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Dear Karen

Proposed merger of 21st Century Fox, Inc and Sky plc

Thank you for your letter of 7 August 2017 requesting advice from Ofcom in accordance with s.106B(2) of the Enterprise Act 2002 on a number of issues raised by the representations you have received in relation to your referral decision.

Background

You asked us to report to you on the effect of the proposed acquisition by 21st Century Fox, Inc ("Fox") of Sky plc ("Sky") on two public interest considerations. Our role is to conduct a first stage investigation and to provide advice and recommendations that may be relevant to your decision on whether to refer the transaction for further assessment. In order to refer, you would need to hold a reasonable belief that it may be the case that the transaction may operate or be expected to operate against the public interest.

We considered that the transaction raised public interest concerns as a result of the increased influence by members of the Murdoch Family Trust over the UK news agenda and the political process, which may justify you referring it to the Competition and Markets Authority on plurality grounds. In light of Fox's and Sky's broadcast compliance records, and having considered relevant corporate governance issues, our view was that the risk that the merged entity would lack a genuine commitment to the attainment of UK broadcasting standards was not such that it may justify a reference.

You have asked us now to advise generally on the substantive responses you have received. You have also asked us to advise in particular on some specific points arising from those representations as well as advising overall as to whether, in light of the sum of the further representations, there are non-fanciful concerns in relation to the broadcast standards consideration that may justify a reference for a further investigation. Our advice is set out below. We consider there are not sufficient concerns that may justify a reference in relation to the broadcast standards consideration. As you will see below, however, there is one issue on which we do not consider that we are in a position to advise the Secretary of State. We recognise, of course, that the Enterprise Act confers on you discretion to apply a different judgment.

We have carefully reviewed the further representations you have provided to us, together with further representations by the public made directly to us since your letter. We are very alive to the high degree of public concern that has been expressed in many of them. As we have made clear in our published decisions, we were very concerned about the widespread wrongdoing and criminality at the *News of the World* and we consider the allegations of sexual and racial misconduct at Fox News to be extremely serious and disturbing. We have considered these matters specifically in relation to the broadcast standards public interest consideration.

Threshold for assessing commitment to broadcasting standards

We recognise that the legal threshold for referral is low. You may refer as Secretary of State if there are any non-fanciful concerns; your judgment would need to be a reasonable belief that those concerns were such that it may be the case that the transaction may operate, or be expected to operate, against the public interest.

We applied this threshold in advising you. We assessed the evidence of corporate governance failings in our fit and proper decision. We relied on the same evidence, in so far as relevant, in relation to the broadcast standards consideration. While we identified issues giving rise to some concern, in our judgment taking all the evidence in the round there were not sufficient concerns that may justify a reference in relation to the broadcast standards consideration.

As requested we now explain in more detail our analysis of that evidence, to the extent that it is relevant to the broadcasting standards ground, including the further specific points on corporate governance and the other representations put to us in your letter.

Ofcom's consideration of corporate governance

You have asked for our advice on concerns raised in the further representations about our approach to corporate governance, generally and in relation to the specific points you raise.

Our starting point is that a statutory regime exists for securing broadcast standards compliance including sanctions, which in our view establishes a framework which incentivises an upfront commitment to compliance through licensing requirements and provides ongoing ex post protection for the public interest in the attainment of broadcast standards. The regime strikes a balance between securing the application of standards which protect audiences, while allowing freedom of expression in the interests of audiences and in the wider interests of a democratic society. Against that framework, in considering corporate governance in relation to the broadcast standards consideration, our approach is that something in the nature of the corporate governance concern has to give rise to an identifiable risk in terms of broadcast standards compliance.

Applying this approach to the evidence, we placed significant weight on the positive evidence of broadcast standards compliance by Sky and Fox. There were alleged behaviours amounting to significant corporate failures which were very concerning. However taking account of the nature of the failings, which did not occur in a broadcasting standards context, and the evidence before us of senior management efforts to rectify the situation, which included dismissal of those directly responsible, our judgment was that when taken together with the positive evidence of broadcast standards compliance, there were not

concerns which may justify a reference on grounds of the broadcast standards public interest consideration.

