

21ST CENTURY FOX, INC. / SKY PLC MERGER INQUIRY

Response to Remedies Notice

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This submission is made on behalf of Twenty-First Century Fox, Inc. (**21CF**) in response to the Competition and Markets Authority (the **CMA**)’s notice of possible remedies (the **Remedies Notice**) in relation to 21CF’s proposed acquisition of the remaining shares in Sky plc (**Sky**) (the **Transaction**).
- 1.2 As 21CF will set out in detail in its response to the CMA’s provisional findings (the **Provisional Findings**), 21CF considers that the Provisional Findings contain a number of material legal and factual errors. The aggregate effect of these errors is that the Provisional Findings do not provide a reasonable basis on which to conclude that the Transaction may be expected to operate against the public interest in respect of the media plurality consideration set out in section 58(2C)(a) of the Enterprise Act 2002 (the **Media Plurality Consideration**). 21CF submits that correcting these errors would therefore allow the CMA to conclude that the Transaction does not raise media plurality concerns, and remove the need for any remedies to address such concerns.
- 1.3 Without prejudice to these views, this Response provides comments on the CMA’s Remedies Notice, and puts forward a proposal on remedies for the CMA to consider in its final report to the Secretary of State.
- 1.4 In the Remedies Notice, the CMA seeks views both on remedies that are fully structural in nature (i.e. the spin-off or divestiture of Sky News) and on “firewall” remedies designed to insulate Sky News from any increase in influence, or perceived influence, by the MFT or members of the Murdoch family over its editorial agenda.
- 1.5 While 21CF disagrees with the CMA’s provisional findings in relation to the Media Plurality Consideration, it is mindful that the essence of these findings is based on an alleged increased ability of the MFT or members of the Murdoch family to influence the editorial output at Sky News post-Transaction. Any remedies recommended by the CMA to the Secretary of State under Article 6(4) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (the **Order**) must therefore be directly related to this concern and provide an effective and comprehensive solution to it.¹
- 1.6 21CF is also mindful of the fact that the CMA may recommend in its report to the Secretary of State the need for remedies to be reasonable and proportionate.² 21CF submits that in applying these considerations to the current case, the CMA should also consider the impact of any remedies on the continued operation of the Sky News business, taking into account the views expressed by Ofcom in its report to the Secretary of State (the **Ofcom Report**).
- 1.7 On the basis of these guiding principles, 21CF submits that, if the CMA’s Provisional Findings are confirmed, the most appropriate form of remedies would be the “firewall” remedies 21CF is willing to offer, in the form attached at **Annex 1** (the **Proposed Firewall Remedies**). In responding to the Remedies Notice and in formulating the Proposed Firewall Remedies, 21CF has also taken into account the view expressed by Ofcom in its Report that the undertakings offered by 21CF at Phase 1 in lieu of a reference (the **UILs**) mitigated the public interest concerns,³ thereby providing a basis for

¹ Merger Remedies Guidelines (as defined below), para 1.6.

² Remedies Notice, paras 19 and 32. Merger Remedies Guidelines, para 1.9.

³ Ofcom Report, pages 6 and 8.

the acceptance of these undertakings. 21CF has also made adjustments that directly address a number of questions for consideration raised by the CMA in the Remedies Notice.

1.8 The Proposed Firewall Remedies include:

- (i) a commitment to maintain a Sky-branded news services in the UK for at least five years (including maintaining equivalent levels of investment);
- (ii) a commitment to establish a fully independent, expert Sky News Editorial Board (initially comprising two existing Sky independent directors and a third member nominated by the Sky independent directors with senior editorial and/or journalistic experience) to guarantee the editorial independence of Sky News, which would oversee:
 - (A) the appointment and dismissal of the Head of Sky News, who will have sole responsibility for setting editorial strategy and direction for Sky News' digital, television and radio output, including the appointment and dismissal of senior Sky News employees (including presenters);
 - (B) any material changes to the authority or reporting lines of the Head of Sky News;
 - (C) decisions regarding the remuneration package of the Head of Sky News;
 - (D) any changes to the Sky News Editorial Guidelines (which have been amended to provide further safeguards that the Head of Sky News will retain complete control over editorial matters and the instructions given to journalists and other editorial staff);
 - (E) any matters escalated to it by the Head of Sky News, by keeping a written record of such matters and providing a copy to the 21CF board and to the Secretary of State, certified as accurate by one independent expert board member (21CF must also publish a summary of any such record in its annual report);
- (iii) a commitment that no employee or officer of 21CF, or a member of the 21CF board who is a trustee or beneficiary of the MFT, will influence or attempt to influence the editorial choices made by the Head of Sky News (including the selection or running of news stories or the political comment and opinion to be broadcast on the Sky News services); and
- (iv) event based sunset provisions, which provide that the undertakings will cease to have effect in the event of certain changes of circumstances which would result in the potential media plurality concerns identified in the Provisional Findings falling away. Under these provisions, the Proposed Firewall Remedies would terminate upon completion of the Disney/21CF Transaction.

1.9 These proposals enhance in a number of material respects the UILs offered by 21CF at Phase 1, taking into account the proposals put forward by Ofcom in its Report and the questions for consideration raised by the CMA in the Remedies Notice. To that end, 21CF submits that the Proposed Firewall Remedies represent a comprehensive and clear cut solution that directly addresses the origin of the CMA's adverse provisional findings in relation to the Media Plurality Consideration, and that they therefore provide an appropriate basis for remedial action by the

Secretary of State under paragraph 9 of Schedule 2 of the Order should the Provisional Findings be confirmed.

2. GENERAL PRINCIPLES FOR REMEDIAL ACTION

2.1 While acknowledging that there is no specific guidance on remedies to address media plurality concerns, the Remedies Notice applies the CMA’s general guidelines on remedies in Phase 2 merger cases for the purpose of considering possible remedies in these proceedings (the **Merger Remedies Guidelines**).⁴ 21CF agrees that the Merger Remedies Guidelines and CMA precedent in applying them provides an appropriate framework as a starting point for considering possible remedies in this case, and that there are certain key general principles derived from them that are relevant to the CMA’s assessment of the Proposed Firewall Remedies.

The nature of remedies is dictated by the adverse effects identified

2.2 As the Merger Remedies Guidelines make clear, the fundamental consideration when assessing potential remedies is that they must be directly related to the adverse effects identified and provide a solution to them.⁵ Any debate on the appropriate nature of a remedy must necessarily be framed by reference to this consideration.

2.3 In this case, the adverse effects provisionally identified by the CMA relate to the increased control that the MFT would exercise over Sky post-Transaction, and the resulting increase in influence – or perceived influence – that the MFT or members of the Murdoch family would have over the editorial agenda of Sky News.⁶ The Proposed Firewall Remedies are tailored to address this specific concern, by insulating the Head of Sky News (and therefore Sky News) from any such influence and ensuring that he has sole responsibility for setting the editorial agenda.

2.4 In this regard, 21CF notes the CMA’s view that “*since the aim of any behavioural remedies would be to limit the ability of the MFT to exercise increased influence over Sky News, Firewall measures might be “particularly relevant”*.”⁷ This is consistent with the conclusions of Ofcom, the expert regulator, at Phase 1, who advised the Secretary of State that the UILs offered by 21CF mitigated its concerns about actual or perceived influence by the MFT or members of the Murdoch family as they “*would insulate the Head of Sky News (and therefore the Sky News editorial position) from other bodies within the merged entity*”.⁸

Remedies must be reasonable and proportionate to the adverse effects identified

2.5 As recognised in the Remedies Notice, decisions regarding remedial action must also be dictated by the reasonableness and proportionality of the solutions proposed.⁹ Consistent with these principles, the CMA must ensure that no remedy is disproportionate in relation to the adverse effects identified.¹⁰ It follows that remedies should go no further than the current *status quo* in place pre-Transaction. The Merger Remedies Guidelines also note that, when presented with two possible remedies that will be equally effective, the CMA will select the remedy that imposes the least cost or is the least restrictive.¹¹

Remedies must be effective in addressing the adverse effects identified

⁴ Specifically, Merger Remedies: CC8. Remedies Notice, para 9.
⁵ Merger Remedies Guidelines, para 1.8.
⁶ Remedies Notice, paras 19 and 32.
⁷ Remedies Notice, para 32.
⁸ Ofcom Report, para 11.18.
⁹ Remedies Notice, para 46.
¹⁰ Merger Remedies Guidelines, para 1.9. This is of course also required under basic principles of public law.
¹¹ Ibid.

