

Minutes of the Ofcom Board held on 22 May 2024, 314(24)

Publication minutes of the three-hundred and fourteenth meeting of the Ofcom Board held on 22 May 2024 at Riverside House, London SE1 9HA and via Microsoft Teams

Present

Michael Grade	Chair
Karen Baxter	Non-Executive Member
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
Will Harding	Non-Executive Member
Clive Jones	Non-Executive Member
Ben Verwaayen	Non-Executive Member

In attendance

Martin Ballantyne	General Counsel
Veronica Branton	Corporation Secretary
Francesca Carter	Head of Governance (via Teams)
Sharon Malley	Governance Manager
Melissa Tatton	Group Director, Corporate (Items 6-8)
Aneen Blackmore	Finance Director (Item 6)
Paul Schwarz	Risk Management & Insurance Lead (Item 6)
Yih-Choung Teh	Group Director, Strategy and Research (Items 7 and 13)
Iqbal Marikkar	Corporate Strategy Director (Item 7)
David Willis	Group Director, Spectrum (Item 8)
Ed Leighton	Strategy and Policy Director (Item 8)
Cristina Nicolotti Squires	Group Director, Broadcasting and Media (Item 9) (via Teams)
Adam Baxter	Standards and Audience Protection Director (Item 9)
Jessica Zucker	Online Safety Policy Development Director (Item 9)
Laura Rhea	Online Safety Policy Principal (Item 9)
Luisa Affuso	Group Director, Economics and Analytics (Item 10)
Brian Potterill	Policy Director (Item 10)
Hugh Mullan	Economics Director (Item 10)

In attendance

Julian Ashworth	Strategy and Policy Director (Item 13)
Benedict Dellot	Technology Policy Principal (Item 13) (via Teams)
Chia Seiler	Public Policy Principal (Item 13)

	Action
Item 1: Declaration of members' interests 1. No new interests were declared.	
Item 2: Minutes of the meeting held on 17 April 2024 (313(24)) and matters arising 2. The minutes of the Ofcom Board meeting held on 17 April 2024 were APPROVED for signature by the Chair as an accurate record. 3. A summary of progress against action points was NOTED.	
Item 3: Chair's report 4. The Chair updated the Board on his activities and said he had been observing the Committee stage of the Media Bill in the House of Lords, where he had noted the desire for public service broadcasters to be pushed to do more work outside London. He said Channel 4 and ITV had issued statements on their financial positions, which were under pressure, and noted the issues involved in imposing potentially costly production quotas on broadcasters seeking to lower costs. 5. He said he had met, at her request, Baroness Beeban Kidron to discuss child online safety and had asked her to put proposals in writing for Ofcom to consider. 6. He said there had been no progress on the appointment of non-executive members to the Ofcom Board. 7. The Board NOTED the report. 8. The Board APPROVED the appointment of Will Harding to the Content Board with effect from 30 April 2024.	
Item 4: Chief Executive's report – Board paper 43(24) 9. Melanie Dawes presented paper 43(24) on her activities and drew attention to the following: - The Network and Communications team had successfully persuaded telecoms companies to share poles and ducts in Kingston-Upon-Hull, in an example of the sort of activity routinely carried out by Ofcom that made a positive difference for consumers. - Ofcom had published its research on politicians as presenters and, separately, a standards decision on the GB News show "People's Forum: The Prime Minister".	

