

Evidence on failures of corporate governance and accountability relevant to the section 58 public interest tests (specifically “Genuine Commitment to Broadcasting Standards”)

Hacked Off 30th March 2017.

Introduction

An acquisition of Sky Plc. by 21st Century Fox (21CF) would result in a major expansion of the influence of the Murdoch Family Trust (MFT) over Sky. In 2012 Ofcom was highly critical of the role of James Murdoch who was CEO and Chairman of News International during the period of criminal and other reprehensible conduct at that organisation. This submission details a long list of criminal and corporate wrongdoings that has emerged since Ofcom reviewed the licenses held by BSkyB in 2012. It also draws attention to an unfolding sexual harassment epidemic being unearthed at Fox News in the US.

The Secretary of State notes in her 6th March 2017 letter¹ to 21CF and Sky that 21CF's record of compliance with the broadcasting code might reflect on the culture or corporate governance at 21CF. The “huge failings of corporate governance” at News Corporation, the precursor company to 21CF were noted in the Culture, Media and Sport Committee on News International and Phone Hacking and the Secretary of State herself acknowledges that James Murdoch's actions during this time was a “failure of corporate governance.”

The corporate governance and accountability record of members of the Murdoch Family Trust are relevant to the Sky takeover bid in several ways.

James Murdoch's conduct and character are relevant because:

- Since 2015 he has been the CEO of the parent company, 21CF that owns and controls Fox News
- He also serves as a board member of 21CF.

Rupert Murdoch's conduct and character are relevant because:

- He is currently Chairman and acting CEO of Fox News since July 2016, after Roger Ailes was ousted
- Currently, Executive Chairman of parent company 21CF.

The relationship between “Fit and Proper” and the record of corporate governance and accountability.

In September 2012, Ofcom reported on its section 3(3) duty in relation to British Sky Broadcasting Limited following revelations of suspected criminality at newspapers owned by News International.²

The report contained harsh criticism of James Murdoch's conduct, saying it was “difficult to comprehend and ill-judged” and overall, it “fell short of the exercise of responsibility to be expected of him as CEO and Chairman” (paragraph 34). It went on to conclude that the events documented “raise questions regarding James Murdoch's competence in the

¹ Bradley, Karen, “To Jeffrey Palker and James Conyers” 3 March 2017. [21st Century Fox Inc. and Sky Plc. European Intervention Notice. DCMS website](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596538/20130303_Sky_letter_FINAL.pdf)

² Ofcom “DECISION UNDER SECTION 3(3) OF THE BROADCASTING ACT 1990 AND SECTION 3(3) OF THE BROADCASTING ACT 1996: LICENSES HELD BY BRITISH SKY BROADCASTING LTD. https://www.ofcom.org.uk/_data/assets/pdf_file/0022/32485/bskyb-final.pdf

handling of these matters, and his attitude towards the possibility of wrongdoing in the companies for which he was responsible” (paragraph 35).

Ofcom found the conduct and character of any director, of any shareholder with a significant holding, and of any other person able to exert influence over the company are relevant in principle to Ofcom’s assessment.

The report stopped short of concluding that BSkyB was not fit and proper to hold a license on the basis of two factors. First, that BSkyB was only minority owned by the Murdochs: “While we consider that any director or large minority shareholder will count as exerting influence for these purposes [of fitness and propriety], *his or her influence may be limited, or may be moderated by other directors or shareholders, in such a way that conduct on the part of that individual is not in fact sufficient to render the company as a whole unfit or improper* (emphasis added)” (para. 43). This situation would now change, if the Sky takeover is allowed to proceed.

The second factor was that James Murdoch had stepped back from an executive role at BSkyB: “While we consider that James Murdoch’s conduct in various instances fell short of the standard to be expected of the chief executive officer and chairman, we do not find that *James Murdoch’s retention as a non-executive director* (emphasis added) of Sky means that Sky is not fit and proper to hold broadcast licenses” (para. 46).

The report also, significantly, caveated its findings by indicating it awaited the findings of the Leveson Report on the conduct of the Murdochs (para 47):

Our duty to be satisfied that a licensee is fit and proper is ongoing. Further evidence may become available in the future, which Ofcom would be obliged to consider in order to fulfil its duty. In particular, Ofcom considers that the findings of the Leveson Inquiry and the results of pending criminal proceedings (including evidence given in such proceedings) could be relevant to its performance of its duty under section 3(3).