Turning to the particular points on which you request further advice:

- You asked us to advise on the basis that effective corporate governance requires robust processes to be in place to prevent misconduct from arising and to ensure that any misconduct is quickly escalated to senior management where appropriate, to the extent such considerations are relevant to the broadcasting standards ground. You further asked us to advise on representations contending that these objectives have not been achieved by the new corporate governance arrangements put in place in 2012 (i.e. taking into account events since then).

In relation to broadcast standards compliance, as set out in both our fit and proper decision and our advice to you, we are satisfied on the evidence that the governance arrangements at all Fox UK licensees are likely to prevent misconduct from arising and to secure that if it does arise it is escalated as appropriate (see further below our response to the particular points you raise on broadcasting compliance about Fox News' broadcast standards compliance arrangements).

We also had regard to the non-broadcasting corporate governance issues arising within the company, in order to determine whether these affected our view. Such non-broadcasting corporate governance issues may indirectly be relevant to broadcast standards but we consider them to be more directly relevant to the issue of fitness and properness to hold a broadcast licence.

- You asked us to advise on the assertions made in some representations that our 2012 fit and proper assessment relied on the fact that the Murdoch family had only a relatively small indirect shareholding in Sky and that (by then) James Murdoch no longer had an executive position at the company. The representations assert that this would not be the case after the merger but that this change in position was not addressed by Ofcom in our reasoning.

On a full reading of our 2012 fit and proper assessment, it is apparent that the facts singled out in these representations were only part of the overall evidence we considered at the time to make our findings. We found that James Murdoch's conduct in relation to events at NGN repeatedly fell short of the exercise of responsibility to be expected of him as CEO and chairman, but the evidence did not provide a reasonable basis to find that he knew of widespread wrongdoing or criminality at NOTW or that he was complicit in a cover up.

In the current case, we considered the overall evidence available now. We placed weight in our fit and proper decision on the revised corporate governance arrangements, which are designed to secure that allegations of misconduct come to senior management's attention, and on the fact that James Murdoch has taken personal responsibility for their effectiveness. We have evidence, which we did not have in 2012, of action being taken to investigate and address alleged wrongdoing.

- You asked us to advise on representations which contend that we have not considered all the evidence of corporate failings relating to the phone hacking scandal. Representations contend that relevant evidence emerging since 2012 includes the various trials into News International staff, the continuing civil action on claims relating to phone hacking and the findings of the House of Commons Committee of Privileges report on the conduct of News International employees. We were aware of this evidence, but we did not consider it to be both new and material so as to affect our view on the broadcast standards public interest consideration.

Ofcom's consideration of broadcasting compliance

You requested advice on aspects of the further representations which comment on our approach to our assessment of broadcast standards breaches in the UK and other jurisdictions.

In considering whether there would be a genuine commitment to the attainment of broadcast standards by Fox and Sky following the transaction, we have placed significant weight on the compliance records of Sky (54 UK broadcast licences) and Fox (14 UK broadcast licences), which are good. We have assessed Sky's and Fox's compliance on their own terms and relative to similar scale broadcasters and looking at the seriousness as well as the number of any compliance breaches.

- Your letter specifically refers to representations you have received contending that it was insufficient for us to rely on a substantially quantitative assessment of breaches by Fox (and Fox News in particular) based primarily on a complaints-based system. This is because Fox News' audience is small and likely to be sympathetic to the views expressed. On this logic, the number of complaints is likely to be minimal and not reflective of the number of actual breaches. It is suggested that Ofcom should have reviewed Fox News' content looking for possible breaches that were not the subject of a complaint.

We have considered broadcasting compliance primarily by reference to complaints and we believe this to be an effective and proportionate approach. We do undertake targeted monitoring of services and in fact we monitored Fox News during the 2017 UK election period. The compliance record considered in our report to you captured this period of monitoring. In this context, see below and in Annex 1 our assessment of the analysis of recent output by Fox News in the UK.

- You have asked us to advise on representations which question whether we gave sufficient weight to the failure of Fox News to have in place adequate procedures to ensure compliance with the Broadcasting Code. They argue that this is directly relevant to the question of whether there is a genuine commitment to broadcasting standards.

Whilst we were concerned by Fox News' lack of adequate procedures for broadcast compliance, we consider we did afford it sufficient weight in considering the question of whether there is a genuine commitment to broadcasting standards by Fox in this country. We considered it in the round together with other relevant evidence including the fact that the broadcast compliance procedures for the other Fox licensees were

satisfactory, the changes to the management of Fox News, and Fox News' compliance history. We also took account of the incentivising effect of our ability to enforce against any breaches of content standards under the broadcast regulatory framework.