• She and Cristina Nicolotti Squires had given evidence to the Future of News inquiry at the House of Lords, with questioning about GB News as well as the BBC. • A tenant had been found for Ofcom's remaining office space on the fourth floor of Riverside House and it was hoped that the lease would be in place by the end of the summer. Both fourth floor tenants would have access to the Watershed, which would be managed appropriately. The agreement would have a positive impact on Ofcom's budget position. • It was thought that rather than undertaking a fuller review of Ofcom, the Government might seek to refresh Ofcom's framework agreement instead. 10. The Board discussed the implication of budget challenges for Ofcom and other regulators. It was noted that Ofcom's role had expanded and the span of its role would need to continue to be explained. It was noted that it would be helpful to include a reference in the Ofcom Annual Report to opportunities Ofcom had taken to remove regulatory requirements where this had been appropriate. 11. The launch of the online safety Protection of Children consultation had been successful and included significant proposals, particularly in relation to age verification. Melanie Dawes said she would be visiting Canada and the US shortly to discuss Ofcom's approach to online safety. She had held a constructive meeting Linda Yaccarino, the Managing Director of X, and her senior executives in safety and compliance. X said their platform was aimed at adults rather than children. 12. The Board noted that Ofcom's relationship with its counterpart in the European Commission had strengthened and an MOU on working together had been signed. The Digital Services Act (DSA) had been enacted earlier than the UK Online Safety Act and the risk that platforms would prioritise compliance with the DSA was noted. 13. Lindsey Fussell updated the Board on the Royal Mail takeover offer from Daniel Kretinsky's EP Group. EP Group now had until 29 May to make a formal offer. Ofcom did not have any formal role in the process. An update on Royal Mail would be presented to the Board in July. 14. Lindsey Fussell updated the Board on BT's trading results and said the market had responded positively to BT's dividend policy, the proposal to consider options for BT Global and its business and investment strategy, with the focus now on delivery. The Board noted that increased costs of capital made investment in telecoms infrastructure more challenging. 15. The Board NOTED the paper.	
Item 5: Report from the Chair of the People Committee 16. Ben Verwaayen updated the Board on the People Committee meeting of 25 April 2024. He said the Committee had evolved into a forum discussing substantial people issues such as talent management, succession, culture and performance. The Committee had approved the Board succession plan and had noted that Ofcom had little opportunity to influence Board succession in practice as appointments were	

made by the Government. The Committee had also discussed Group Director performance and bonuses and the CEO's objectives for the year ahead. 17. The Chair noted that Ben Verwaayen's term would conclude before the next People Committee and recorded the Board's sincere thanks for the work he had carried out over many years as the Committee Chair. 18. The Board NOTED the report.	
Item 6: Report from the Chair of the Risk and Audit Committee, including Risk Management Policy Annual review, Risk Appetite Statements annual review, and Strategic Risk Register update – Board papers 44(24), 45(24) and 46(24) 19. Angela Dean updated the Board on the meeting of the Risk and Audit Committee of 15 May 2024. She said the Committee had discussed an internal audit report on key financial controls which gave a rating of substantial assurance and had included very positive findings. There were three overdue internal audit actions, all relating to data management, which were complicated to deliver. The deadlines had been extended and the Committee would continue to monitor progress. The Committee had noted the likely annual internal audit opinion, which would be confirmed following the findings of the final internal audit report due in September. 20. The Committee had noted that Ofcom had closed the financial year £2.4m under budget as planned, following strong management of the cash position. It had reviewed the draft Annual Report and Accounts and noted that the programme to bring payroll back in house had completed successfully. 21. Angela Dean said she had met the new Finance Director and updated the Board on her background and approach to the role. 22. The Board NOTED the report. 23. Angela Dean presented paper 44(24) on the annual review of the Risk Management Policy, paper 45(24) on the annual review of the Risk Appetite Statements and paper 46(24) on the Strategic Risk Register and said all three had been discussed by the Risk and Audit Committee and were being recommended for approval by the Board. 24. She said the Board had reviewed the new format risk register in December and the changes to the structure now flowed through to the Risk Management Policy and Risk Appetite Statements. The reports remained works in progress and would remain under active review. 25. She said the Risk Management Policy would be amended to show that the People & Culture Strategic Risk would be owned by the Risk and Audit Committee rather than the People Committee as had been previously agreed. The description of risk tolerance would also be refined. 26. The Risk Appetite Statement was the first Board-level statement and it was helpful to see Ofcom's risk appetite laid out on one page. Thought would continue to be given to how the risk appetites linked through to the Strategic Risk Register.	