The part of the Leveson Inquiry which relates directly to the conduct of the Murdochs has still not even begun. It is likely that when that takes place it will uncover more failings of corporate governance and accountability, and potentially worse, so OfCom should be loath to permit this merger to go ahead where these issues are considered relevant and should have regard to the fact that a Phase 2 inquiry would provide sufficient time for the Leveson Part 2 process to start and for OfCom and the CMA to obtain more information.

Not only has none of the evidence material to the 2012 section 3(3) decision ever been subject to a Public Interest (“section 58”) review, but substantial new evidence has emerged since the September 2012 report, including from:

- the Report of Part 1 of the Leveson Inquiry (November 2012),
- the Report of the House of Commons Privileges Committee (2016)
- and from police investigations and criminal trials of News International (now news UK) executives, employees and agents
- from investigative journalism into some of the scandals (such as tapes of Rupert Murdoch addressing employees, and broadcasts about the Daniel Morgan murder)
- from the continuing civil litigation in both the UK and the US
- from observing governance decisions made by the Murdoch’s in relation to – for example - the re-employment of those who have a record of failure of corporate governance, and their failure to implement the form of regulation recommended by Part 1 of the Leveson Inquiry and by Parliament.

These show a clear pattern of gross failures of corporate governance, management and accountability in companies controlled by the Murdoch Family Trust, throwing new light on

the issues analysed by Ofcom in its 2012 report, and revealing more recent wrongdoings, including in the US.

In the US, 21CF is under investigation by a federal prosecutor for mishandling a number of sexual harassment suits by its staff, after former staff and investors alleged a cover-up (see *Sexual harassment, denials and cover ups: evidence of a rotten corporate culture at Fox*, submitted by Avaaz).with strong echoes of how News International treated phone hacking in the UK until it was forced to divulge details by court cases, Part 1 of the Leveson Inquiry and parliamentary select committee inquiries.

In her letter of 3rd March, the Secretary of State spells out her reasoning for asking Ofcom to produce a report on broadcasting standards, noting that Ofcom data on breaches by 21CF and by Sky indicate that

“21CF might be less effective than Sky at ensuring compliance with broadcasting standards, and therefore raises a concern that Sky’s compliance record may potentially deteriorate following the merger.”

She notes the implications, as follows:

“The Secretary of State recognises that there could be a number of reasons for 21CF’s compliance record: it might reflect on the culture or corporate governance at 21CF, alternatively it could simply be attributable to the circumstances of the individual breaches. Given that Ofcom is the regulatory body with responsibility for enforcing the Broadcasting Code, other Ofcom codes and broadcast licence conditions, the Secretary of State considers that it would be helpful for her to receive a report from Ofcom on this issue.”³

James Murdoch and Rupert Murdoch are both very hands-on owners (for examples see Avaaz’s submission *Murdoch’s Fox Effect: How full ownership of Sky risks undermining British broadcasting standards*, by Media Matters for America and Avaaz) who have significant impact on the culture and corporate governance. It is therefore essential for the Secretary of State to receive a report on the fitness and propriety (by reference to their record on failures of corporate governance, management and accountability) of the Murdoch family members who would take full control of Sky, including Sky News, if this takeover proceeds.

It is noteworthy that Ofcom has produced “a list of all breaches of licence conditions and Ofcom’s codes and rules over the last 10 years against each of the licensees and VOD service providers owned by Sky plc subsidiaries and by 21st Century Fox subsidiaries”⁴, and the Secretary of State should ensure she obtains from Ofcom a full accounting of all concerns regarding senior executives as well as an assessment of their implications.

