

MEMORANDUM OF UNDERSTANDING

Between the Department for Digital, Culture, Media and Sport and Ofcom

Scope and Purpose

1. This Memorandum of Understanding ("MoU") sets out the process for appointing members to the Board of the Channel 4 Corporation ("C4C"). It further sets out agreed practices to ensure Ofcom engagement with the Secretary of State and DCMS officials, in order to ensure transparency and clarity about how the appointment process will be conducted at each stage.

2. The process set out below is underpinned by the general practices of due accountability and good governance as set out in the Framework Document between DCMS and Ofcom.

Background

3. Under s.23 of the Broadcasting Act 1990, Ofcom appoints members of the C4C board, except for *ex officio* board members, and the Secretary of State must approve these appointments. Such board members appointed by Ofcom are referred to as non-executive directors ("NEDs"). Under paragraph 4, Schedule 3 of the 1990 Act, Ofcom also determines board members' remuneration, subject to approval by the Treasury.

4. Although the appointment of NEDs is not required to be subject to the oversight of the Office of the Commissioner for Public Appointment rules, Ofcom nevertheless commits to acting in accordance with the principles set out in the Cabinet Office's Governance Code on Public Appointments (except insofar as they relate to ministerial responsibility). The guidance is available on the gov.uk website and at the following address:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/578498/governance_code_on_public_appointments_16_12_2016.pdf

Contacts

5. The principal contact for Ofcom will be the Corporation Secretary and for DCMS will be the Public Appointments Team. Both parties agree to maintain close contact and notify each other of material issues affecting the recruitment process at the earliest opportunity.

Preparation for appointments

6. In the case of replacements for NEDs reaching the end of their term, Ofcom will approach DCMS to discuss its approach at least six months before the end of an individual's term. In the case of resignations or other situations where a vacancy arises in shorter order, Ofcom will advise DCMS at the earliest possible stage of the need for a recruitment process and suggest an appropriate timetable to meet all of the steps outlined below.

7. In advance of any appointment, Ofcom will advise DCMS of the planned recruitment strategy, including the required skills mix and diversity balance of the C4C board, relevant capability and experience gaps, succession planning and proposed remuneration so that officials can advise of any relevant government policy matters. An appropriate C4C representative will be invited to attend this briefing discussion.

Job description

8. The job description will be drafted by Ofcom and shared with DCMS officials for comment, with specific request for feedback including on matters of government policy. Following this but prior to publication, it will be agreed by the Chairs of Ofcom and C4C. Ofcom will provide a recommendation on the annual fee and the time commitment for the role, supported by benchmarking data. DCMS officials will seek HMT approval for the annual fee at this stage, before the publication of the advertisement. Appointments will typically be for 3 years in duration, although Ofcom may exercise discretion around post durations (within the five year limit permitted by the Broadcasting Act 1990) if it would support future board continuity.

Advertisement

9. The job advertisement must be discussed and agreed in advance by the Chairs of Ofcom and C4C. The content and approach for advertisements is to be shared for views with DCMS officials no less than one week before publication. The advert must be published on the Cabinet Office Centre for Public Appointments website¹.

Search

10. The search for applicants is to be undertaken by Ofcom (or an executive search company on its behalf). DCMS Officials and/or Ministers may suggest names at this stage. All candidates will be required to consent to their names being included in order to progress to the longlist.

11. Following consultation with DCMS and/or Cabinet Office, Ofcom may engage an executive search agency in line with Ofcom's internal governance and budgetary controls.

Review Panel

12. The interview panel ("Panel") will consist of the Chairs of Ofcom and C4C, and at least two independent panellists appointed by Ofcom, with one of the independent panellists appointed as the 'independent assessor'. The Ofcom Chair will chair the Panel, and Ofcom will notify DCMS of the proposed Panel composition once it has been determined. If an independent Panel member is unwell or unavailable, they will be replaced by another independent Panel member. If the Chair of Ofcom or C4C is unwell or unavailable, they will be replaced by a suitable NED from that organisation.

13. For recruitment of the C4C Chair, the panel will consist of the Chair of Ofcom and at

¹ <https://publicappointments.cabinetoffice.gov.uk/>

least two independent panellists, one of whom will be appointed as the 'independent assessor'.

Sift

14. The DCMS contact is to be advised of the proposed longlist at least one week in advance of the sift meeting, together with the aggregated diversity statistics for the longlist.

15. The Panel will review the longlist of applicants and agree on a shortlist, based on the role criteria. The DCMS contact is to be advised of the shortlist, together with the aggregated diversity statistics for the shortlist. Any decision by the Panel not to interview a potential candidate recommended by DCMS will be highlighted, with reasons for the Panel's decision not to interview provided.

16. Interviews will be undertaken by the Chairs of Ofcom and C4C and the independent Panel members. Reports of interviews are to be written by the independent panel member designated as the assessor.

Final appointment and securing consent of the Secretary of State

17. Final selection will take place as follows. The Panel Chair will send their recommendations to the Secretary of State for consideration and, as appropriate, approval. Alongside the recommended candidate, all other appointable candidates will be notified to the Secretary of State and these candidates will be ranked. The independent assessor's report will be provided as context for the recommendations. Ofcom will also supply CVs, completed diversity monitoring forms, completed political activity forms and declaration of conflicts of interest for all appointable candidates to DCMS officials.

18. DCMS ministers may ask to speak with and/or meet with every appointable candidate in advance of approving the appointment. Formal written consent to any appointment by the Secretary of State, will be notified to the Panel Chair.

19. The Panel may seek agreement from candidates to put their names forward to the Secretary of State and update candidates on the process, but will not provide candidates with feedback or advise them of final outcome until receipt of the Secretary of State's decision on approval. Public communications before this stage will be factual and will not prejudice the outcome of the process. Any public communications and the media plan will be shared in advance with DCMS, wherever practical to do so.

Review

20. Both parties agree to review the operation of this MoU and make necessary revisions to it, with such a process to begin one year after the MoU's commencement or sooner, if there are any significant changes to the overall process for making public appointments.

21. For the avoidance of doubt, this MoU indicates the agreed intention of the parties but does not create any legally enforceable obligations.

Signatures



*(For and on behalf of the Secretary of State
for Culture, Media and Sport)*



(For and on behalf of Ofcom)