeod to the Board of MG ALBA from 1 May 2022 for a term of four years; **NOTED** that the Board of MG ALBA must have a member nominated by Highlands and Islands Enterprise under s183A(5)(b) of the Broadcasting Act 1990 and that Calum would be that nominee; and **NOTED** that, in line with the provisions of the Scotland Act 2016, the appointment was subject to final approval by Scottish Ministers.

Item 11: Ofcom Board recruitment – update from the Interim Chair

23. The Interim Chair updated the Board on the DCMS process to fill the Broadcasting Board Member vacancy. Despite progress in shortlisting, it was noted that the situation had changed, given Michael Grade's appointment as Ofcom Chair and his in-depth broadcasting expertise.

24. Following discussion, the Board **AGREED** that discussions would take place outside the meeting between the Interim Chair, the Chair Designate and the Chief Executive on a formal request being made to the Secretary of State for DCMS to review the recruitment currently underway.

Item 12: Report from the Chair of the Content Board – Board paper 34(22)

25. The Interim Chair of the Content Board had provided a short update paper on recent Content Board activity, including details of matters discussed at the Content Board meeting on 15 March 2022.

26. As part of Michael Grade's induction to Ofcom, it was **AGREED** that a session would be arranged to go through Ofcom's processes to deal with broadcast content/standards/licensing decisions and the role of the Content Board.

27. Members **NOTED** Board paper 34(22).

Item 13: Executive Director updates – Board paper 35(22)

28. The Board had been provided with a short update paper by Lindsey Fussell and Kevin Bakhurst. In addition, Lindsey Fussell reported that Ofcom expected to receive details of a new Openreach pricing regime shortly and Kevin Bakhurst flagged that the licence to allow Khalsa Television Limited to broadcast had been suspended. He also reported that the BBC would shortly have a number of important strategic decisions, which it was required to discuss with Ofcom, and that the timing of the privatisation of Channel 4 could raise some issues in relation to its licence, which would come up for renewal in 2024.

29. Members **NOTED** Board paper 35(22).

Item 14: Reports from non-executive members – Board paper 36(22)

30. The Board had been provided with a short update paper by non-executive members.

31. Members **NOTED** Board paper 36(22).

Item 15: Information Items

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

- Finance Report – Board paper 37(22)

- Latest Hybrid Working Data – Board paper 38(22)
- Board Work Programme/Forward Agendas – Board paper 39(22)
- Publications Schedule – Board paper 40(22)
- Minutes of the Risk & Audit Committee (meeting held on 2 March 2022)
- Minutes of the Communications Consumer Panel/ACOD (meeting held on 17 February 2022)

Item 16: Any Other Business

33. There was no other business.

Item 17: Date of the Next Meeting

34. The next scheduled Board meeting would be held on Wednesday, 18 May 2022.

Approved: _____
Interim Chair