- You asked us to advise on the contention in some representations that we did not adequately take into account Fox's approach to broadcasting in international jurisdictions, for example the US and Australia – and that we only undertook an assessment based on the number of breaches, and that we were overly reliant on evidence gathered by Fox rather than that from regulators.

In preparing our report we obtained information from Fox about its compliance record in all jurisdictions in which it broadcasts. We placed most weight on those jurisdictions having similar, or the most similar, broadcasting regulatory regimes to the UK, i.e. the EU. We did not consider that useful parallels could be drawn to other jurisdictions given the political and cultural differences between them and the UK.

Further, we do not consider that Fox News' broadcasts in the US or Australia are a guide to its commitment to broadcasting compliance in the UK because the broadcast conduct complained of in several representations does not breach broadcasting regulation in those jurisdictions.

You have also asked us to advise on representations which raise the question whether a partisan approach to news and current affairs reporting in other contexts (for example in the US and Australia), even if not in breach of regulatory standards, augurs an approach that may be taken by Sky News in the UK, where Ofcom recognises that the regulatory regime does not fully protect against partiality, and whether this has any implications regarding the likelihood of the parties complying with the spirit of broadcasting standards.

You highlight representations which suggest that the merging parties require not just a commitment to compliance with Ofcom's Broadcasting Code, but a commitment beyond that, to some "spirit" of impartiality not captured by the Code. We do not agree with this, and consider it would be an unwarranted restriction on freedom of speech. What is required by the Code is no more, and no less, than what the Code says. We do not believe that a person can be said to lack "genuine" commitment to the Code merely because they intend to act only as the Code requires. This issue may however be relevant to the plurality public interest consideration, for which we advised that a reference to the Competition and Markets Authority by you may be justified.

In relation to the suggestion that we should have talked to other regulators rather than rely on this information from Fox, we consider it reasonable to have taken this approach - failure to give complete and accurate information by Fox carries criminal sanctions.

New evidence

You have noted representations which appear to contain new substantive evidence, and ask us to advise on this.

- Representations made to you identified specific programme items on Fox News which were said to show that Fox News is not committed to broadcasting standards. We have reviewed these programme items for compliance with the UK broadcasting standards code and our assessment is that none of the 10 instances raises any issues which we would consider warrant us opening an investigation. We attach as Annex 1 a summary of our assessment of these specific programme items.
- You asked us to comment on representations about various litigation relating to corporate governance failings at News America Marketing, which may be relevant to issues of corporate governance concerns. The allegations relate to conduct that took place outside broadcasting and which occurred long before the new corporate governance arrangements. We did not consider them relevant to our view on the broadcast standards public interest consideration.
- You asked us to comment on further evidence submitted to Ofcom and copied to you by [REDACTED] in relation to claims against Fox and in particular allegations of false reporting.

We have reviewed against the Broadcasting Code all the broadcast content on Fox News about the Seth Rich case, which is the subject of the [REDACTED]. Our assessment is that it does not raise issues that would warrant us opening a UK investigation into compliance with broadcasting standards. Our assessment is set out in Annex 1. We consider the wider issues raised by the complaint further in Annex 2 and summarised in the conclusion below.

Conclusion

We have considered carefully all the evidence including these further representations. Placing particular weight on the incentives established by the existence of the statutory framework for broadcast standards regulation and on the parties' history of compliance, our judgment as the broadcast regulator is that while there are non-fanciful concerns, we do not consider that these are such as may justify a reference in relation to the broadcast standards public interest consideration, subject to the issues we discuss below.

As the evidence is uncertain at this stage we do not consider we can reach a view on wider issues raised by the Seth Rich case in order to respond to your letter. As you are aware, our fit and proper duty is ongoing. We would have regard to any significant emerging issues as a part of carrying out that duty.

Yours sincerely

[REDACTED]

Sharon White

ANNEX 1

Ofcom's assessment of broadcast items raised in further representations submitted to the Secretary of State

Ofcom has conducted an assessment of whether each programme item complained of raised issues which warranted investigation under the Broadcasting Code.