- 2.6 The Merger Remedies Guidelines are clear that for remedies to be effective, they must be capable of comprehensively addressing the adverse effects identified.¹² In formulating remedies, 21CF has, as far as possible, sought to maintain a link between Sky News and the broader Sky business, so as to address the concerns raised by Ofcom in its Report to the Secretary of State that the structural separation of Sky News from Sky “*may lead to the risk of the scale of Sky News decreasing over time, given the inherent difficulties in sustaining a loss-making unit outside of the Sky corporate structure.*”¹³ Ofcom also noted that a degradation or loss of Sky News could potentially present risks to plurality “*equal to or greater than those presented by the transaction itself.*”¹⁴ This is a consideration raised in paragraphs 26 and 27 of the Remedies Notice, where the CMA acknowledged that Sky News has “*never operated as a standalone business*”.
- 2.7 Finally, the Merger Remedies Guidelines make clear that in order to be effective, remedies must be practical, i.e. they must be capable of “*effective implementation, monitoring and enforcement*”.¹⁵ To that end, a remedy that is designed to be self-monitoring and that is also transparent in its reporting lines and publication requirements is likely to constitute a practical means of addressing the adverse effects identified.

3. APPLICATION OF THE GENERAL PRINCIPLES TO THE PROPOSED FIREWALL REMEDIES

- 3.1 Applying the general principles set out in Section 2, 21CF submits that the Proposed Firewall Remedies represent the most effective, proportionate and reasonable solution to the media plurality concerns provisionally identified by the CMA.

Commitment to maintain a Sky-branded news services in the UK for at least five years

- 3.2 As previously submitted to the CMA and stated publicly in 21CF’s rule 2.7 announcement in connection with the Transaction, 21CF intends that Sky News will continue to operate as an editorially independent business unit within Sky following completion of the Transaction. As one of the organisation’s founding shareholders, 21CF has been a supporter of Sky (including Sky News) since its origin. The Transaction does not change that. 21CF is therefore prepared to commit formally to the Secretary of State to maintain a Sky-branded news service in the UK for at least five years (including similar levels of operational net investment in the service to those currently made by Sky, taking into account inflation) (Section 2).

Commitment to establish a fully independent Sky News Editorial Board to guarantee the editorial independence of Sky News

- 3.3 In order to address the CMA’s concerns regarding the increased ability, or perceived ability, of the MFT and the Murdoch family to influence the editorial output of Sky News, the Proposed Firewall Remedies provide for the establishment of a fully independent Sky News Editorial Board, tasked with ensuring the editorial independence of Sky News.

¹² Merger Remedies Guidelines, paras 1.7 and 1.8.

¹³ Ofcom Report, para 11.22.

¹⁴ Ofcom Report, para 11.22.

¹⁵ Merger Remedies Guidelines, para 1.8 (c).

Composition of the Sky News Editorial Board

3.4 The Proposed Firewall Remedies include comprehensive commitments regarding the composition and initial appointment of the Sky News Editorial Board. Specifically:

- (i) **The Sky Editorial Board will comprise only independent members:** the Proposed Firewall Remedies provide for a fully independent Sky News Editorial Board (Section 3.1(i)). This is a material enhancement to the UILs offered to the Secretary of State at Phase 1, which provided for a majority of independent members, and addresses specific questions raised by the CMA in the Remedies Notice.¹⁶ In doing so, the commitment speaks directly to the potential adverse effects identified in the Provisional Findings, by further increasing the degree of separation between the MFT and members of the Murdoch family and the body tasked with preserving Sky News’ editorial independence, thereby eliminating any residual risk of actual or perceived influence.

With regard to the principle of proportionality (in particular the need not to go beyond the pre-Transaction status quo), 21CF notes that the board of Sky is itself currently not fully independent; its non-independent members include members of the 21CF executive, including members of the Murdoch family. However, the Proposed Firewall Remedies commit that the Sky News Editorial Board will comprise only independent members. While 21CF’s proposal therefore arguably goes beyond the pre-Transaction *status quo*, it is in line with the original intention of 21CF to entrust this function to the NCGC (via the board resolution adopted in April 2017), which also comprises only independent directors. As a result of this formal undertaking, any concerns articulated by CMA in the Provisional Findings in relation to the potential reversibility of 21CF’s commitment can be dismissed.¹⁷

- (ii) **The Sky News Editorial Board will comprise only members that have experience in the UK media sector:**¹⁸ this is a further enhancement to the UILs originally provided at Phase 1, and addresses concerns raised in the Provisional Findings about the effectiveness of the NCGC in constraining any attempts by members of the Murdoch family to influence the editorial agenda of Sky News due, inter alia, to the CMA’s view that “*members of the NCGC have no experience of the UK TV news sector or UK broadcasting more generally.*”¹⁹ 21CF respectfully reminds the CMA that the members of the NCGC are directors of an international media organisation with substantial interests in the UK (including the provision of channels in the UK and a significant investment in Sky). Notwithstanding this, 21CF has introduced this explicit requirement for the Sky News Editorial Board in the Proposed Firewall Remedies. In addition, the Proposed Firewall Remedies include a commitment that the board will be chaired by a member who also has senior editorial and/or journalistic experience, and will be quorate only if at least one member with senior editorial and/or journalistic experience is present (Sections 3.1(ii) and (vi)).
- (iii) **The board will initially comprise two existing Sky independent directors and a third member nominated by the Sky independent directors who has senior editorial and/or journalistic experience** (Section 3.1(i)(A)): as another enhancement to the UILs, this will ensure continuity of the Sky News business upon

¹⁶ Remedies Notice, paras 38(b) and (f).
¹⁷ Remedies Notice, para 8.11.
¹⁸ Definition of Independent Expert Board Member.
¹⁹ Provisional Findings, para 8.10.

completion of the Transaction, without compromising the independence of the Board. It also ensures that the remedies are capable of immediate implementation, with the Sky News Editorial Board becoming effective as of the date of closing. 21CF understands that the Sky independent directors have confirmed in principle that they would be willing to assume this role post-Transaction.

Mechanism for appointment of subsequent Independent Expert Board Members

- 3.5 21CF has entrusted the NCGC with selecting subsequent Independent Expert Board Members to the Sky News Editorial Board (Section 3.1(i)(B)). 21CF is of the view that the NCGC (which itself is composed entirely of independent board members) is well equipped and best placed to do this, in accordance with the criteria for selection of Independent Expert Board Members contained in the definitions section of the Proposed Firewall Remedies.
- 3.6 However, to address a specific question raised by the CMA in the Remedies Notice,²⁰ the Proposed Firewall Remedies now include an additional safeguard, by requiring that any appointment made by the NCGC is conditional on approval by the Secretary of State (or the CMA or Ofcom, if that is considered more appropriate) as meeting those criteria. Such approval would not be unduly burdensome; it would effectively involve confirming that the NCGC has properly considered each of the selection criteria for appointment, i.e. that the proposed Independent Expert Board Member has the requisite experience in the UK media sector and independence from 21CF.

Remit of the Sky News Editorial Board

- 3.7 The Proposed Firewall Remedies include a commitment that the following matters will require the approval of the Sky News Editorial Board:
- (i) the appointment and dismissal of the Head of Sky News;
 - (ii) any material changes to the authority or reporting lines of the Head of Sky News;
 - (iii) decisions regarding the remuneration package of the Head of Sky News; and
 - (iv) any changes to the Sky News Editorial Guidelines (Section 3.3) (the **Sky News Editorial Board Approvals**).
- 3.8 In doing so, the remedies reserve key decision-making in relation to the Head of Sky News and the Sky News Editorial Guidelines to the fully independent expert board members, thereby insulating these decisions from any form of external influence, including by the MFT or members of the Murdoch family. The Proposed Firewall Remedies also provide for clear escalation and reporting lines by the Sky News Editorial Board to both the 21CF board and the Secretary of State in the event that any attempted influence is escalated to it by the Head of Sky News (Section 3.1(v)). 21CF also notes that the addition of decisions regarding the remuneration package to the Sky News Editorial Approvals is an enhancement from the UILs offered at Phase 1, and addresses a question raised by the CMA in the Remedies Notice.²¹
- 3.9 In addition, and as an enhancement to the UILs offered by 21CF at Phase 1, 21CF has now included a definition of the Head of Sky News, which clarifies that the Head of Sky News is solely responsible for setting editorial strategy and direction for Sky News' digital, television and radio output, including the appointment and dismissal of senior Sky News employees, (including presenters). This is reinforced by the commitment in the Proposed Firewall Remedies (also

²⁰ Remedies Notice, para 38(d).

