

# HACKED OFF

THE CAMPAIGN FOR A FREE + ACCOUNTABLE PRESS

## Hacked Off response:

### News Corp UK and Ireland Limited - Invitation to comment on a request to accept undertakings in place of conditions relating to its acquisition of The Times and The Sunday Times newspapers in 1981

#### Summary

This response recommends that News UK's application to accept new undertakings in place of the conditions should be rejected for the following reasons.

1. The specific additional clause to the undertakings proposed by News UK would:
  - a. jeopardize quality and standards at the titles, and
  - b. reduce media plurality.
2. Varying the conditions would be inappropriate in principle given that:
  - a. There are historic allegations of editorial interference in the Times titles from the Murdoch family;
  - b. The corporate governance failures at News UK-owned News of the World have never been properly investigated; and,
  - c. Allegations of illegality at two other News UK titles, the Sunday Times and The Sun, have never been properly investigated.
3. Updating the "conditions" to the status of "undertakings", even when applied only to certain sections, significantly reduces the sanctions available for non-compliance for *all* conditions; hence, particularly in the context of (2) above, any attempt to vary them should be rejected.
4. Finally, and in any case, News UK must publish the specific amendments it is proposing to the TNL Articles of Association as part of their application (paragraph 7.7), before any proper consideration of the implications and possible consequences can take place.

This response is supported by a petition which has gathered 5393 signatures from the public. The text of the petition and list of signatories are appended to this submission.

## **The proposed additional clause should be rejected**

### **Quality at the titles will suffer**

1. News UK state openly that their reason for this application is to support the titles' profitability (paragraph 6.4):

*News UK believes that this [the reforms available under proposed additional clause] represents the only way for it to achieve further cost efficiencies and ensure that the financial position of the two titles will remain stable without compromising their quality in the future.*

2. News UK argue that such reforms are necessary to preserve quality but fail to make a clear argument for how the sharing of such resources will in practice support quality. It is equally arguable that the "sharing" of journalists and resources envisaged by the new clause would lead to redundancies in like-for-like roles between the organisations, and the requirements for remaining staff to produce more content to cover both titles. A reduced workforce, which might easily include merging the investigatory agendas of two titles into one – would inevitably compromise quality rather than enhance it.
3. News UK seeks to justify its application by arguing that the financial wellbeing of the Times titles is under threat, and further integration is necessary for the titles to be financially viable in the long-term. Yet the titles reported an after-tax profit of £9.6m for the last year<sup>1</sup> - itself a major increase on the previous year. The Mediatique report commissioned for the Cairncross Review found that the ten-year decline in circulations for both The Times and the Sunday Times were far less significant than the declines at all other major national titles<sup>2</sup>. There is no question that the newspaper market has been under great financial pressure over the last decade, but the Times titles and continuing profitability give them an enviable (and arguably dominant) position in the quality market.
4. Paragraph 6.4 of News UK's application states that:

*News UK has implemented a degree of sharing of support services covering non-editorial areas of News UK's business (such as marketing, finance and procurement, logistics, paper and ink).*

These are areas of the business where cost-efficiencies can be made which do not impact on quality, and we recognise the logic to minimising administrative costs between the titles. But this only serves to demonstrate that the areas which remain distinct, and which are therefore the subject of News UK's proposal, are those directly

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<sup>1</sup> <https://www.thetimes.co.uk/article/times-newspapers-in-profit-as-subscriptions-rise-bxwg7z9pv>

<sup>2</sup> Figure 40:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720400/180621\\_Mediatique\\_-\\_Overview\\_of\\_recent\\_dynamics\\_in\\_the\\_UK\\_press\\_market\\_-\\_Report\\_for\\_DCMS.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720400/180621_Mediatique_-_Overview_of_recent_dynamics_in_the_UK_press_market_-_Report_for_DCMS.pdf)

related to journalism and news production where quality is most susceptible to cost-cutting.