Again, please see Avaaz’s submission, *Murdoch’s Fox Effect: How full ownership of Sky risks undermining British broadcasting standards*, by Media Matters for America and Avaaz

³ Bradley, Karen, “To Jeffrey Palker and James Conyers” 3 March 2017. [21st Century Fox Inc. and Sky Plc. European Intervention Notice. DCMS website](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596538/20130303_Sky_letter_FIN_AL.pdf) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596538/20130303_Sky_letter_FIN_AL.pdf pg. 6

⁴ Bradley, Karen, “To Jeffrey Palker and James Conyers” 3 March 2017. [21st Century Fox Inc. and Sky Plc. European Intervention Notice. DCMS website](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596538/20130303_Sky_letter_FIN_AL.pdf) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596538/20130303_Sky_letter_FIN_AL.pdf footnote 18, p.6

Failures of Corporate Governance: the evidence

What should be considered when considering failures of corporate governance and accountability

The conduct of the following kind is relevant, and in relation to Rupert and James Murdoch

- their involvement direct or indirect in criminal or other wrongdoing
- their active knowledge of the widespread nature of the criminal or other wrongdoing
- their complicity in a cover-up (which there undoubtedly was)
- whether their corporate governance and accountability was of a level that makes them fit and proper to have the control and influence over a Broadcasting licence holder

In respect of the last of these, it is important to consider –

- breaches of regulatory codes (such as they exist)
- cover-up of wrong doing
 - concealment, by omission (of inquiry or investigation) or commission (for example, gagging potential whistle-blowers)
 - destruction of evidence
 - false denial made with the intention to deceive the public and the authorities or reckless as to their truth (by way of wilful blindness and failures to investigate)
- attacks, through the media they control, or the platforms they can access as a result of their position in the media market, on investigating authorities (police, ICO, CPS) and independent regulators (IMPRESS, PRP) which have the effect or are intended to have the effect of intimidating or otherwise influence the actions or approaches of those entities.
- wilful blindness and failure to conduct investigations when reasonable grounds (in relation to evidence or effective risk-management) exist to do so
- failure to provide adequate sanctions for wrongdoing (thereby creating a culture of impunity)
- the “rewarding of failure” in corporate governance by promoting or reappointing those responsible for failures of corporate governance, or at best the demonstrable failure to abide the basic norms of corporate governance by so doing
- the placing of “corporate reputation” above the need to be law-abiding and broader corporate social responsibility obligations
- other reckless or negligent conduct on management or corporate governance

Because of the decision by the Murdochs on September 2015 to reappoint and since then to maintain Rebekah Brooks as Chief Executive of NI and NGN, we believe it is necessary to apply the same tests to her conduct as to theirs, because they have judged her the most suitable person to run NI and NGN and be in charge of corporate governance there.

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In the first instance, we refer you to the material in the associated submission that has been made to the Fit and Proper test. As Ofcom has acknowledged, the issues overlap in each test.

We consider that all that material is relevant to the public interest test in relation to genuine commitment to broadcasting standards

That material sets out in detail what more is known (or can be obtained by OfCom) in relation to the issues covered to the extent of available evidence in September 2012. It also deals with new matters, as we do below.

New evidence on corporate governance failings since Ofcom's previous report

Since Ofcom's report of September 2012, there have been a number of developments which shed further light on the culture and practice (as exemplified by failures of corporate governance, management and accountability) in News International, its successor company and the companies and persons who controlled it. What follows is an indicative overview of the material Ofcom need to access and analyse in the public interest review dealing with the record of corporate governance and accountability.

Hacked Off and Avaaz will be happy to cooperate with Ofcom in providing more such information and advising where other material can be obtained. We have both written seeking a meeting because, in the case of Hacked Off, some of the sources of this material are whistle-blowers and would require some assurances.

Ofcom can draw on the fact of, and the evidence from, successful prosecutions since its 2012 review. Criminal convictions of News International staff include:

- Six senior employees of News International have been convicted of phone-hacking. They are Andy Coulson (Editor), Greg Miskiw (News Editor), James Weatherup (News Editor), Ian Edmondson (News Editor), Neville Thurlbeck (Chief Reporter), Jules Stenson (Features Editor).⁵
- Over 30 police and public officials have been convicted of accepting corrupt payments from employees of News International, payments which were approved at high level by that organisation⁶.
- One News International journalist, Dan Evans, has been convicted of making unlawful payments, as part of Operation Elveden,⁷
- A News International journalist, Nick Parker, was convicted of handling stolen property, namely MP Siobhan McDonagh's mobile phone.⁸
- A new and separate conspiracy, the Pinetree conspiracy, on the Features desk of the News of the World between 2005 and 2006, to hack phones has come to light, a journalist has been convicted, and it has been admitted by News Corporation.⁹

⁵ Sedghi, Ami. "Operation Weeting: arrests and charges - timeline" *Guardian*, 2 Nov 2012. Web 8 Mar 2017. <https://www.theguardian.com/media/2012/nov/02/operation-weeting-arrests-charges-timeline>

⁶ "Operation Elveden completed." *Metropolitan Police*, <http://news.met.police.uk/news/operation-elveden-completed-152789>. Accessed 8 March 2017.