²¹ Remedies Notice, para 38(e).

contained in the UILs offered by 21CF at Phase 1) that the Sky News Editorial Guidelines would be amended to contain provisions ensuring that the Head of Sky News will retain complete control over editorial matters and the instructions given to editorial staff (including journalists) (Section 4.2(i)).

- 3.10 The Remedies Notice asks whether the remit of the Sky News Editorial Board should extend to “*broader editorial issues such as the editorial issues such as the composition of the programme schedule and the mix of programming*”.²² 21CF considers that to include broader editorial matters within the remit of the board would not be appropriate or practicable and would seriously hinder the ability of Sky News to offer a rolling 24 hour news service. 21CF submits that such matters should, as in the status quo, remain operational matters for Sky News, with overall responsibility for them resting with the Head of Sky News (as is currently the case, and as provided for in the Proposed Firewall Remedies).

The Proposed Firewall Remedies, through the Sky News Editorial Board, are designed to be primarily self-monitoring

- 3.11 In addition to being capable of immediate implementation upon completion of the Transaction, the Proposed Firewall Remedies, through the role of the Sky News Editorial Board, are designed to be primarily self-monitoring. Specifically, the Sky News Editorial Board will be entrusted with oversight of compliance with the Sky News Editorial Guidelines (including provisions relating to editorial independence) and will be responsible for ensuring that there are no attempts to influence the editorial choices made by the Head of Sky News.²³ In addition, the Proposed Firewall Remedies contain clear and transparent reporting lines in relation to any influence or attempt to influence the editorial output of Sky News. First, the Head of Sky News must escalate any such attempts to the Sky News Editorial Board (Section 4.2(iii)). Further, the Sky News Editorial Board must keep a written record of this and provide a copy to the 21CF board and the Secretary of State (Section 3.1(v)). 21CF must also include a summary of any such record in its annual report (Section 3.2)).
- 3.12 The approval of the Secretary of State is envisaged only in specific and limited circumstances, namely: (i) the selection of members of the Sky News Editorial Board by the NCGC requires the approval of the Secretary of State as meeting the criteria of Independent Expert Board Member (Section 3.1(i)(B)); and (ii) any future amendments to the Sky News Editorial Guidelines or the Sky News Editorial Board Approvals require the Secretary of State’s prior approval (Sections 3.4 and 4.3).²⁴
- 3.13 While the Proposed Firewall Remedies currently provide for the Secretary of State to carry out these functions, as noted above, 21CF would be equally willing for this to be carried out by the CMA or Ofcom, if considered more appropriate.

Commitment that no employee or officer of 21CF, or a member of the 21CF board who is a trustee or beneficiary of the MFT, will influence or attempt to influence the editorial choices made by the Head of Sky News

- 3.14 The Proposed Firewall Remedies include a commitment that no employee or officer of 21CF, or a member of the 21CF board who is a trustee or beneficiary of the MFT, will influence or attempt to influence the editorial choices made by the Head of Sky News (Section 3.5).
- 3.15 The Remedies Notice and Provisional Findings note that concerns have been raised about the perceived ineffectiveness of the undertakings given in relation to the acquisition of the

²² Remedies Notice, para 38(e).

²³ Proposed Firewall Remedies, para 3.1(iii) and (v).

²⁴ In addition, under Section 2.3, the Secretary of State will receive a copy of the annual Sky News Investment Report. Under Section 5.1, the Secretary of State will also receive and consider requests to vary the undertakings in the event of a material change of circumstance.

Times/Sunday Times in 1981 and of Dow Jones in 2007.²⁵ 21CF is unclear on what basis these concerns are articulated, in particular as 21CF is not aware of any previous breaches of these undertakings, and indeed Ofcom said in its Report that no evidence had been provided to it of any breaches.²⁶ 21CF also notes that these undertakings did not include a commitment preventing the news proprietor from expressing views, whether directly or indirectly, in relation to editorial output.²⁷ By contrast, the Proposed Firewall Remedies provide an explicit commitment to this effect, as described above, and in doing so therefore go further than either the 1981 or 2007 undertakings in ensuring the editorial function of Sky News is free from external influence.

- 3.16 In addition, as described above, the Proposed Firewall Remedies provide for clear and transparent reporting lines in relation to any influence or attempt to influence the editorial output of Sky News in contravention of this commitment. Ofcom advised the Secretary of State that this transparency, combined with the fact that (as described above) the remedies are directly enforceable by the Secretary of State, meant that the UILs offered at Phase 1 were “*more robust*” than the commitments given in relation to News Corporation’s acquisition of the Times/Sunday Times in 1981 and Dow Jones in 2007.²⁸

Event based sunset provisions

- 3.17 21CF agrees that it is appropriate for the CMA’s consideration of potential remedies to take into account the eventuality that the Disney/21CF Transaction completes as expected. As currently envisaged, the total shareholdings of the MFT and members of the Murdoch family in the combined Disney/21CF would be less than 5% (as illustrated in **Table 1** below), far less than the MFT’s current shareholding in 21CF. As acknowledged by the CMA in the Remedies Notice, in this scenario, the media plurality concerns expressed in the Provisional Findings would necessarily fall away in their entirety.²⁹

Table 1: Envisaged shareholdings of the MFT and members of the Murdoch family in combined Disney/21CF

	(a) 21CF shares	(b) Number of Disney shares from transaction ((a) multiplied by 0.2745)	(c) Percentage of Disney shares from transaction ((b) divided by 2.014 billion total Disney shares)
MFT	[✂]	[✂]	[✂]
Rupert Murdoch	[✂]	[✂]	[✂]
James Murdoch	[✂]	[✂]	[✂]
Lachlan Murdoch	[✂]	[✂]	[✂]
Total	[✂]	[✂]	[✂]

²⁵ Remedies Notice, para 38; Provisional Findings, para 8.42.

²⁶ Ofcom Report, para 2.58.

²⁷ Specifically, the Times / Sunday Times undertakings of 1981 provided that the Editor “*shall not be subject to 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 [...] of the Times or The Sunday Times.*”

²⁸ Ofcom Report, paras 11.20-11.21.

²⁹ Remedies Notice, para 42.

- 3.18 To that end, the Proposed Firewall Remedies include event based sunset provisions (as proposed by the CMA in paragraph 45(b) of the Remedies Notice), which build on the termination provisions contained in the UILs offered to the Secretary of State and accepted by Ofcom.³⁰ Specifically, Section 5.2 of the Proposed Firewall Remedies provides that the undertakings shall continue to have effect for so long as:
- (i) the MFT holds, directly or indirectly, more than 10% of the voting rights in News Corp; and
 - (ii) the MFT holds, directly or indirectly, more than 10% of the voting rights in 21CF or any 21CF Parent Company;³¹ and
 - (iii) 21CF or any 21CF Parent Company holds, directly or indirectly, more than 10% of the voting rights in Sky.
- 3.19 Scenario (ii) is intended to cover completion of the Disney/21CF Transaction as currently envisaged. However, 21CF considers that it is also appropriate for the Proposed Firewall Remedies to cease to have effect if: (i) the MFT ceases to hold more than 10% of the voting shares in News Corp; or (ii) if 21CF, or any successor company, ceases to hold more than 10% of the voting shares in Sky. Either of these scenarios would also result in the media plurality concerns expressed in the Provisional Findings falling away in their entirety.
- 3.20 21CF does not consider that it would be appropriate for termination of the Proposed Firewall Remedies to be subject to review by the Secretary of State.³² The proposed sunset provisions described above are intentionally bright-line and, if any of the three scenarios occur, it is indisputable that the media plurality concerns identified in the Provisional Findings would fall away. Moreover, the Proposed Firewall Remedies as drafted include a general review provision, which would cover changes of circumstance not addressed by the sunset clause (Section 5.1).