Tucker Carlson Tonight, 22 March 2017

█████ complained that Mr Walid Phares, a National Security and Foreign Affairs expert, who appears on various Fox channels, claimed on 23 March 2017 that "one man... shut down a city" in relation to the Westminster Bridge attack. It said that contrary to "Fox News reports" the City was not shut down and therefore the claim was inaccurate.

Having looked into this matter we found that the comment was made by Mr Phares in a tweet posted at 10.25pm (UK time) on 22 March 2017: "*Will be on Tucker on Fox News at 9AM EST to discuss the terror act in London. "One man can shut down a city..."*". This tweet would have appeared on American Twitter feeds shortly before 5.30pm (Eastern time) that day. We do not regulate social media however we did go on to consider whether the comment had been made in the context of a relevant broadcast.

The tweet appears to flow from an exchange Mr Phares had with a presenter on Fox Business Channel at around 4.50pm (UK time). This was approximately two hours after the attack took place. We do not license Fox Business Channel in the UK. However, we noted that neither he, nor the presenter, said the words "one man can shut down a city" on air. Instead the tweet was clearly paraphrasing their discussion of the parts of London that were closed down in the immediate aftermath of the attack as a result of a single assailant who carried out an attack using just a knife and a car. These comments appear to be largely accurate. Taking into account the timing of the tweet in the US and the broadcast time of *Tucker Carlson Tonight*, it seems that Mr Phares had intended to say he would appear on Fox News at 9pm rather than 9am. We reviewed that appearance on *Tucker Carlson Tonight* and found no mention by either Mr Phares, or anyone else who appeared, of the comment complained of.

Tucker Carlson Tonight, 22 March 2017

Tucker Carlson Tonight is a one-hour show in which political commentator Tucker Carlson tackles current political issues in the format of a discussion show with a series of guests. In this programme, he discussed the Westminster Bridge attack, which had taken place earlier that day, with Katie Hopkins. During this discussion, Katie Hopkins described British citizens as being "cowed", "afraid" and "not united". █████ complained that many would believe this to be inaccurate.

Tucker Carlson Tonight is not a news programme therefore there is no due accuracy requirement. The comments made by Ms Hopkins were clearly her personal opinion of how the attack had impacted upon British people and we do not consider them to have been materially misleading. In our view, any potential offence caused was justified by the context in which Ms Hopkins made these comments.

Hannity, 22 March 2017

Hannity is a talk show hosted by conservative political commentator Sean Hannity in which he and guests discuss and comment on news events. This programme involved a discussion of the Westminster Bridge attack and other terrorist attacks more generally. During the discussion, the former UKIP leader Nigel Farage stated that “*Frankly, if you open your door to uncontrolled immigration from Middle Eastern countries you are inviting in terrorism*”.

█████ complained that in making this comment Mr Farage was “linking the Westminster terror attack to a lack of immigration controls” which was inaccurate (the Westminster Bridge attacker was British-born) and the programme “promote[d] a particular view”.

Hannity is not a news programme so there is no requirement for due accuracy.

From the start of the programme, Mr Hannity clearly framed the discussion on the Westminster Bridge attack within the wider context of a series of recent terror attacks in Europe. The discussion moved on to President Trump’s proposal to put in place “vetting measures” for people entering America as immigrants in light of the news that some of the attacks had been carried out by immigrants. It appeared that Mr Farage’s comment was in relation to this proposed policy rather than in relation to the Westminster Bridge attack specifically. In our view, this did not raise issues under the Code.

Tucker Carlson Tonight, 18 May 2017

This programme involved host Tucker Carlson commenting on a New York Times article about recent research into the reasons behind the gender pay gap. Referring to the article, Mr Carlson states: “... *the New York Times has finally admitted that the gender pay gap has nothing to do with sexism*”.

█████ complained that Mr Carlson had “spun the findings” in order to make the claim that “the pay gap had nothing to do with sexism, that it was simply a fair result of free choices, and that it did not really exist in the first place”. █████ complained that the item was inaccurate and offensive to women.