⁷ "Ex-NOTW Reporter Dan Evans Spared Jail." *Sky News*, 24 July 2014, <http://news.sky.com/story/ex-notw-reporter-dan-evans-spared-jail-10395547>. Accessed 8 March 2017.

⁸ Ponsford, Dominic. "Three month suspended sentence for Sun's Nick Parker after conviction for handling MP's stolen mobile phone." *Press Gazette*, 9 December 2014, <http://www.pressgazette.co.uk/suns-nick-parker-cleared-over-payments-public-officials-convicted-handling-mps-stolen-mobile-phone/>. Accessed 8 March 2017.

⁹ "Phone Hacking, Judge orders "Operation Pinetree" disclosure despite opposition by News Group", *Inform's Blog*, 13 July 2013, <https://inform.wordpress.com/2013/07/13/news-phone-hacking-judge-orders-operation-pinetree-disclosure-by-police-despite-opposition-by-obstructive-news-group/>. Accessed 8 March 2017.

Mr Parker's case (which relates to his acts as an employee of **The Sun** newspaper not the News of the World), and the convictions of 30 police and public officials for accepting corrupt payments from (mainly) Sun journalists, are particularly important because they demonstrate that criminality was more widespread than recognised by the Secretary of State in her 6th March 2017 letter to 21CF and Sky:

"The Secretary of State recognises that some time has passed since these activities took place, and also that the findings related specifically to failings within NotW, which no longer exists."¹⁰

New developments took place last year specifically in the case of Mazher Mahmood, a senior employee of News International, also at **The Sun**:

- Mr Mahmood has been convicted of perverting the course of justice¹¹;
- This fresh conviction points towards further, more widespread criminal activity. "After the verdict, the Guardian learned that News UK was facing more than 45 civil claims relating to Mahmood's stings. The media lawyer Mark Lewis, who is handling the claims, said they could "dwarf" those brought following the phone-hacking scandal."¹²
- News UK terminated Mazher Mahmood's employment with regret; the company also nodded to the possibility of further legal action against News UK as a result saying it would "vigorously defend" any civil claims brought against it.¹³
- As reported by the Guardian, Mark Lewis, the lawyer "who is representing some of those targeted by Mahmood and who acted against News UK in some phone-hacking cases, said: "I've had calls from people from all walks of life that he deliberately set up. Some of these people had their lives ruined for over 20 years. They lost not just their livelihoods but their liberty, careers, families."¹⁴
- A former assistant commissioner and head of counter-terrorism at Scotland Yard argued in favour the second phase of the Leveson inquiry as a result of the Mahmood conviction.¹⁵

Mr Mahmood's case (which relates to his acts in 2014 and 2015 and as an employee of the Sun newspaper not the News of the World) is particularly important because it demonstrates that criminality was more widespread in both time and titles than recognised by the Secretary of State in her 6 March 2017 letter¹⁶ to 21CF and Sky:

¹⁰ Bradley, Karen, "To Jeffrey Palker and James Conyers" 3 March 2017. 21st Century Fox Inc. and Sky Plc. European Intervention Notice. DCMS website
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596538/20130303_Sky_letter_FI_NAL.pdf

¹¹ Davies, Caroline "Mazher Mahmood: 'Fake Sheikh' jailed for 15 months" *Guardian*, 21 Oct 2016. Web 8 Mar 2017. <https://www.theguardian.com/media/2016/oct/21/fake-sheikh-mazher-mahmood-jailed-for-15-months>
<https://www.theguardian.com/media/2016/oct/21/fake-sheikh-mazher-mahmood-jailed-for-15-months>.