4. CONCLUSION

- 4.1 For the reasons described above, and without prejudice to 21CF's view that the Transaction does not raise concerns in relation to the Media Plurality Consideration, 21CF submits that the combined effect of the Proposed Firewall Remedies is that there could be no circumstances in which, post-Transaction, the MFT or members of the Murdoch family could influence, whether directly or indirectly, the editorial line or policy of Sky News.
- 4.2 The Proposed Firewall Remedies therefore go to the heart of the adverse effects set out in the CMA's Provisional Findings. As such, should the Provisional Findings be confirmed, 21CF submits that the Proposed Firewall Remedies would be the most effective, proportionate and reasonable form of remedial action for the CMA to fully address the concerns identified in the Provisional Findings and to recommend to the Secretary of State.
- 4.3 21CF stands ready to provide any further information the CMA may require in order to inform its final report, whether on the substance of the Transaction or on 21CF's Proposed Firewall Remedies.

Allen & Overy LLP
6 February 2018

³⁰ Per section 5.2 of the UILs, which provided that the Sky News Editorial Board would only remain in place for as long as the MFT held more than 10% of the voting rights in News Corporation.

³¹ The definition of Parent Company in the Firewall Remedies is based on Companies Act 2006 definitions of "parent undertaking" and "subsidiary undertaking".

³² Remedies Notice, para 43(b).

OFFER BY 21ST CENTURY FOX, INC. FOR THE REMAINING SHARES IN SKY PLC

UNDERTAKINGS GIVEN BY 21ST CENTURY FOX, INC. PURSUANT TO PARAGRAPH 9 OF SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

WHEREAS:

- (a) 21CF proposes to acquire the entire issued and to be issued share capital of Sky that 21CF does not already own.
- (b) On 16 March 2017 the Secretary of State issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 20 September 2017 the Secretary of State, in exercise of her powers under Article 5(3) of the Order in connection with the Transaction, made a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group might investigate and report on the questions referred to in Articles 6(2), (3) and (4) of the Order within the period set down in Article 9 of the Order (the **Reference**).
- (d) On [●] the Secretary of State received a report of the CMA under Article 8 of the Order.
- (e) On [●] the Secretary of State published his decision in connection with the Transaction under Article 12(2) of the Order (the **Decision**). In the Decision, the Secretary of State decided that the conditions set out in Article 12 (6)(a) – (c) are met.
- (f) Under Article 12(7) of the Order, the Secretary of State has a discretion to take such action under paragraph 9 or 11 of Schedule 2 to the Order as he considers reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which he has decided may be expected to result from the creation of the European relevant merger situation.
- (g) Whereas under paragraph 9 of Schedule 2 to the Order, the Secretary of State may accept undertakings as he considers appropriate to remedy, mitigate or prevent such effects.
- (h) The Secretary of State considers that the undertakings given below by 21CF are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the creation of the European relevant merger situation.

NOW THEREFORE 21CF hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the Transaction.

1. EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect (subject to the variation and termination provisions at 5.1 and 5.2) from the date that, having been signed by 21CF, they are accepted by the Secretary of State.

2. COMMITMENT TO MAINTAIN A NEWS SERVICE

- 2.1 As at the Closing Date, for so long as 21CF owns more than 39.14% of the shares in Sky or a successor to Sky, and subject to variation and/or termination under 5.1 and/or 5.2, 21CF shall continue to maintain a Sky-branded news service received primarily in the UK for at least 5 years from Closing Date.

- 2.2 21CF shall maintain the Operational Net Investment in its Sky-branded news service at a level not materially different (taking into account cost and revenue inflation) from Sky's level of Operational Net Investment in Sky News as set out in the Schedule attached under **Annex 1** for at least 5 years from Closing Date.
- 2.3 21CF shall procure that Sky UK Limited or any successor company that provides the Sky-branded news service will maintain financial records showing the annual Operational Net Investment in its Sky-branded news service (**Sky News Investment Report**) for at least 5 years from Closing Date. The Sky News Investment Report shall be certified by an independent auditor, with a copy provided to [the Secretary of State].

3. SKY NEWS EDITORIAL BOARD

- 3.1 21CF will establish an editorial board (the **Sky News Editorial Board**), which will become effective immediately following the Closing Date and will be part of Sky UK Limited or any successor company that holds the licence for the Sky News service (**Sky UK**), and which will:
- (i) comprise solely members who are Independent Expert Board Members, with such members:
 - (A) initially comprising two existing Sky independent directors and a third member nominated by the Sky independent directors who has senior editorial and/or journalistic experience; and
 - (B) subsequently comprising members selected by the Nominating and Corporate Governance Committee of the 21CF Board and approved by [the Secretary of State] as meeting the criteria of an Independent Expert Board Member;
 - (ii) be chaired by an Independent Expert Board Member with senior editorial and/or journalistic experience;
 - (iii) be entrusted with oversight of the compliance of the Sky News services with the Sky News Editorial Guidelines, including provisions relating to editorial independence in news reporting and compliance with Ofcom's Broadcasting Code;
 - (iv) operate under terms of reference which will stipulate that the Sky News Editorial Board will:
 - (A) be adequately resourced and have powers to review and investigate all areas within the remit of the Sky News Editorial Board;
 - (B) meet at least two times a year;
 - (C) consider any representations made by the Head of Sky News as to Sky News' compliance with the Sky News Editorial Guidelines as provided for under section 3.1(iii) above and report any such representations to the 21CF Board;
 - (D) advise the 21CF Board on any issues within its remit including the Sky News Editorial Board Approvals (as defined in section 3.3) below;
 - (v) keep a written record of any matters escalated to it by the Head of Sky News as provided for in section 4.2(iii) below, and provide a copy of any such record to the

21CF Board and [the Secretary of State] certified as accurate by one Independent Expert Board Member; and

- (vi) be quorate only if at least one Independent Expert Board Member with senior editorial and/or journalistic expertise is present.

3.2 21CF shall ensure that a summary of any report provided under section 3.1(v) above shall be included in its annual report.

3.3 21CF shall ensure that the following matters at Sky UK take place only with the approval of a majority of the Sky News Editorial Board:

- (i) the appointment or removal of the Head of Sky News;
- (ii) the remuneration package of the Head of Sky News;
- (iii) any material changes to the authority or reporting relationship of the Head of Sky News; and
- (iv) any future changes to the Sky News Editorial Guidelines.

(together the **Sky News Editorial Board Approvals**).

3.4 21CF shall not make any subsequent amendments to the Sky News Editorial Board Approvals without the prior approval of the Secretary of State.

3.5 21CF shall ensure that, subject to general compliance procedures and oversight, no employee or officer of 21CF, or a member of the 21CF Board who is a trustee or beneficiary of the MFT, will influence or attempt to influence the editorial choices made by the Head of Sky News (including the selection or running of news stories or the political comment and opinion to be broadcast on the Sky News services).

4. COMMITMENT TO ENHANCE AND MAINTAIN SKY NEWS EDITORIAL GUIDELINES

4.1 As at the Closing Date, 21CF shall continue to maintain and observe the editorial guidelines that are in place in relation to Sky News as at the Effective Date, as modified according to section 5.2 below and as attached at **Annex 2** to these undertakings (the **Sky News Editorial Guidelines**).

4.2 As at the Closing Date, 21CF shall ensure that the Sky News Editorial Guidelines specify that:

- (i) the Head of Sky News retains complete editorial control over all news and current affairs output, including the selection and running of news stories and any political comment and opinion broadcast on the Sky News services;
- (ii) subject to general compliance procedures and oversight, instructions to Sky News editorial staff including journalists shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority; and
- (iii) in the event that the Head of Sky News becomes aware of an attempt by any employee or officer of 21CF outside the Sky News editorial function to influence the selection or running of news stories or the political comment and opinion to be broadcast on the Sky News services, the Head of Sky News will escalate such matters to the Sky News Editorial Board.

4.3 21CF shall not make any subsequent amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State].

5. VARIATION AND TERMINATION

5.1 In the event of a material change of circumstances (other than these undertakings ceasing to be effective in accordance with 5.2 below), the Secretary of State may, in response to a request from 21CF, waive, modify or substitute one or more of these undertakings. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

5.2 These undertakings shall continue to have effect from the Effective Date, subject to any variation under 5.1, only for so long as:

- (i) the MFT holds, directly or indirectly, more than 10% of the voting rights in News Corp; and
- (ii) the MFT holds, directly or indirectly, more than 10% of the voting rights in 21CF or any 21CF Parent Company; and
- (iii) 21CF or any 21CF Parent Company holds, directly or indirectly, more than 10% of the voting rights in Sky UK.