### **The adverse impact on plurality in the UK newspaper market**

5. The new clause would also reduce plurality in the UK newspaper market, by allowing the sharing of journalists between the two titles.
6. Subsection 58.2(b) of the Enterprise Act 2002, which sets out the considerations for proposed media mergers, specifies a need for “a sufficient plurality of views” in the newspaper market. The new clause proposed by News UK would actively undermine plurality in the newspaper market, by permitting increased journalistic and, effectively, editorial, exchange and convergence between the titles.
7. Paragraph 1.6(b) of News UK’s application attempts to defend the proposal on the basis of the fact the titles will retain separate editors, claiming:

*Nor (to the extent this is relevant to the Secretary of State’s consideration of this application) could the Proposed Undertakings have any potential adverse effect on media plurality, since each title will remain under separate editorship. Rather, the Proposed Undertakings would benefit media plurality by contributing to the sustainability of the titles going forward.*

8. The distinctive and partial character of individual titles, however, are determined in various ways which are not necessarily dictated by decisions of individual editors: the stories and issues on which individual reporters choose to focus, the sources on which they rely, the investigations they choose to pursue, and their individual partisanship are manifested throughout the newspaper. News UK’s application fails to acknowledge or respond to this broader and more democratically meaningful approach to media plurality.
9. It appears that the only argument to justify this application on plurality grounds is that greater viability will contribute to plurality. Paragraph 8.8 of the application states:

*Rather, the proposed variation will help secure the future of The Times and The Sunday Times as high quality newspapers, and thereby maintain, rather than reduce, media plurality.*

As we have argued above, however, these are profit-making titles whose viability is not threatened. This argument is therefore moot. Given that we see no plurality benefit but significant risk of *reduced* plurality in a shrinking newspaper market, we believe this application should be rejected.

## **Varying the Conditions is inappropriate in principle**

### **Historic allegations of publisher interference at Times titles**

1. Two former editors have made credible and disturbing allegations that News UK's ownership have consistently ignored the 1981 Conditions. A bid to alter them at this stage must be seen in this context and cannot realistically be considered until there has been a proper investigation into News UK's record on compliance.
2. Sir Harold Evans was editor of the Sunday Times from 1967 to 1982. He has referred to significant and repeated instances of Rupert Murdoch, then Chairman of News International (now News UK), attempting to influence editorial coverage at the newspaper in clear breach of the 1981 conditions.
3. In his Leveson evidence, for example, Sir Harold describes several specific incidents of interference, which amount to clear attempts to steer the paper's editorial position towards uncompromising support for the Government of the day.
4. In respect of the conditions attached to the 1981 deal, he said Rupert Murdoch had a "*determination to impose his will and destroy the editorial guarantees that he'd given*".
5. Sir Harold also provided to the Inquiry a contemporaneous letter he had sent to the Times Independent Directors, which detailed repeated instances of editorial interference<sup>3</sup>.
6. Furthermore, recent Times editor James Harding has also indicated that Rupert Murdoch may have played a decisive role in his resignation, possibly in breach of the conditions<sup>4</sup>.
7. Thus, a full investigation into whether News UK failed to comply with the conditions, and if so to what extent, must take place before the Secretary of State can reasonably contemplate any variation.

### **Corporate governance collapse at News UK-owned News of the World**

8. It would be inappropriate for the Government to sanction a variation in the Conditions at one News UK title, after a lack of adequate investigation into the collapse in corporate governance standards at others.
9. News of the World was closed in 2011 after the extent of criminality at and on behalf of the title was revealed.

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[https://www.discoverleveson.com/evidence/Exhibit HE19 to Witness Statement of Sir Harold Evans/11686/media](https://www.discoverleveson.com/evidence/Exhibit_HE19_to_Witness_Statement_of_Sir_Harold_Evans/11686/media)

<sup>4</sup> As reported: <https://www.pressgazette.co.uk/james-harding-admits-he-was-pushed-out-times-editors-chair>

10. The role of News UK executives in practices and events at News of the World was due to be investigated in Part Two of the Leveson Inquiry. The Government cancelled Part Two in March 2018. The necessary investigation, which was deemed of paramount importance when announced by the Government in 2011, has therefore still not happened.
11. The fact that illegality occurred on such a large scale at the paper for so long demonstrates that News UK had failed to put in place even basic standards of corporate governance. As long as these manifest failures are not adequately investigated, it would be entirely inappropriate for the Conditions attached to newspaper titles under the same ownership to be varied in any way.

### **Allegations of illegality at The Sunday Times and The Sun**

12. John Ford, a whistle-blower, has come forward with evidence of his work for the Sunday Times. Ford alleges that his work involved sifting through the bins of people of interest and stealing personal data through impersonation. These very serious allegations would have been investigated at Part Two of the Leveson Inquiry. It is difficult to see how any Conditions directly affecting the journalistic integrity of News UK's news operation can be varied while allegations of serious criminality hang over one of the titles.
13. At The Sun newspaper, vast settlements have been agreed with phone hacking claimants which, despite non admissions, clearly indicate a serious failure of corporate governance at senior levels which also requires investigation before any variation is contemplated.