27. There were two proposed changes to the Strategic Risk Register: to reduce the People & Culture risk from very high to medium/high to reflect improvements following recruitment to key roles and restarting the Pay Framework project; and to increase the Trusted Regulator risk from medium/high to high in light of increased scrutiny of Ofcom's work in broadcasting and online safety. 28. The Board noted that the risk documents were more detailed than might normally be expected at Board level and that this transparency was appropriate given Ofcom's role as a regulator. The documents ensured that senior managers were clear on the ownership of individual risks and would be able to raise concerns if needed. The strategic risk relating to changes in technology, markets and consumer behaviour was particularly challenging to describe as controls spanned the whole organisation but there would be a deep dive on this at a future Risk and Audit Committee meeting. 29. The Board APPROVED the Risk Management Policy, the Risk Appetite Statements and the Strategic Risk Register.	
Item 7: Full-year review 2023/24 – Board paper 47(24) 30. Iqbal Marikkar presented paper 47(24), setting out Ofcom's performance against the Plan of Work 2023/24. 31. The Board discussed the timetable for implementing one-touch switching and noted that it was complicated by the need for the whole industry to act together in order to succeed. Ofcom's approach of prioritising the completion of the project to deliver benefits to consumers, over enforcement for delays, was noted. 32. The delay to the Spectrum licensing platform was noted, with the cause attributed to the external provider and work was in hand to mitigate any further delays. 33. It was noted that where work had been delayed due to other work taking priority, the organisation had made progress in making those choices more consciously and being more transparent across the organisation about their implications. This had and would continue to require a shift in Ofcom's culture. 34. The delay in the data strategy and implementation programme was being addressed through the appointment of an interim Data Director to take the work forward. Updates on the data transformation strategy and data retention and management would be brought to forthcoming Board and Risk and Audit Committee meetings. 35. The Board NOTED the full-year review.	
Item 8: Agility – Year 1 update and Year 2 plans – Board paper 48(24) 36. David Willis presented paper 48(24) on Ofcom's Agility programme. He said the programme aimed to increase consistency across groups to reduce silos. It would introduce a range of optional tools, and a few mandatory procedures, to improve the ability to carry out cross-group planning and performance management, as well as to foster a 'looks good to me' culture to improve productivity in Ofcom's work and speed the delivery of work. The importance of	

ensuring the new procedures replaced the previous ones, rather than adding to them, was noted, with responsibility on this falling collectively onto senior leaders. 37. The Board discussed the links between the next three-year business plan and the Agility programme, with both contributing to better understanding and decisions on the number of people needed to deliver particular tasks. Examples included the new ‘t-shirt size’ approach to project planning. Labelling projects using a consistent sizing structure aimed to help with understanding where resources were being deployed and making informed decisions about priorities, alongside higher timesheet completion and accuracy to measure resource use. 38. The Board NOTED the update.	
Item 9: Ofcom’s regulatory approach to the General Election – Board paper 49(24) 39. Adam Baxter presented paper 49(24), setting out Ofcom’s regulatory approach to broadcasting during the General Election. He said the broadcast standards team had experience of annual local elections and was building on this for the forthcoming General Election, anticipated in Autumn 2024¹. Plans were in place for resource to be diverted to the election team if needed to enable real-time assessment and other work could be deprioritised during the election period. It was noted that any implications of deprioritising other work would need to be clearly expressed and managed. 40. The Board noted the speed with which Ofcom would need to respond to complaints during the election period. It was noted that Ofcom had established processes with the BBC to ensure that the BBC First system did not lead to complaints being unduly delayed. Licensees would be expected to engage with Ofcom on increasingly tight timescales in the run-up to the election. 41. The Board noted that the broadcasting and regulatory landscape had changed since the previous General Election and Ofcom needed to be alive to this. Broadcasters had a role to play in avoiding deepfake content and had verification units to assist with this. Ofcom had convened a roundtable with broadcasters and discussed cooperative working in this area. It was reassuring to note that broadcasters had defences in place. 42. Redress would be an important element of Ofcom’s work and on-air corrections would form part of this. Ofcom was clear that it expected licensed broadcasters to comply with its requests. 43. It was noted that Ofcom may be expected to intervene in relation to social media and other online content and it would be important to manage expectations on this given that Ofcom played a very limited regulatory role in this. If misleading content were widespread on social media during the campaign it may spark debate about the scope of the Online Safety Act. It was agreed that a briefing previously provided to Parliamentarians on this would be circulated to the Board after the meeting.	Corp Sec