6. COMPLIANCE

6.1 21CF shall comply promptly with such written directions as the Secretary of State may from time to time give:

- (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
- (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

6.2 21CF shall procure that any member of the same Group of Interconnected Bodies Corporate as 21CF complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as 21CF shall be attributed to 21CF for the purposes of these undertakings.

6.3 Where any Affiliate of 21CF is not a member of the same Group of Interconnected Bodies Corporate as 21CF, 21CF shall use its best endeavours to procure that any such Affiliate will comply with these undertakings as if it had given them. Until the Closing Date, Sky shall not be treated as an Affiliate of 21CF for the purposes of this section 6.3.

7. PROVISION OF INFORMATION

7.1 21CF shall furnish promptly to [the Secretary of State] such information as [the Secretary of State] considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

8. INTERPRETATION

8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

8.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

8.3 In these undertakings the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “include” and its derivatives shall be construed accordingly.

8.4 For the purposes of these undertakings:

“**21CF**” means 21st Century Fox, Inc.;

“**21CF Board**” means the board of directors of 21CF;

“**21CF Parent Company**” means any parent undertaking of which 21CF is a subsidiary undertaking (“parent undertaking” and “subsidiary undertaking” having the meanings given to them in section 1162 of the Companies Act 2006);

“**Act**” means the Enterprise Act 2002;

“**Affiliate**” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“**business**” has the meaning given by section 129(1) and (3) of the Act;

“**Closing Date**” means the date on which 21CF acquires all or a majority of the share capital of Sky or, if the Transaction is effected by a scheme of arrangement, the date on which the scheme of arrangement becomes effective;

“**CMA**” means the Competition and Markets Authority;

“**Effective Date**” means the date that, having been signed by 21CF, these undertakings are accepted by the Secretary of State, as described at 1.1 above;

“**Group of Interconnected Bodies Corporate**” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“**Head of Sky News**” means the individual responsible for setting editorial strategy and direction for Sky News’ digital, television and radio output, including the appointment and dismissal of senior Sky News employees (including presenters);

“**Independent Expert Board Member**” means a member of the Sky News Editorial Board who:

- has experience in the UK media sector;
- has not been an employee of 21CF, News Corp or any member of the same Group of Interconnected Bodies Corporate as 21CF or News Corp within the last five years;
- does not have, and has not had within the last three years of the date of their first appointment to the Sky News Editorial Board, a material business relationship with 21CF or

News Corp either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship;

- has not received and does not receive remuneration from 21CF or News Corp (other than a fee paid by 21CF for their service as a member of the Sky News Editorial Board), does not participate in 21CF's or News Corp's share option or performance-related pay scheme, and is not a member of 21CF's or News Corp's pension scheme;
- does not have close family ties with any of 21CF's or News Corp's advisers, directors or senior employees;
- does not have significant links with directors of 21CF or News Corp through involvement in other companies or bodies;
- does not represent a significant 21CF or News Corp shareholder; and
- has not served on the board of 21CF or News Corp within nine years from the date of their first appointment

“**MFT**” means the Murdoch Family Trust;

“**News Corp**” means News Corporation;

“**Ofcom**” means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

“**Operational Net Investment**” means the revenue attributable to the relevant business minus direct and indirect costs attributable to the relevant business (excluding capital expenditure);

“**Order**” means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, as amended by the Enterprise Act 2002 (Protection of Legitimate Interests)(Amendment) Order 2014;

“**Secretary of State**” means Secretary of State for Digital, Culture, Media and Sport;

“**Sky**” means Sky plc;

“**Sky News**” means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast television news channels currently branded “Sky News” and “Sky News HD” provided by Sky UK and received primarily in the United Kingdom and the Republic of Ireland and related services under the Sky News brand (including digital and radio services) and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, “Sky Sports News” is a separate business;

“**Sky News Editorial Guidelines**” has the meaning given to it in section 4.1 above;

“**Sky News Editorial Board**” has the meaning given to it in section 3.1 above;

“**Sky News Editorial Board Approvals**” has the meaning given to it in section 3.3 above;

“**Sky UK**” has the meaning given to it in section 3.1 above; and

“Transaction” means the proposed acquisition by 21CF of the entire issued and to be issued share capital of Sky that 21CF does not already own.

ANNEX 1

SKY NEWS OPERATIONAL NET INVESTMENT SCHEDULE

	FY 2016/17	Further details
	£m	
Revenues ¹	[X]	Includes: wholesale of Sky News channel [X]; international distribution agreements; spot advertising; sponsorship and online revenue; and syndication / distribution / radio revenue.
Direct costs	[X]	Includes: headcount costs; coverage/ newsgathering costs; production, studio & archive costs; Sky News International, digital, radio, and channel management.
Indirect Costs ²	[X]	Includes: satellite / freeview capacity; music licence fees & creative services; corporate & functional / facilities; and capex depreciation.
Operational Net Investment	[X]	

¹ Does not include: Sky Media [X] % sales commission for provision of ad sales.

² Does not include: property costs and facilities (rates and rent); marketing costs (advertising costs); equipment support costs or broadcast operations.

ANNEX 2

UPDATED SKY NEWS EDITORIAL GUIDELINES



Updated Sky News Editorial Guidelines

Key messages	2
Referral process	3
1. The law	4
2. Editorial independence of Sky News	5
23. The public interest — conflict with the law	56
34. Bribery act 2010 facilitation payments and hospitality	89
45. Privacy	910
56. Defamation	1112
67. Live libels	1213
78. Contempt	1314
89. Copyright and fair dealing	1517
910. Compliance and regulation	1718
1011. Fairness	1819
1112. Due impartiality and due accuracy	1920
1213. Elections and referendums	2122
1314. Commercial issues	2223
1415. Protecting under-18s	2324
1516. Complaints and mistakes	2425
1617. Breaking news stories	2526
1718. Newspaper Reviews	2627
1819. Multi-product thinking	2728
1920. Portrayal	2829
2021. Note-taking	2930
2122. Payment	3031
2223. Reconstructions	3132
2324. Social media and public appearances	3233

Sky News editorial guidelines

Introduction

Dear colleagues,

This is the third edition of the guidelines which has been updated to reflect your feedback and to provide relevant guidance on the issues we deal with on a daily basis.

Sky plays a highly valued role in the lives of millions of people across the UK and Ireland – and Sky News is a very important part of that: with our linear TV, digital and radio services we can reach almost everyone in the UK with first class content, provide value to our customers and give non-subscribers a window on Sky's products. Social media plays an increasingly important role in our daily working lives and it is important that we apply the same standards to all of our content on whichever platform we share it.

Our reputation as a news organisation is our most valuable asset so it is vital that our journalism is always of the highest quality. If it isn't – and we make bad decisions, poor judgements or mistakes – we put at risk the trust of our audiences and the potential damage will resonate well beyond the newsroom.

So, we must ensure that we always act responsibly, with our customers' and potential customers' interests at heart. We must be attuned to Sky's Ways of Working and doing the right thing. That way we will always make a positive contribution to the wider company and share in the success of Sky.

The purpose of these guidelines is to help you produce high quality news with confidence. Journalism in the UK has never been under greater scrutiny; every journalist working for Sky News has a duty to understand the legal and regulatory framework in which we operate and our own in-house guidelines and practices. We need to have the processes and structures in place to assess stories, with risk attached, quickly and comprehensively.

Senior editors, producers, correspondents and our in-house lawyers have helped draw up these guidelines. The guidance is not exhaustive, and not a substitute for editorial decision-making, but it does provide crucial information for those occasions where we have difficult and sensitive decisions to make or where we might fall into conflict with the law or regulatory codes under which we operate.

These guidelines will help ensure that we always do the right thing.

Head of News

Key messages

These guidelines are designed to ensure that Sky News' journalism and output is conducted to the highest ethical and editorial standards and is appropriately managed and supervised. They recognise that there is rarely a "one size fits all" approach and that in some cases it may be necessary to consider the need to balance the right to privacy with that of freedom of expression.

The four key messages from this document are:

- Sky News journalists are required to respect and abide by the law and the obligations imposed upon us under the Ofcom Broadcasting Code.
- Always follow the referral processes set out in this document.
- Keep written records and accurate, contemporaneous and detailed notes.
- Adhere to the rules set out in this booklet. This is a requirement, not a choice.

