

## **Fox/Sky**

### **Submission by Hacked Off in relation to the CMA's report on provisional findings on broadcasting standards ('the report').**

Hacked Off campaigns for free and accountable journalism. We have the support of many victims of press abuses and of many thousands of members of the public and we also engage closely with academic and legal authorities on matters relating to journalism. Our submission concerns itself principally with the provisional findings in relation to unlawful conduct, regulatory compliance and governance at MFT-controlled companies in the UK, as set out in paragraphs 151-158 of the main report, with background in pages 294-319.

We believe that the CMA's provisional finding 'that Sky, Fox and the MFT have a genuine commitment to the attainment of the broadcasting standards objectives' is founded on significant misunderstandings and is in error and we ask that it be reconsidered. Our principal grounds for this belief are as follows.

#### **Scale of 'misconduct'**

With regard to known serious failings in compliance with newspaper regulation and the law, the CMA has taken too narrow a view. The text of the report repeatedly betrays an unjustified focus on phone hacking. While phone hacking is an extremely grave matter, so too were (among others):

- data theft, in which News International (NI) newspapers indulged over many years on an industrial scale, breaching the rights of thousands;
- the activities of senior NI journalist Mazher Mahmood, which have affected the lives of hundreds and which continued and were defended by his employers until very recently – despite new governance arrangements introduced in 2012 (arrangements held up as evidence that the conduct of these companies is now lawful);
- the persecution of the McCann family, of their associates and of Robert Murat and his associates, in which NI newspapers played a leading and notorious part;
- the persecution of Christopher Jefferies, in which again NI newspapers played a leading part and which led to the conviction of the Sun for contempt of court;
- the bribery of public officials, a practice known and publicly acknowledged at the highest levels of NI;
- email hacking. News UK has recently paid damages to a victim of email hacking.

Nowhere does the report of provisional findings acknowledge the scale of the collapse in standards that this entails. Instead the language used – ‘misconduct at News Corporation in connection with phone hacking prior to the Leveson Inquiry’ – implies failure on a far less fundamental scale.

Nor does the report do justice to the scale of regulatory failure in this period. NI was a leading proponent of, defender of and beneficiary of the Press Complaints Commission (PCC), a body which, as the Leveson Report made clear, systematically put the interests of the press industry before those of the public. For two decades NI dishonestly exploited this sham regulator as cover for unethical activities, and it continued to use the columns of its newspapers to present a false picture of the PCC to readers well into 2011.

Also worthy of note is how long this went on. For example it is known that NI journalists and their agents engaged in phone hacking over a period of at least eight years. Data theft is known to have continued for much longer, and indeed there is no way to be certain it has ended. Mazher Mahmood worked for NI (and subsequently News UK) titles for 20 years.

Finally in this context there is the matter of persistent and well-documented corporate denial and cover-up. Throughout this period the routine response of NI to any challenge, criticism or revelation relating to these matters was not sincere and responsible scrutiny of its own affairs as might be expected in a culture of sound governance, but denial, the closing of corporate ranks, dishonest or misleading public statements and frequently the use of NI newspaper space to attack and demean those who raised these matters. There are also strong grounds to believe that on occasion evidence has been destroyed.

It is clear from the report that the CMA, in its deliberations on these matters, has not grasped the scale and persistence of the failure of management and of good governance at NI in this period. NI was a rogue corporation in which the law, the rights of innocent people and journalistic standards were not merely breached with great frequency but were held in contempt.

Though the report states that the ‘misconduct’ occurred ‘some time ago’, it is directly relevant to the CMA’s considerations today. Throughout the entire period the person in ultimate charge of these newspapers, and the person bearing ultimate responsibility, was Rupert Murdoch. This period saw the rise of Rebekah Brooks through the ranks of the News of the World and the Sun to the position of CEO of NI. From 2007 to 2011 James Murdoch held executive authority in this area, including as chair of News Group Newspapers. The ethical standards and governance records of all three are directly relevant to the CMA’s present considerations, as we explain below.

We ask that the CMA revisit the evidence on this matter and give these failures the weight they merit.

## **News UK and Leveson**

The report states (para 152) that the CMA ‘also looked at the record of News Corporation and News Corp in the UK post Leveson. We found that the policies, systems and procedures News UK put in place were a considered and detailed attempt to address the failings identified by the Leveson Inquiry and others in the aftermath of phone hacking.’

In this context, the report states (para 16.32) that ‘we considered News UK titles’ approach to editorial compliance’ – a consideration that principally involved consulting the Independent Press Standards Organisation (IPSO). In this light the conclusion was reached that ‘News UK’s record since shows its approach to complaints handling is on a par with comparable news publishers in the UK’.

Here again the CMA has made a fundamental misunderstanding. It relates to the method by which the CMA might reach a credible judgement on whether the response of News UK to its many known failures is ‘considered and detailed’. This terrain is not untrodden. Others have visited it before and others have specific current expertise. The CMA, however, appears to have ignored these resources and has neglected important context.