Tucker Carlson Tonight is clearly signposted as offering “spirited debate”. It is not a news programme and therefore there is no due accuracy requirement. Mr Carlson accurately quoted the title of the article “The Gender Pay Gap is Largely Because of Motherhood” and he broadly captured the essence of the article’s content. It is correct that the article does not ‘admit’, or even suggest, that the gender pay gap has “*nothing to do with sexism*” as Carlson stated. However, we considered that his comments were intended to provoke debate relating to what he described as the New York Times’ past campaigning on the issue of equal gender pay. Given the audience expectations of this as a presenter-led opinion programme, we did not consider the references to the article to be materially misleading. On the issue of offence, while some viewers may have found this interpretation offensive, we took into account the factors discussed above including that the audience would have expected a robust and challenging viewpoint to be expressed by Mr Carlson.

Tucker Carlson Tonight, 31 May

Tucker Carlson interviewed anti-abortion campaigner Lila Rose. They discussed a secretly recorded video of attendees at the National Abortion Federation Convention. The video had been the subject of an injunction due to ongoing legal proceedings and the judge’s concerns that the content could

lead to reprisals. During this discussion, Mr Carlson stated: *“if ever there was a time for civil disobedience, it seems like some might think that this would be the time”*.

█████ complained that Mr Carlson’s statement was inciting crime. It also considered the material was offensive, biased and inaccurate.

As this content was not news there was no due accuracy requirement. Although there were some brief references to details of abortions these were relatively limited and provided in the context of a current affairs programme broadcast well past the watershed. Therefore, any offence was justified by the context. There was nothing in the programme which appeared to be materially misleading (e.g. the status of the legal order was broadly correctly described). On the issue of bias, given the focus was the debate over a legal judgment, this would not engage the due impartiality rules (i.e. it was not dealing with a matter of political controversy or matter relating to current public policy). On the issue of Tucker Carlson allegedly inciting crime, taking his whole statement in context, we do not consider he was advocating what might be construed as criminal action.

[Hannity, 16 May 2017](#)

We previously received a complaint about this programme’s coverage of Seth Rich’s murder. We did not consider that this raised issues that warranted investigation under the Code.

Although █████ claimed the programme was not accurate, *Hannity* is not a news programme so there was no due accuracy requirement. We also did not consider it to be materially misleading.

The segment about Seth Rich was presented as a *“murder mystery”*. Hannity did not state that this was the definitive account of what happened and made it clear that the official version of events, according to police, was that Seth Rich was killed during a robbery gone wrong. He set out information that might undermine the official account of what happened. He also suggested that this alternate version was not definitive (*“If true, this could become one of the biggest scandals in American history and could mean that Seth Rich could have been murdered under very suspicious circumstances”*).

[Fox and Friends, 16 May 2017](#)

We did not consider the coverage of Seth Rich’s murder in this programme raised issues under the Code. The programme reported on the statements made by Rod Wheeler to Fox 5 DC and discussed what they might mean for the official version of events. The programme is not news so there was no due accuracy requirement. The presenters said that they did not know if the claims were true. We did not consider that the item was materially misleading.

[America’s News Headquarters, 23 May 2017](#)

America’s News Headquarters is a daily news programme. It covers both live breaking news by reporters on the ground as well as studio-based discussions. █████ complained that during this broadcast, which was covering the Manchester bombing, a correspondent had suggested that the bomber was a refugee “despite clear evidence which had already emerged of his birth in the UK”. █████ said this was inaccurate broadcast reporting.

The broadcast involved live reporting of a rapidly developing breaking news story from a correspondent in Washington. The correspondent said: *“We’re working to confirm more about the suspect but based on the reporting that’s now coming out of the UK, he was a British national of*

Libyan descent. So, it will be key to understand whether he was born in the UK or whether he came to the UK at some point as a refugee, maybe as a child or more recently”.

As this was a developing breaking news story, correspondents may not have been receiving all the most up to date information as it emerged elsewhere. Although at the time of broadcast reports had been released identifying the bomber as being British-born, we did not consider that the correspondent’s comment that emphasised the importance of understanding the bomber’s background raised due accuracy issues under the Code.

[Fox and Friends, 4 June 2017](#)

Fox and Friends is a current affairs discussion programme in which guest contributors offer their personal opinion on news events. The programme item focused on the London Bridge terrorist attack. As part of the discussion, some contributors raised the issue of whether the 3,000 individuals said to be on the so-called “terrorist watch-list” should be interned because of the potential threat they posed. During this part of the discussion guest contributor Katie Hopkins commented “*we do need internment camps*”. █████ complained that this statement was inaccurate and biased.