You can find the Ofcom Broadcasting Code at:

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

Referral process

Sky News and its journalists are required to respect the law and the Ofcom Broadcasting Code and will never seek conflict with either lightly. There may be very rare occasions where providing accurate, impartial and fair coverage in the public interest involves possible conflict with the law. Any proposal that might have the potential to contravene the law, in order to pursue a story considered to be in the public interest, must be subject to a rigorous and documented process of referral and consultation.

On those rare occasions where it is proposed to pursue a story in a way which may bring us into conflict with the law, the matter **MUST** be referred immediately – and in advance of any action – to the relevant Head of Home or International News who will instigate a mandatory referral process, to include the Head of Newsgathering, the Executive Editor, the Head of Sky News (or designated deputy) and Sky's in-house legal department. Given the potential ramifications for the company as a whole, the Head of Sky News will also consult Sky's Chief Executive.

All communications relating to such internal escalation must be recorded in writing and all such communications kept for at least 18 months.

1. The law

Sky News journalists must have a comprehensive understanding of the law, particularly with regard to contempt, defamation, privacy, data protection and copyright. In addition, everyone must have an understanding of the Ofcom Broadcasting Code relating to Fairness and Privacy, Harm and Offence, Due Impartiality, Protecting Under 18s, Crime, Religion, Elections and Referendums and Commercial References in programmes. If you feel that your understanding of the law is in any way insufficient, it is your responsibility to inform your line manager in order for training to be arranged.

Sky News has its own dedicated lawyer based in the newsroom to assist with all legal issues as well as a team of duty lawyers who are all available to provide training and specific advice. Regular media law training sessions are held throughout the year and it is your responsibility to attend these to ensure you remain up-to-date with the law.

Where there may be doubt or uncertainty over a legal issue – in the first instance check with the Head of Home News or Head of International News, as appropriate.

Remember: if in doubt, do not proceed, broadcast or publish. Always refer upwards.

2. Editorial independence of Sky News

The Head of Sky News has complete editorial control over all news and current affairs output, including the selection and running of news stories and any political comment and opinion broadcast on the Sky News services.

Instructions to Sky News Editorial Staff

Subject to the compliance policies and procedures of the 21st Century Fox group (including those set out in these guidelines), instructions to Sky News editorial staff (including journalists) on editorial matters must be given only by the Head of Sky News (or designated deputy). You should not take instructions on these matters from anyone else.

Attempts to influence

In the event that anyone outside the Sky News editorial function, but within the 21st Century Fox group, attempts to influence you in the selection or running of news stories or any political comment and opinion broadcast on the Sky News services (or indeed you become aware of such an attempt on another member of Sky News editorial staff) you must report this immediately to the Head of Sky News (or designated deputy).

3. The public interest — conflict with the law

In the context of potential conflicts with the law, we need to be clear that certain acts are illegal and could result in a criminal prosecution and/or a civil claim. The public interest does not provide a charter for breaking the law or ignoring broadcasting regulations and there is generally no public interest defence to breaking the law.

The Director of Public Prosecutions (DPP) has issued guidelines for prosecutors on assessing the public interest in cases affecting the media. These guidelines recognise that cases involving the potential prosecution of journalists for offences that may have been committed in the course of their work as journalists are difficult and sensitive. The DPP's guidelines include the following which provides a helpful reminder of what can be understood by 'public interest':

31. The public interest served by freedom of expression and the right to receive and impart information has never been defined in law. However, examples of conduct which is capable of serving the public interest include the following:

- (a) Conduct which is capable of disclosing that a criminal offence has been committed, is being committed, or is likely to be committed.*
- (b) Conduct which is capable of disclosing that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which s/he is subject.*

- (c) *Conduct which is capable of disclosing that a miscarriage of justice has occurred, is occurring or is likely to occur.*
- (d) *Conduct which is capable of raising or contributing to an important matter of public debate. There is no exhaustive definition of an important matter of public debate, but examples include public debate about serious impropriety, significant unethical conduct and significant incompetence, which affects the public.*
- (e) *Conduct which is capable of disclosing that anything falling within any one of the above is being, or is likely to be, concealed.*

It is vital to note that these are only guidelines and are not, in any event, meant to be exhaustive. It does not mean that if we can satisfy any – or all – of these that we may proceed without risk of prosecution, nor do so without the referrals and escalation described above.

Any grounds for an investigation that involves significant intrusion into any individual's privacy must be very strong. Before we start out we must be certain that any such intrusion is outweighed by the seriousness of the story and the amount of public good that will be delivered by its publication and/or broadcast.

Even if you believe that this test has been satisfied, the story must still be subject to the mandatory referral process set out above.

By way of guidance, the DPP has identified the following areas as being most likely to bring journalists into conflict with the law:

- a. Bribery Act 2010
- b. Computer Misuse Act 1990
- c. Data Protection Act 1998
- d. Misconduct in Public Office
- e. Official Secrets Act 1989
- f. Perverting the Course of Justice
- g. Regulation of Investigatory Powers Act 2000
- h. Serious Crime Act 2007

It is vital that you are familiar with these areas of the law. If you anticipate any kind of conflict, you should always refer upwards.

On very rare occasions Sky News might receive material from external sources, such as websites or other news organisations, which could have been gathered illegally or in breach of Ofcom guidelines. The decision on whether to run such material will be subject to the process of referral set out at the start of these guidelines. In taking such decisions the Head of Newsgathering, the Executive Editor and our legal team will apply the same principles to the broadcast of such material as would apply if the material had been gathered ourselves – namely can we verify its authenticity, can we be sure of its provenance, and is it in the public interest to broadcast it.

4. Bribery act 2010 facilitation payments and hospitality

Sky News' anti-bribery and corruption policy prohibits the making of facilitation payments.

Facilitation payments are unofficial payments made to public officials in order to secure or speed up the performance of a routine or necessary action. They are sometimes referred to as 'speed' or 'grease' payments. They are usually payments made to obtain a service which the recipient is required to provide, i.e. grant of entry, passage through check point etc.

Sky News will not jeopardise your safety and if you consider your personal safety to be jeopardised/threatened as a result of not complying with a request to make a facilitation payment, such a payment will not be considered a breach of the policy. This does not in any way alter the policy as regards the making of facilitation payments in the absence of such threat or the payment of other types of bribes, which are all prohibited.

If you have to make such a payment you should make a written record as soon as possible and report it to the relevant Head of Home or International News.

Any gift or hospitality offered to you with an estimated value over £250 must be logged in Ariba and approved by your manager. £250 is a cumulative total. If over the course of a year the value of gifts and/or hospitality from any one source exceeds £250 they need to be logged and approved by your line manager.

5. Privacy

This is a fast-moving and complicated area of media law which is subject to a great deal of debate and uncertainty. We need to be clear amongst ourselves and able to demonstrate to our audience that we are transparent, honest and fair.

The law recognises that people have a 'reasonable expectation of privacy' but the degree to which we can report and record what they do is determined by a range of factors. These include the individual's public profile and reputation, the nature of the activity which makes them potentially news-worthy, and what they were doing and where they were when they were approached or recorded.

We cannot and should not breach anyone's privacy without an exceptionally good reason. Any proposal to do so must be authorised in advance by the Head of Newsgathering, the Executive Editor and our legal team.

Any invasion of privacy – such as secret recording or 'door-stepping' – must be warranted, usually by demonstrating that the amount of public good that will be delivered by broadcast and/or publication of the story will outweigh the intrusion. The method used to obtain material must be proportionate to the subject matter. In particular, we do not conduct 'fishing expeditions' into people's private lives.

Any proposal to carry out secret/covert filming must be authorised in advance by the Head of Newsgathering, the Executive Editor and our legal team. This process must be documented and all relevant documents kept for at least eighteen months.

Care should be taken to protect against disclosure of private addresses and/or personal family information (which can include photographs). In particular when filming websites or in sensitive situations we should make sure that we do not inadvertently show private information.

Special care should be taken when filming private residential addresses. Consider carefully whether their inclusion is necessary. If we are featuring a property linked to a controversial historical story that has since changed hands consider how the current residents would feel. If we decide to anonymise a property it is important that we do so properly. It is not enough simply to obscure the house number if people in the locality would be readily able to identify it.

Consent should normally be obtained before a person or organisation's privacy is infringed, unless such infringement is warranted (and confirmed and documented internally as such). In addition, consent for broadcast should also be obtained, unless broadcast without such consent is warranted. This will be determined by the relevant Head of Home or International News and the Head of Newsgathering, in consultation with our legal team. If a contributor has agreed to be identified as the victim of a sexual offence that consent must be confirmed in writing.