¹² Davies, Caroline "Mazher Mahmood: 'Fake Sheikh' jailed for 15 months" *Guardian*, 21 Oct 2016. Web 8 Mar 2017. <https://www.theguardian.com/media/2016/oct/21/fake-sheikh-mazher-mahmood-jailed-for-15-months> ; O'Carroll, Lisa. "Sentence for Mazher Mahmood closes one chapter, but the legal fallout rumbles on." *The Guardian*, 21 October 2016, <https://www.theguardian.com/media/2016/oct/21/sentence-for-mazher-mahmood-closes-one-chapter-but-the-legal-fallout-rumbles-on>. All accessed 8 March 2017.

¹³ Ibid..

¹⁴ Dodd, Vikram, Davies, Caroline and O'Carroll, Lisa. "News UK faces civil claims totalling millions after Mazher Mahmood trial." *The Guardian*, 21 October 2016, <https://www.theguardian.com/media/2016/oct/21/news-uk-rupert-murdoch-civil-claims-totalling-millions-after-mazher-mahmood-trial>. Accessed 8 March 2017.

¹⁵ Ibid.

¹⁶ Bradley, Karen. "To Jeffrey Palker and James Conyers." 3 March 2017. 21st Century Fox Inc. and Sky Plc. European Intervention Notice, *DCMS website*,

“The Secretary of State recognises that some time has passed since these activities took place, and also that the findings related specifically to failings within NoTW, which no longer exists.”

Additional legal developments include:

- News International has admitted phone hacking at the News of the World in several hundred phone-hacking claims and has made payments to victims and lawyers in relation to these cases amounting to over \$600m.¹⁷
- Despite a challenge by News UK, a high court judge has permitted civil claims to be made about hacking at (i) the News of World Features desk beyond the staff and years covered by the Pinetree criminal investigation, and (ii) the Sun newspaper.¹⁸

Like the recent conviction for Mazher Mahmood, the litigation against the Sun is particularly important because it demonstrates that criminality was more widespread in both time and titles than recognised by the Secretary of State in her 6th March 2017 letter¹⁹ to 21CF and Sky:

“The Secretary of State recognises that some time has passed since these activities took place, and also that the findings related specifically to failings within NoTW, which no longer exists.”

Furthermore, a number of revelations about corporate governance have emerged since the September 2012 Report.

- The Privileges Committee report into the alleged contempt of Parliament raised serious questions about the conduct and competence of News International Chief Executive Les Hinton.
- The Privileges Committee report cast further light on the culture of paying what was alleged to be “hush money” to employees guilty of criminal offences to deter them from co-operating with the police and prosecution authorities. These payments were approved by News International Chief Executive, Les Hinton.
- After she was acquitted in 2014, Rebekah Brooks sought to recover some of the legal costs that had been incurred in her defence by NI. However, the trial judge told the company, “*I have to consider whether any defendant brought it on themselves and also whether I would have to consider News International conduct in relation to*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596538/20130303_Sky_letter_FIN_AL.pdf. Accessed 8 March 2017.

¹⁷ Ponsford, Dominic. “News Corp hacking scandal costs total \$7m for last three months of 2015, up 40 per cent on previous quarter”, *Press Gazette*, 8 May 2015, <http://www.pressgazette.co.uk/news-corp-hacking-scandal-costs-rise-512m/>. Accessed 8 March 2017.

¹⁸ Jackson, Jasper. “The Sun to face trial over phone-hacking claims”, *The Guardian*, 28 April 2016, <https://www.theguardian.com/media/2016/apr/28/sun-trial-phone-hacking-damages-les-dennis>. Accessed 8 March 2017.

¹⁹ Bradley, Karen, “To Jeffrey Palker and James Conyers” 3 March 2017. 21st Century Fox Inc. and Sky Plc. European Intervention Notice. *DCMS website* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596538/20130303_Sky_letter_FIN_AL.pdf

*the matter*²⁰ – in other words, he would have to examine how the company dealt with evidence of wrongdoing when it emerged. News International decided to drop the request for costs recovery rather than have their conduct so investigated.