This programme is not a news programme and therefore there was no due accuracy requirement. We did not consider that the comment was capable of materially misleading the audience since it was clearly a statement of Ms Hopkins’ opinion rather than a statement of fact. We went on to consider whether as a result of the comment, the programme as a whole was not duly impartial. We took into account that Ms Hopkins was the only person who appeared on the programme to call for internment and that her point of view was challenged by others appearing on the programme. Nigel Farage, another contributor, commented that he did not think internment was the right approach because it was likely to “*alienate decent fair-minded Muslims*”. The presenter went on to say that calls for internment would be “*strong talk*” and later in the programme the presenters described internment as “*reprehensible*”. In our view, the programme preserved due impartiality by presenting strong alternative views to that expressed by Ms Hopkins.

[The Five, 6 June 2017](#)

The Five is a current affairs panel discussion programme. The discussion covered the public row between President Donald Trump and London Mayor Sadiq Khan. The presenter commented: “*the London mayor says he doesn’t want to roll out the red carpet for President Trump, but some could argue he’s been really rolling a red carpet out for a lot of these Muslim extremists who have just come in and out of the country willy-nilly*”.

█████ complained that the comment “falsely claimed that Khan is rolling out the red carpet for Muslim extremists” and fell foul of the broadcasting standards demand for impartiality and accuracy.

The Five is not a news programme and therefore there was no due accuracy requirement. We did not consider the comment was materially misleading in context because it was clearly a provocative introductory remark intended to spark debate among the panellists, rather than a statement of fact. In terms of due impartiality we considered that the programme also included significant criticism of Donald Trump’s tweets following the London Bridge attack. One of the panellists (Juan Williams, a Democratic commentator) placed Sadiq Khan’s original comments (about there being no need for alarm due to extra armed police on the streets) in context and was critical of Trump’s response. Overall, the general view of the panel was that both Trump and Khan should put their personal differences aside to focus on combating terrorism. In our view, there were a range of viewpoints expressed and due impartiality was preserved.

Fox News Specialists is a current affairs discussion programme in which three regular presenters are joined by two guest panellists who are experts on a particular subject (the “specialists”). In this episode, the panel discussed climate change and, in particular, a study appearing in a peer-reviewed journal which claimed a “*sixth mass extinction event*” was underway as a result of overpopulation and overconsumption. The programme’s host referred to it as “*an absurd piece of environmental garbage*”.

█████ complained that instead of discussing the scientific facts around climate change, the hosts instead made fun of the scientists and the discussion was not duly accurate or impartial. It also said the item was misleading because despite the programme being called *Fox News Specialists*, there was not a single scientist present.

We previously received 20 complaints on this matter, assessed these and decided the programme did not raise issues under the Code warranting investigation. The programme is not a news programme so there was no due accuracy requirement. While the overall view was of scepticism towards the scientific report, this was targeting the more extreme suggestions made in the report, rather than denying the impact of the population on the planet or the need to take a responsible approach to the environment. In addition, given the background and expertise of “the specialists” was made clear to viewers at the start of the programme, we did not consider it was materially misleading that the programme did not include any scientists.

ANNEX 2

Wider issues raised by [REDACTED] submission

Rod Wheeler's complaint was filed on 1 August 2017. The Seth Rich story began with an online article about the case, by Fox News. Fox retracted the online article. While Ofcom has no jurisdiction over online articles, we generally take retractions to be indicative of a commitment to accuracy and to proper behaviour, rather than the converse.

However in essence Mr Wheeler's complaint is more than that a mistake was made in reporting. He suggests that Fox News knowingly faked a news story for political purposes. If true, this would clearly be of relevance to the degree of public concern arising from a plurality issue. Whether it might also be of relevance to commitment to broadcasting standards would depend on a number of factors, including in particular the degree (if any) of knowledge and culpability within Fox News beyond the journalist concerned. If evidence of wider wrongdoing were to emerge at some future date it may be significant.

The evidence at present is uncertain and the substantive issues are, of course, subject to proceedings in the US courts and will be addressed within a timeframe determined by those courts. [REDACTED] adduces some evidence as a part of the complaint which implies the possibility of wrongdoing on the part of the journalist. Commentators on the case have suggested it may be part of some wider wrongdoing, although we are aware of no evidence and no legal claim that this is the case.