No opinion on how to address the failings identified by the Leveson Inquiry can be as ‘considered and detailed’ as the opinion of the Leveson Inquiry itself, in the form of its report and recommendations. This was a formal public inquiry under the Inquiries Act 2005, constituted in consequence of cross-party initiative and presided over by an independent senior judge. It sat for more than a year and heard every interested voice, in a process of exemplary transparency. Its recommendations were accepted by Parliament, where measures very closely based on the Leveson recommendations were approved overwhelmingly in both Houses, chiefly in the form of a Royal Charter. These measures also demonstrably enjoyed overwhelming public support.

It follows that the appropriate test of the policies, systems and procedures put in place by News UK since 2011 is whether they meet the standards recommended in the Leveson Report and endorsed by Parliament, as expressed in the relevant Royal Charter. Conveniently the Charter created an expert body explicitly charged with applying this test: the Press Recognition Panel (the PRP). It further follows that in reaching a view on the adequacy of News UK’s regulatory arrangements the proper course for the CMA is to seek and give great weight to the view of the PRP. Indeed, given the PRP’s expertise and

authority, it is hard to see how the CMA could justify reaching any conclusion different from the PRP's.

So far as regulation is concerned the fact is plain: News UK's response has not passed the PRP test. Nor would it if submitted because, as the Media Standards Trust [<http://mediastandardstrust.org/wp-content/uploads/downloads/2013/11/MST-IPSO-Analysis-15-11-13.pdf>] among others has demonstrated in great detail, its chosen regulator plainly does not meet a number of the criteria of independence and effectiveness set out in the Royal Charter. That being the case, there can be no grounds for the CMA to declare it sufficient.

The CMA declares (para 152): 'News UK's record since shows its approach to complaints handling is on a par with comparable news publishers in the UK.' The same paragraph states: 'We have also not identified evidence that indicates more recent non-compliance by News UK (or News Corp more generally) with UK regulation in general or press regulation in particular.'

News UK's approach is indeed on a par with that of comparable news publishers, but that is because comparable news publishers are also failing the public. Again, the essential test is that applied by the PRP, and the comparable news publishers have not put their regulator forward for PRP recognition. Together with News UK, they have instead adopted a form of self-regulation that is based on a blueprint explicitly rejected in the Leveson Report [pages 1648-1650, [http://webarchive.nationalarchives.gov.uk/20140122145354/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780\\_iv.pdf](http://webarchive.nationalarchives.gov.uk/20140122145354/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_iv.pdf)] as insufficiently independent and effective to protect the public.

That the CMA has consulted IPSO on the regulatory record of News UK publications and has been told it is satisfactory proves nothing except that News UK is meeting standards deemed by Parliament and the Leveson Inquiry to be too low to protect the public. If the CMA had consulted the PCC about the record of NI publications a decade ago it would undoubtedly have received the same answer. As the Leveson Report put it [page 1535, [http://webarchive.nationalarchives.gov.uk/20140122145023/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780\\_iv.asp](http://webarchive.nationalarchives.gov.uk/20140122145023/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_iv.asp)], the history of press self-regulation is marked by a pattern of cosmetic, rather than substantive reform: IPSO is the latest manifestation of that.

No responsible regulatory body acting in the interests of the public should accept NI's participation in IPSO as proof that it is showing a newfound commitment to high standards. It is the reverse. News International has, as a matter of policy, rejected the minimum standards deemed necessary by Leveson and by Parliament, and continues to reject those standards even though it

has the option at any time of joining Impress, a functioning, PRP-recognised regulator. As the Leveson Report makes clear, it is standards in regulation that matter so far as the interests of the public are concerned, not the consensus among a group of companies found by Leveson to have 'wreaked havoc in the lives of innocent people' [<http://webarchive.nationalarchives.gov.uk/20140122161047/http://www.levesoninquiry.org.uk/wp-content/uploads/2012/11/Remarks-by-Lord-Justice-Leveson-29-November-2012.pdf> ].

Hacked Off strongly urges the CMA to revisit its flawed findings on this matter. Participation in IPSO cannot be judged by any responsible regulatory body to be a satisfactory response to the known and highly significant failures of this important part of the MFT-controlled corporate world. It is clear from his dismissal of the IPSO blueprint that Sir Brian Leveson did not think so. Nor did the two Houses of Parliament in 2013. Nor does the government today, whose policy remains that news publishers should join regulators recognised by the PRP. Nor does public opinion, as every relevant poll demonstrates. And nor do the many victims of phone and email hacking, data theft, unjustified intrusion, libel, dishonesty and bullying for whom Hacked Off speaks.

## **The issue of personalities**

The report rightly addresses the doings and policies of corporations, but it is the view of Hacked Off that it takes insufficient account of the role of personalities, which in the case of 20th Century Fox, Fox News, News Corp, News UK, News International, News Group Newspapers and Sky is of central importance. The following comments, like those above, relate principally to press activities in the UK, but they are directly relevant to your considerations.