- In March 2013, Rupert Murdoch privately addressed Sun journalists in London to reassure them about the company's co-operation with police; in July of that year, a secret recording of the meeting emerged. which raise questions about whether the scandal really changed News Corp's attitude to corporate governance and wrongdoing by its employees. In the recording, Murdoch was heard to:
 - minimise the significance of illegal payments to public officials: *"But why are the police behaving in this way? It's the biggest inquiry ever, over next to nothing"*
 - imply that he had known illegal payments had been going on at his newspapers: A Sun journalist tells him *"I'm pretty confident that the working practices that I've seen here are ones that I've inherited, rather than instigated,"* to which he replies, *"We're talking about payments for news tips from cops: that's been going on a hundred years. You didn't instigate it"*
 - effectively promises to rehire any journalist found guilty of crimes: *"What you're asking is, what happens if some of you are proven guilty? What afterwards? I'm not allowed to promise you – I will promise you continued health support – but your jobs – I've got to be careful what comes out – but frankly, I won't say it, but just trust me."*²¹

News Corp re-hired Nick Parker after his conviction for handling an MP's stolen phone, and in apparent contradiction of The Sun's apology to the court on that matter, and assurances given by management that criminal acts by their staff in their work for the company would not be tolerated.

Most remarkably, the Murdochs re-hired Rebekah Brooks in mid-2015 even after major doubts about her character and fitness to run a company were raised in court;

- Brooks' defence at the phone hacking trial was that she did not know that her own journalists were breaking the law to get the stories they delivered to her, and that in all the years of working as a journalist and editor, she never realized they were the product of phones being illegally hacked. This explanation should have alarmed News Corp, despite the fact of her acquittal.
- When Brooks was CEO of News International between 2009-11, the company aggressively denied allegations of widespread criminality without being in full possession of the facts, or having conducted a rigorous internal investigation.

²⁰ O'Carroll, Lisa. "Phone-hacking trial: Rebekah Brooks drops costs application." *The Guardian*, 1 October 2014, <https://www.theguardian.com/uk-news/2014/oct/01/phone-hacking-trial-rebekah-brooks-costs>. Accessed 8 March 2017.

²¹ Davies, Andy. "Revealed: the Rupert Murdoch tape." *Channel 4 News*, 3 July 2013, <https://www.channel4.com/news/murdoch-rupert-tape-police-the-sun-journalists>. "Rupert Murdoch tape: read extracts from the transcript." *The Guardian*, 4 July 2013, <https://www.theguardian.com/media/2013/jul/04/rupert-murdoch-tape-extracts-transcript>. Both accessed 8 March 2017.

- Moreover, she is alleged to have personally negotiated a legal settlement and confidentiality agreement with the celebrity agent Max Clifford in March 2010 over his phone hacking claim against the company.²² Given that his clients were celebrities, not royalty, it must have seemed unlikely to her that his phone was hacked at the instigation of the *News of the World's* royal correspondent Clive Goodman, in which case the company's public line about Goodman being 'one rogue reporter' was false.
- Furthermore, James Murdoch's defence when the scandal blew up in July 2011 was that it took until December 2010 for him to realize that the company's public line was false, and only then as a result of documents the company was forced to disclose in a different civil claim it was fighting in court (lodged by Sienna Miller).²³ If it is true Brooks negotiated the Clifford settlement and confidentiality agreement, it is hard to understand why she would not have told him in the intervening period.
- In September 2016, The House of Commons Privileges Committee published a police witness statement by former *News of the World* Editor (2007-2011) Colin Myler in which he stated that, in July 2009, he told Rebekah Brooks of the confession of *News of the World* Chief Reporter, Neville Thurlbeck to phone hacking the Home Secretary David Blunkett in 2004. He told how it was covered up by the then editor, Andy Coulson, the then deputy editor, Neil Wallis and the then Managing Editor, Stuart Kuttner. It is clear that Rebekah Brooks either told James Murdoch and then both continued to cover up the criminality, or she did not. Either way she was guilty of a gross failure of corporate governance.

The response by the company to this allegation was merely to suggest that Mr Myler's statement, given under caution, to the police should not be relied upon because it conflicted with his evidence to the CMSSC (given when he was an employee of the Company). This defence of Ms Brooks is weak. It is weakened further by the finding of the Privileges Committee that Mr Myler's evidence to the CMSSC was, in parts, untruthful.

Part 1 of the Leveson Inquiry, published two months after Ofcom's review of fitness and propriety, found "a serious failure of governance within the NoTW, NI and News Corporation. There was a failure on the part of the management at the NoTW to take appropriate steps to investigate whether there was evidence of wrongdoing within the organisation".