¹ The election was subsequently announced as being held on 4 July 2024

44.	The Board NOTED the paper.	
Item 10: Mobile merger and markets – Board paper 50(24)		
45.	Luisa Affuso presented paper 50(24) on the potential merger between Vodafone and Three. She said that the CMA had decided to refer the merger to a Phase 2, in-depth, review which would complete in the autumn. Luisa Affuso noted that this was the first time the CMA would review a 4:3 merger in the mobile sector in the UK. A previous 4:3 mobile merger in the UK, Three/O2, had been attempted over ten years before and had been reviewed by the European Commission; at the time Ofcom had publicly opposed the merger and it had eventually been blocked. On this occasion, Ofcom was not taking a position on the merger and would offer support to the CMA's investigation through technical knowledge and expertise.	
46.	It was noted that the CMA's assessment would focus on the incentives for the investments proposed by the parties to materialise within a suitable timeframe so as to provide benefits that would counterbalance any risk of substantial lessening of competition. The Board discussed possible outcomes of the Phase 2 review and potential scenarios for the market.	
47.	The Board noted that the CMA would need to assess whether the merger would deliver sufficient benefits to consumers to outweigh the reduction in competition within a specific technical framework and that it would be difficult to assess whether refusing to permit the merger might lead to potential broader detriment on the investment climate.	
48.	The Board NOTED the paper.	
Item 11: Content Board remit – Board paper 51(24)		
49.	Michael Grade presented paper 51(24) on the remit of the Content Board. The Board had previously agreed to progress the appointment of an individual with online safety expertise to the Content Board. However, now that there was clarity over the scope of the Online Safety Act, it was thought that existing governance mechanisms would be sufficient and there would be no need to formally expand the terms of reference of the Content Board to include online safety duties or to appoint an individual with expertise in this area.	
50.	The Board noted that public concern about misleading and inaccurate content on social media and elsewhere online was growing and that there could be some overlap with this and the work of the Content Board. The Misinformation and Disinformation Committee may pick up some of these issues and a paper on its terms of reference and approach to appointments would be presented to the Board before summer.	
51.	The Board APPROVED that the appointment of an individual with online safety expertise to the Content Board should not be progressed at this time. The role of the Content Board would be kept under review and Clive Jones, Bob Downes and Will Harding would discuss whether any changes were required to its Terms of Reference.	
Item 12: Shared Rural Network (compliance preparations) – Board paper 52(24)		

52.	The Board NOTED the paper.	
Item 13: Cross-Ofcom AI programme update – Board paper 53(24)		
53.	Yih-Choung Teh presented paper 53(24) concerning Ofcom’s Generative AI (GenAI) work in relation to the Online Safety Act. Benedict Dellot said that several types of GenAI content and applications were caught by the Act. This included cases where users uploaded GenAI content to a regulated service (e.g. deepfake fraud adverts to a social media platform); where regulated services embedded GenAI features on their services (e.g. as Bing has done with Copilot); and where standalone GenAI services in their own right emulated user-to-user and search services (e.g. with ChatGPT Plus offering live internet results to users). However, the Act did not cover all types of GenAI content and applications. For example, a standalone chatbot with no sharing functionalities and no search features was unlikely to be caught by the regime. Ofcom was in dialogue with DSIT about this regulatory gap.	
54.	Chia Seiler provided an update on the latest developments regarding the UK Government’s AI policy development, including statements in the Government’s recent AI White Paper Response pointing to the regulation of highly capable general-purpose models as being ‘ultimately necessary’. She set out that such measures could be aimed at the risks the Government has considered, such as those arising from transparency and accountability concerns.	
55.	The Board NOTED the paper.	
Item 14: Renewal of Ofcom’s co-regulatory arrangements with the Advertising Standards Authority – Board paper 54(24)		
56.	The Board NOTED the paper.	
Items 15-18: Information items		
57.	The Board NOTED the following information items: • Non-executive member updates – Board paper 55(24). • Monthly performance report – Board paper 56(24) • Board work programme – Board paper 57(24), and publications schedule – Board Paper 58(24) • Minutes of Advisory Committee for Scotland on 22 February 2024, the Advisory Committee for Wales on 27 February 2024, the Advisory Committee for England on 29 February 2024, the Advisory Committee for Northern Ireland on 7 March 2024, the Communications Consumer Panel on 21 March 2024 and the Content Board on 26 March 2024.	
Item 19: Items in the Diligent Board reading room		
58.	The Board NOTED the mobile merger context report in the reading room.	
Item 19: Any other business		

59.	There was no other business.	
Item 18: Date of the next meeting		
60.	The next scheduled Board meeting would be held on Wednesday 19 June 2024.	
61.	The meeting concluded at 12.40 pm.	

Approved: _____
Chair