Special care should be taken over the broadcast of situations involving suffering and personal distress. Care should be taken to avoid identifying any dead and injured before next of kin have been informed.

6. Defamation

We might defame someone if we lower their reputation in the minds of 'right-thinking people'. An alternative definition refers to an assertion which exposes anyone to 'hatred, ridicule or contempt'.

Any story which has the potential to be defamatory must in the first instance be referred to either the Head of Home or International News.

There are a number of possible defences to defamation including truth, privilege, or honest opinion. Each of these sound relatively simple and straightforward but they are not; they are highly complicated legally – and we may end up having to argue our case in a court of law. Therefore any story involving potential defamation needs to be subject to rigorous editorial scrutiny.

For example, our coverage of parliamentary debate gives us what is known as 'qualified privilege' in matters of defamation. BUT that is no defence at all against contempt – just because someone says something in Parliament does NOT mean we can simply repeat it without any concern over legal repercussions.

If you become aware of a potentially defamatory statement on any platform then it should be raised immediately with the relevant Head of Home or International News and our dedicated lawyer.

If in doubt, refer up.

7. Live libels

We are a 24-hour breaking news operation, and much of our output is live, so we clearly have to be particularly vigilant about the perils of defamatory remarks being made live on-air. What our guests say is ultimately OUR responsibility and consequently our problem if it's libellous.

If you feel that an upcoming interview or live broadcast has the potential for defamatory remarks being made, seek advice from the Executive Editor. We need to be able to demonstrate that we took care in advance to avoid being liable ourselves for the defamation.

Should a defamatory comment occur, the presenter or reporter should distance Sky News from the comment immediately and terminate the interview as soon as is possible. It should not be repeated, clipped, displayed on straps or posted on any other platform. Make sure all platforms are aware of any issue.

8. Contempt

The law on contempt is designed to stop reporting which would interfere with the course of justice, or unduly influence the result of a court case. If no additional reporting restrictions are in place we cannot be guilty of contempt in respect of reporting events in court if we produce a fair and accurate report of a court case held in public, published contemporaneously and in good faith. Also remember, however, that it is still possible to commit contempt when a court case is underway. We must confine our reporting to facts raised in open court in front of the jury.

Legally, criminal proceedings are 'active' from the moment of the first formal step in launching a prosecution. Technically, this is from the moment of arrest or issuing of a warrant. A civil case is 'active' when a trial date is fixed, or when the case is 'set down for trial'.

When reporting on a case such as this, the key questions are:

Are proceedings active?

Does the report create a substantial risk of serious prejudice?

Have any other case-specific reporting restrictions been imposed?

If a case is 'active'...

- Do not report anything which implies the guilt or innocence of the accused (which includes previous convictions, evidence of bad character or admissions of other crimes).
- Do not criticise the Judge, Crown or Defence, or the fact of the prosecution itself.
- Do not anticipate the course or the outcome of the trial.
- Do not compromise a prosecution or defence by publishing photographs or IDs, or identifying members of the Jury (e.g. at court exits and entrances).
- Do not taint any potential witnesses with promises of payment.
- Do not interview actual or likely witnesses while proceedings are active.
- In a civil case, do not reveal that a 'payment into court' has been made (a formal offer to settle for the amount paid in).

Remember: these rules also apply to military Courts Martial and Inquests.

9. Copyright and fair dealing

The Copyright Act provides a defence which effectively permits, in limited circumstances, the use of copyright material from other sources without infringing copyright. This is called fair dealing and is intended for use when reporting current events. But it does not mean we can put any video we like to air.

Points to consider:

- Photographs are excluded from the fair dealing defence.
- Is it for reporting current events?

All requests for fair dealing should be referred in the first instance to the relevant Head of Home or International News. If they are satisfied that the clip can be legitimately used under fair-dealing, we must do the following:

- Duration to be used will be determined by the relevant Head of Home or International News.
- It must be credited on-screen to the copyright holder throughout the entire duration.
- Our justification for using the clip must be referenced in the script.

Be aware that there can be other factors at work in deciding if we can fairly-deal.

Copyright material of sports events are governed by different industry rules and are usually exempt. Any questions relating to use of sports footage should be directed to the sports desk.

It is not our policy to broadcast another station's news output or exclusive content.

A note on YouTube and other internet video sites: if we are looking to use material from any of these platforms in circumstances where we cannot fair deal it, we should where possible attempt to obtain the permission of the copyright holder (usually the person who posted it), NOT the platform on which it is held. Generally, sites such as YouTube will NOT be the copyright holders. If we believe the material has been posted on a site in breach of copyright we should not use it.

Remember that Sky News Online and other digital platforms are subject to the same copyright restrictions.

10. Compliance and regulation

In addition to media law, much of what we do is governed by principles enshrined in the Ofcom Broadcasting Code. These principles are based in part on objectives set out in the 2003 Communications Act. It is up to us to know the standards and to comply with them.

It is the duty of every Sky News journalist to ensure that they are entirely familiar with the Ofcom Broadcasting Code and the requirements it makes of us. It is Sky News' policy to abide by the Code; broadcasters can be fined – or worse – for breaching it.

11. Fairness

People taking part in a news item should be treated fairly. They should be told the nature and subject of the item. If an interviewee will be going live, head-to-head with another guest or an opponent, they should be told in advance. All recorded interviews should be edited fairly.

For people not in a position to give informed consent (e.g. children and vulnerable adults) the permission of a carer should be obtained.

People who are the subject of reports should not be treated unfairly. Where wrongdoing is alleged, they should be offered an opportunity to respond.

The use of deception or misrepresentation is only justified if there is a clear public interest justification and if the information could not be obtained by any other means. Even in these cases, the actions taken must have undergone the mandatory referral process set out earlier.

12. Due impartiality and due accuracy

Sky News must always be duly impartial and duly accurate. We always strive to solicit a broad range of views and voices on our stories and never to show favour to – or be influenced by – any side of a story.

The Communications Act and the Ofcom Broadcasting Code set out special impartiality requirements for coverage of matters relating to political or industrial controversy or matters relating to public policy.

The rules include:

- Not allowing our personal views or opinions to form a part of our coverage.
- Making sure views and facts are not misrepresented.
- Making sure all significant opinion is duly reflected on any controversial issues.
- Making sure any personal interest of a reporter or presenter is made clear to viewers – they must not use their position to express their own views.
- Members of staff have a duty to disclose to senior management any personal interest which may potentially jeopardise their duty to report with due impartiality.
- Making sure particular views and opinions are not given undue prominence over others.

We should also make sure that the personal views and interests of those we invite to contribute are established and made clear to the viewer if it would be misleading not to do so. If we are not certain of a guest's views we should ask them before allowing them on any of our platforms.

When using video or still images of people in the news it is crucial that we do not make mistakes. We should NEVER use pictures from an online source without double checking they are correct. Particular caution is required with people who are relatively unknown. If there is even the smallest doubt about the identity of the person featured the material should not be passed on. Once it is in the system mistakes become much more likely. The consequences of such mistakes are extremely serious from a reputational and financial perspective.

13. Elections and referendums

Particular attention must be paid to fairness, impartiality and balance at times of elections and referendums. Our journalism will be under particular scrutiny at these times and we must be certain to be fair, impartial and rigorous on all our platforms.

Remember, we abide by the rules set out in the Ofcom Code.

On occasions, we may come under pressure from political parties or their representatives. If this should happen – or if you receive a complaint – do not take the argument on there and then; refer it to the Managing Editor – External Relations.

Further guidance and reminders of the rules will be issued in the run-up to elections and referendums but it is still important that all journalists are familiar with them.

14. Commercial issues

There are two key principles governing commercial issues:

- The clear separation of advertising and editorial elements.
- Independence of any external commercial or political pressure or influence.

Products and services must not be promoted in programmes. This includes premium rate phone lines – except where they are clearly programme related. If products and services are featured in programmes it should be because there is a genuine editorial need. We should never promise how or if we are going to feature a product or service in any of our programmes.

There should be no undue prominence given within a programme to products and/or services.

Programme related material (such as fact sheets and websites) must only be promoted where editorially justified.

15. Protecting under-18s

One of the main objectives of the Ofcom Broadcasting Code is to protect those under the age of 18 from unsuitable material. This can include violence, sex, offensive language and material relating to the use of drugs and stimulants.

There are also rules designed to protect those under 18 who take part in programmes. Young people may not have the same judgement as adults, so care must be exercised to ensure that they are not exploited.