Some of Lord Justice Leveson's findings particularly bear highlighting:

- Although I endorse the right of any business to seek to protect its reputation, it surely must first take every step to get to the bottom of what had happened. To argue that the decision by the police to conclude their criminal investigations precluded the requirement for a proportionate but robust internal investigation is, in the circumstances, of real concern; and the attitude at NoTW to the police investigation

²² Watson, Tom and Hickman, Martin. *Dial M for Murdoch*, p. 107: "Clifford lunched Rebekah Brooks in London, and agreed a deal: *News International* would pay him £220,000 a year for three years and costs of £331,112 – a total of £991,112 – in return for his silence, and for reopening the flow of exclusives"; Davies, Nick, *Hack Attack*, pp. 208-9.

²³ CMSC, *News International and Phone Hacking, Volume II – Evidence*, p. 16, Q153.

equally meant that reliance could not be put on their having done so. In any event, if the explanation of James and Rupert Murdoch is correct, far from simply limiting external damage to reputation, one or more parts of the management at the NoTW was engaged in a determined cover-up to keep relevant information about potential criminal activity within the organisation from senior management within NI.²⁴

- Lord Justice Leveson additionally found that “A similar analysis stands in respect of News Corporation. Although there is no evidence from which I could safely infer that Rupert Murdoch was aware of a wider problem, it does not appear that he followed up (or arranged for his son to follow up) on the brief that he believed had been given to Mr Myler to “find out what the hell was going on”, leaving the matter solely in the hands of Mr Hinton. If News Corporation management, and in particular Rupert Murdoch, were aware of the allegations, it is obvious that action should have been taken to investigate them. If News Corporation were not aware of the allegations which, as Rupert Murdoch has said, have cost the corporation many hundreds of millions of pounds, then there would appear to have been a significant failure in corporate governance and in particular in the effective identification and management of risks affecting NI and, thus, the corporation.” (p.349)
- And “In truth, at no stage, did anybody drill down into the facts to answer the myriad of questions that could have been asked and which could be encompassed by the all-embracing question “what the hell was going on”? These questions included what Mr Mulcaire had been doing for such rewards and for whom?; what oversight had been exercised in relation to the use of his services?; why had Mr Goodman felt it justifiable to involve himself in phone hacking?; why had he argued that he should be able to return to employment and why was he being (or why had been) paid off. On any showing, these questions were there to be asked and simple denials should not have been considered sufficient. This suggests a cover up by somebody and at more than one level. Although this conclusion might be parsimonious, it is more than sufficient to throw clear light on the culture, practices and ethics existing and operating at the News of the World at the material time.” (p. 350)
- Material of real significance has also been disclosed to officers working on Operation Elveden, which appears to indicate that not only were routine payments made to public officials by some journalists working at the NoTW but that similar payments had also been made by the employees of The Sun. These payments are alleged to have occurred on multiple occasions and included large payments in figures of thousands of pounds. In her oral evidence, DAC Akers said that: “There also appears to have been a culture at the Sun of illegal payments, and systems have been created to facilitate those payments, whilst hiding the identity of the officials receiving the money. The emails indicate that payments to sources were openly referred to within the Sun, in which case the source is not named, but rather the category “public official” is identified, rather than the name.” (p. 430)

Since the Leveson Report, further details have emerged that call into question how much James Murdoch would have known about phone hacking and other illegal activities, and how “fit and proper” he can be in the context of the Sky deal:

²⁴ The Leveson Inquiry, “AN INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS”, November 2012, pp. 348-349, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270939/0780_i.pdf. Accessed 8 March 2017.

- In 2016, it was alleged at the high court, that James Murdoch was personally involved in authorising the deletion of emails at News International in early 2010. As covered in the Guardian:

“Acting on behalf of 17 people suing the publisher of the now-defunct News of the World and the Sun over alleged phone hacking, David Sherborne claimed on Monday there were documents, emails and meeting agendas that showed senior executives including Murdoch and Rebekah Brooks pursued an email deletion policy that removed “emails that could be unhelpful in future litigation in which News International could be a defendant”.

A full trial is expected this year.²⁵

- The same court case alleged that James Murdoch specifically encouraged emails to be deleted on six occasions between January and April 2010.²⁶
- James Murdoch also served as an NDS director -- NDS was News Corp's secure-encryption subsidiary, under which the unit Operational Security was accused of piracy.²⁷

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Some further matters and details are set out in appendices.