## **Updating the Conditions to Undertakings would reduce their enforceability**

1. The statutory effect of variation of the conditions is that they would become undertakings under the Enterprise Act 2002. This would mean that breaches of the undertakings would no longer be punishable as a criminal offence, thus reducing the deterrent for breaches. In the context of the un-investigated allegations of condition breaches referred to above, the application therefore poses a serious risk to the integrity of the remainder of the conditions and should be rejected.
2. In January 1981 the transfer of The Times and Sunday Times to News International received Ministerial Consent.
3. The transfer had conditions attached to it under the Fair Trading Act 1973. These conditions were necessary to ensure the independence of the titles.

They include:

*(ii) The Editor of each newspaper shall retain control over any political comment published in his newspaper and, in particular, shall not be subject to any restraint or inhibition in expressing opinion or in reporting news that might directly or indirectly conflict with the opinions or interest of any of the newspaper proprietors (within the meaning of Section 57 of Fair Trading Act 1973) of the Times or The Sunday Times.*

*(iii) Instructions to journalists shall be given only by the Editor or those to whom he has delegated authority.*

4. Section 62 of that Act makes it a criminal offence, punishable by up to two years imprisonment, to be knowingly in breach of any such conditions:

### ***Enforcement provisions relating to newspaper mergers.***

*(1) Any person who is knowingly concerned in, or privy to, a purported transfer of a newspaper or of newspaper assets which is unlawful by virtue of section 58 of this Act shall be guilty of an offence.*

*(2) Where under that section the consent of the Secretary of State is given to a transfer of a newspaper or of newspaper assets, but is given subject to one or more conditions, any person who is knowingly concerned in, or privy to, a breach of that condition, or of any of those conditions, as the case may be, shall be guilty of an offence.*

*(3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.*

5. Section 373 of the Communications Act 2003 repeals that regime:

*373 Repeal of existing newspaper merger regime*

*Sections 57 to 62 of the Fair Trading Act 1973 (c. 41) (newspaper merger references) shall cease to have effect.*

6. Schedule 18 of that Act, however, specifies that that regime, including the offence contained in s62, continues to apply in respect of historic transfers:

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*(1) Chapter 2 of Part 5 and any related repeals shall, subject to sub-paragraph (2), not apply in relation to—*

*(a) a transfer of a newspaper or of newspaper assets (within the meaning given by section 57(2) of the Fair Trading Act 1973 (c. 41)) which has been made before the coming into force of section 373 of this Act; or*

*(b) a proposed transfer of a newspaper or of newspaper assets in relation to which an application for the consent of the Secretary of State under section 58 of the Act of 1973 has been made before the coming into force of section 373 of this Act.*

7. The result is that, unamended, the FTA 1973 provides for a powerful deterrent from owner interference in editorial matters.
8. As referred to in paragraph 8 of the “Invitation to comment”, in accepting News UK’s application, the conditions attached to the transfer would be converted to “undertakings” under the Enterprise Act 2002.
9. Undertakings are monitored by the CMA, whose remedies (set out in Schedule 8 of the Enterprise Act 2002) are structural. There would therefore no longer be a criminal offence for breaching the conditions/undertakings.
10. The effect of this would be to reduce the deterrent for breaches of the conditions/undertakings.
11. While the transition from conditions to undertakings may be appropriate with other historic transfers, the context here is of repeated and well-substantiated allegations of breaches or attempted breaches of the conditions. As such, it would be deeply inappropriate to reduce the deterrent for breaching those conditions.

## **Amendments to the TNL articles of association**

1. Paragraph 7.7 states:

*News UK also seeks permission for corresponding changes to be made to the Articles of Association of TNL. All other provisions of the Articles would remain unchanged.*

2. Any proposed amendment(s) to the TNL Articles of Association should be published and consulted upon as part of this application.

## **Petition**

5393 signatories have signed the following petition in response to this consultation:

*Dear Secretary of State,*

*The Times and Sunday Times are important newspapers. But under the ownership of the Murdochs the titles' editorial independence has been repeatedly called into question, while the phone hacking scandal and resulting court cases at News of the World have exposed the Murdochs as having no proper regard for good corporate governance.*

*This application would only serve to waterdown the 1981 conditions, by effectively weakening the protections put in place to keep the two newspapers distinct. It would also pave the way for a decline in standards and quality, with the two titles able to cut costs by rationing out services and resources between them. It is bad for the integrity of the two titles and it is bad for journalism.*

*To protect the editorial integrity of The Times and The Sunday Times, we the undersigned call on the Government to reject this bid to amend the Conditions agreed in 1981.*

The signatories, which are not for publication, have been sent separately, so that this submission is publishable.