Under-18s involved in court cases cannot usually be identified by law. But care should also be taken to justify any identification of under-18s linked in other ways to sensitive stories, including victims or eye-witnesses. If in doubt, refer to the relevant Head of Home or International News.

Remember we have a duty of care to protect the emotional and physical welfare of those under 18 that we feature. That duty of care remains regardless of any consents obtained.

16. Complaints and mistakes

If someone contacts us to query or challenge something we have broadcast or published, do not have a full discussion with them there and then. Thank them for calling in, make a note of their name, number and the time of the call, and then refer it to your Executive Producer and/or the Managing Editor – External Relationships. If it relates to a legal issue please make sure that our dedicated legal advisor is aware.

It is the duty of on-air output teams and the news desk to monitor the Sky News inbox at all times.

17. Breaking news stories

Unless notified through official channels, news of the death of a prominent member of the royal family or senior serving politician (such as the Prime Minister or Chancellor), or the calling of a general election should not be broken without reference to the relevant Head of Home or International News, Executive Editor or Head of Newsgathering.

Where such stories are officially notified (validated news releases, or Press Association wire) the news can be broken without referral, but senior management (as listed above) must be notified as soon as possible.

If a story breaks which involves an employee of BSkyB we should ensure that our corporate communications department is informed immediately. As always, we should show particular sensitivity when reporting on ourselves or one of our colleagues.

Stories with potential for commercial and/or reputational consequences for other parts of Sky should not be broken without reference to the Head of News, Executive Editor or Head of Newsgathering.

When dealing with natural disasters or other tragic events particular caution is required to make sure that we report in such a way that, as far as possible, protects the dignity of the victims and their families.

18. Newspaper Reviews

Newspaper reviews form a significant proportion of our output. Our coverage of the content of newspapers in reviews or otherwise is subject to the same editorial and legal restrictions as any other content. We are responsible for comments made by our contributors so it is extremely important that any guests or occasional contributors are carefully briefed to avoid including detail we wouldn't include ourselves. If the story relates to an ongoing active criminal case or is particularly controversial we should consider carefully whether it is appropriate to discuss with our guests.

If featuring newspapers or magazines on screen we have to be very careful about how we treat any photographs contained in them. Fair Dealing does not apply to photographs. We should not zoom in on or focus solely on a photograph. If we do we open ourselves up to the possibility of expensive legal complaints from copyright holders. Generally it will be OK to feature a full front or inside page as part of a review as long as we are not focussing on photographs to the exclusion of the page around them. If in any doubt about whether we should be using an image please seek advice.

19. Multi-product thinking

We are a multi-product broadcaster; multiple outlets, several different versions of each story running simultaneously with on-screen straps, panels and many different added extras. The same standards are expected of our journalism across all media. Our content must all be world-class, editorially robust and produced to the highest standard. It is vital that the decisions we take are enforced with equal rigour throughout all that we do. When it comes to big editorial, legal or compliance decisions we must be truly joined-up in our thinking.

Similarly, these guidelines apply to all Sky News staff – whether you work in the TV newsroom, on a digital platform or out on the road, we must all abide by the same guidelines, principles and ways of working.

If we are not confident that a story is legally or editorially robust enough to run on television, it should not run in any form on any other platform.

20. Portrayal

Sky News is committed to reflecting the United Kingdom the way it is – so that our coverage properly represents all of its cultures, races and religions and doesn't discriminate against anyone. Sky News is committed to increasing the number of female and ethnically diverse experts and commentators appearing on television news and radio.

References to sex, sexual orientation, disability, ethnicity and age should only be made where pertinent to the news story. We should not perpetuate stereotypes – for example people who are disabled should not only ever appear because they are disabled; people from ethnic minorities should not only appear because of issues related to ethnicity or religion; our coverage as a whole should reflect the nation as a whole.

21. Note-taking

Accurate note-taking has never been more important – just look at the different versions of events exposed by various high profile inquiries into media practices. Face-to-face or by telephone, you must keep accurate, detailed and contemporaneous notes.

Keep a notebook with your name on the front and the date it was started. If you keep your notes electronically make sure they are thorough, dated, and effectively backed-up. Avoid making notes on spare pieces of paper. Date each new day, and wherever possible, note the time of each conversation. Your notes should be as full as possible; if you use shorthand, transcribe the notes as soon as possible.

If you agree a course of action at a meeting, record it by email with the other participants afterwards and ensure that everyone is happy with the approach.

If it is inappropriate to make notes at the time of the conversation, write them up as soon as you can. Keep important notes and emails for at least eighteen months in case of legal queries.

All work email communications should be conducted through your Sky News account rather than a personal one, for reasons of transparency and retrieval.

22. Payment

As part of our everyday business we make payments to interviewees, for stills, footage, copy, and for facilities. However, there may be exceptional circumstances in which advice from senior editorial management must be sought. These include, but are not limited to, any proposal to pay convicted criminals, actual or potential witnesses in court cases and public employees.

Any payment outside or beyond usual day-to-day expectations must be referred to the relevant Head of Home or International News.

We do not pay politicians, campaigners, trade union representatives, lobbyists, or similar individuals, for interviews. This list is not exhaustive. If you are ever in doubt about a guest payment please refer to the Managing Editor – External Relationships.

Make sure you are familiar with the fundamentals of the Bribery Act.

23. Reconstructions

We would only consider shooting or using a reconstruction after the approval of the Executive Editor. On the rare occasions we do this, a reconstruction tag should be displayed for the duration of that sequence. As well as being Sky News policy, this is a requirement of the Ofcom Broadcasting Code.

24. Social media and public appearances

This is an area that is becoming increasingly important in terms of news gathering and reporting. Recent high profile cases have demonstrated the need to be vigilant. Common sense should guide your behaviour on social media, as it should guide your behaviour on all occasions when you are associated with Sky News.

As a Sky News journalist you are expected to use social media responsibly, adhering to the principles of fairness, accuracy, impartiality, legality and rigour.

You are personally responsible for the content you publish on social networks.

Do not undermine the work of colleagues who are assigned to a particular story by posting information which contradicts or devalues their journalism.

Breaking news

Particular caution is required with regard to contempt of court and defamation. If you are not certain that a posting on social media would be considered suitable for any of our platforms then DO NOT post it. If someone else has posted something that could be considered in contempt of court, defamatory or in clear breach of privacy DO NOT link to it, retweet it or reproduce it in any way.

Always pass breaking lines to the news desk and video to Sky News Centre before posting on social media networks.

Professional and personal

Updates from your Sky-linked social media accounts can reflect your personality and personal interests, to an extent. You should be guided by common sense and by the principles outlined above.

If you regularly use social media to comment on areas of interest outside work or chat to your friends use a separate private account to do so.

Twitter

It is your responsibility to ensure anything you tweet or re-tweet on a story is consistent with Sky News' cross-platform editorial decisions and guidelines. You should never re-tweet any content that we would not be prepared to put on any of our platforms. Be mindful that, on occasion, information is not broadcast for reasons of taste or security. This is particularly important for breaking or developing news stories.

If in doubt, check with your line manager or the news desk.

Remember, breaking news lines should be passed to the news desk before they are posted on social media. This includes information from tweets and re-tweets.

Be aware that a re-tweet could be perceived as an endorsement. Consider adding context to your re-tweets. If you re-tweet a statement that is defamatory then action could be taken against you as well as the original tweeter.

Any work related Twitter account username should contain the word 'Sky'.

Be sensible

Do not say anything on social media which may bring Sky News into disrepute.

Do not be offensive, use bad language or language that could be perceived as offensive to a reasonable person.

Always adhere to the Terms of Use and seek to conform to the norms of the social media platform being used.

Always respect the law, including those laws governing defamation, privacy, discrimination, harassment and copyright.

Only discuss publicly available information. You should not comment on or disclose confidential Sky information (such as financial information, future business performance, business plans or personnel issues).

Avoid engaging in arguments on social media. On matters of company policy no member of staff is authorised to speak on behalf of Sky News without permission from the Head of Sky News.

Public Appearances

Any public appearance that you make representing Sky News must be cleared in advance by your line manager and notified to PR. Examples of relevant public appearances would include (but are not limited to) panel discussions, lectures and presenting awards ceremonies. If you have been asked to appear as a result of your role with Sky News then you will be expected to conduct yourself in the same way as you would in your daily working life.