Appendices to both this submission and that on the Fit and Proper test

- A) The tape recording of Rupert Murdoch talking to Sun journalists in March 2013 with a commentary on how it reflects on corporate governance matters. We recognise that this will need to be “proved” with a tape recording and we are seeking to obtain that and will forward that when it is available.
- B) A note setting out some of the history of email deletion at News International and how it implicates James Murdoch and Rebekah Brooks in concealment and destruction of evidence, which has significant implications for judging the record of corporate governance.
- C) A note setting out examples of willful blindness: Failures of Rupert and James Murdoch, and Rebekah Brooks to carry out investigations into allegations of unlawful conduct when reasonably called for
- D) Corporate governance concerns relating to Rebekah Brooks prior to her reappointment as CEO of News International by Rupert and James Murdoch.
- E) Leveson Report (Part 1) criticisms of the Murdochs and executives and NGN/NI

²⁵ Jackson, Jasper. “James Murdoch involved in News International email deletion, court told.” *The Guardian*, 5 December 2016: <https://www.theguardian.com/media/2016/dec/05/james-murdoch-involved-news-international-email-deletion-high-court-phone-hacking>. Accessed 8 March 2017.

²⁶ Ibid; Robinson, Martin. “James Murdoch ‘was personally involved in authorising the deletion of emails at News International in early 2010 amid phone-hacking scandal’.” *The Daily Mail*, 6 December 2016: <http://www.dailymail.co.uk/news/article-4005444/James-Murdoch-personally-involved-authorising-deletion-emails-News-International-early-2010-amid-phone-hacking-scandal.html>. Accessed 7 March 2017.

²⁷ Prodhan, Georgina and Paul, Sonali. “TV piracy claims heap more pressure on Murdoch empire.” *Reuters*, 28 March 2012, <http://www.reuters.com/article/us-newscorp-piracy-idUSBRE82R04720120328>. Accessed 7 March 2017.

- F) House of Commons CMS and Privileges Select Committees' criticisms of Murdochs, their executives and NGN/NI
- G) Summary of failures of corporate governance and accountability since 2011 in rebuttal of the 21C Fox claim that it was "fixed" in 2011
- H) Articles in (a) The Sun and (b) the Times and Sunday Times attacking the police and CPS (and individuals) for investigation News International – as Rupert Murdoch promised on 6th March 2013 in his talk to Sun staff.
- I) Articles in (a) The Sun and (b) the Times and Sunday Times attacking Leveson Part 2 after Sir Brian Leveson indicated in his report of Part 1 that part 2 would investigate the precise role, if any, of the Murdochs in the cover up at News International
- J) Articles in (a) The Sun and (b) the Times and Sunday attacking individuals and organisations associated with the independent press self-regulation recommended by Sir Brian Leveson and agreed by Parliament.
- K) Full list of false denials by News International and the Murdochs in relation to criminal wrong-doing at News International.

Appendices to this submission only

- L) A short paper setting out the history of the Murdochs in relation previous attempts to deliver effective and independent regulation of the press.
- M) Examples of breaches of the standards code in newspaper regulation in the last two years, even under the filter of IPSO.

Conclusions:

The analysis done by Ofcom, and the decision it reached in 2012, has been overtaken by new evidence that has emerged from the Leveson Inquiry, the Privileges Committee, judicial processes and elsewhere in the intervening years.

Several senior News International staff have been convicted and fresh scandals have emerged in the UK, as well as the US with a growing number of Fox News employees accusing executives of sexual misconduct (see *Sexual harassment, denials and cover ups: evidence of a rotten corporate culture at Fox*, submitted by Avaaz).

In both countries, corporate governance experts argue that senior executives either should have known and acted, or did know and did not act. The seriousness of this evidence means it would be unwise for the Secretary of State to approve any deal before getting the full information that Ofcom and the Competition and Markets Authority can provide using their powers.

Ofcom's concerns about the conduct of Mr James Murdoch and his corporate stewardship in September 2012 can only have been vindicated and significantly strengthened by events (including the critically the astonishing decision to reappoint Rebekah Brooks as Chief Executive of News International) and emerging evidence since. They more than add up to basis that on grounds of "genuine commitment to broadcasting standards" Ofcom should be advising the Secretary of State to not allow the merger to proceed.