Rupert Murdoch is the creator of these companies and indisputably, through his various formal and informal roles, the person who defines their cultures. He was ultimately responsible for their activities and for their cultures in the period of the gross abuses described above. That he has not been found guilty of any crime is a point to be noted, but it is the most that can be said in his favour in relation to these companies at this time.

He has asserted that he did not know about phone hacking, despite its persistence and scale at newspapers in which he took a constant interest, and despite the involvement of senior journalists with some of whom he had dealings personally. This was without doubt a failure of oversight on his part, stretching over at least eight years, and even if he did not know about it he bears responsibility for the culture that engendered, funded and tolerated it.

The same can be said about data theft by his companies and their agents, which took place over an even longer period.

Rupert Murdoch has been unable to assert that he did not know about bribery. He also stood by as his papers – which he read regularly and with which he was in frequent contact – persecuted the McCanns, Robert Murat, Christopher Jefferies and others, and as those papers were found guilty of breaching their rights and (in the case of the Sun) committing contempt of court. He participated in a strategy of denial of wrongdoing. He also failed to acknowledge the failure of the PCC to act in the interests of the public.

If Rupert Murdoch had taken personal responsibility for his failures of oversight and good governance and stepped down from his various roles, the CMA might be justified in regarding all of this as something that merely 'occurred some time ago'. But he is still present at the head of this group of companies. His record, therefore, is highly relevant.

It might also be argued that if he had remained in charge but engaged in a thoroughgoing reform of governance and regulation in his companies, and if no further significant oversights had come to light, the CMA might be justified in treating his past record generously. Indeed this is the tenor of the provisional findings. But, as described above, Mr Murdoch has refused to accept the judgement of a public inquiry and of Parliament on the proper form of regulation for his newspapers, even though this form was explicitly put forward as a shield against the repetition of failures of the kind described above. Furthermore, the exposure of sustained sexual harassment and other abuses at his US television operations demonstrates that his capacity for oversight has not improved.

Rupert Murdoch failed to provide appropriate leadership, governance and oversight over many years and in many ways and the consequence has been that many blameless people have suffered harm. He has had the opportunity to reform, to show better judgement and to accept changes put forward for the future protection of the public and he has not taken it. He remains the dominant personality in this group of companies and as such, in the view of Hacked Off, his stewardship represents as great a danger to the public today as in the past.

Rebekah Brooks, while not currently involved either in Sky or Fox, is none the less a person highly relevant to the CMA's considerations, and whose record must be weighed in the balance. As with Rupert Murdoch, the best that can be said of her governance record is that she has not been convicted of any crime.

When tried in relation to phone hacking her successful defence was that she was totally unaware that several senior colleagues with whom she had worked closely for years and whose work she formally supervised both as editor and CEO were engaged in industrial-scale hacking and that many of the most prominent stories published in her papers over at least eight years were founded in this activity. This constitutes oversight failure of an extreme kind. Even after being told of the scale of phone hacking by the police, Brooks fully participated in the company policy of denial and cover-up, including through the payment of confidential settlements. She also knew that her journalists were bribing public officials.

Again, if Brooks had taken responsibility and resigned, and had been replaced by a personality with a clean pair of hands, the CMA might be justified in overlooking her past role. The same might be true if she had remained but been instrumental in reforms including the adoption of Royal Charter-standard regulation. But neither is the case. Brooks is CEO of News UK today just as she was CEO of News International at the height of the press standards scandal. She has not even apologised to the public or the victims for her own failures.

Brooks is, in short, unreformed and unrepentant, and it amounts to a rejection of the normal standards of corporate governance that she is thought suitable for her present very senior executive post. Furthermore, given the traffic of senior executives around Murdoch companies in the past, it is more than possible that she might at some future date be given a senior position at Fox or Sky.

James Murdoch is another personality whose role deserves closer CMA attention. Many of the criticisms of Rupert Murdoch and of Brooks above also apply to him, but specifically the report fails to give sufficient weight to his double failure of governance.

First, when he was a senior executive in London he too failed to detect or to identify as governance problems phone hacking, the culture of criminality in the NI newspapers, their persistent abuse of blameless members of the public and the regulatory inadequacies of the PCC. He also failed to overturn the policy of denial and counter-attack. All of these he could have done but did not do and again these represent serious governance failures.

Second, as a senior figure in his father's companies in the United States in recent years he failed to detect the persistent sexual and other abuse taking place at Fox News, even though it was of sustained duration and two of the company's most prominent figures were involved.

At the very least, this suggests that despite his London experience James Murdoch has not become more vigilant in matters of corporate governance. Like Rupert Murdoch and Rebekah Brooks, he has failed to learn the lessons of governance failure.

No one who has the slightest knowledge of business, let alone of News Corp, could argue that personalities do not matter. These are three of the most significant figures in that group of companies. By any measure they failed their companies and the public in the years 2000-2011 in ways that caused untold harm, and yet they still hold very powerful positions.

Further, in the CMA's limited discussions of what senior figures knew and when they knew it, too little attention has been paid to when they ought to have known. Governance means something more than merely responding when it is clear that things have gone wrong; it entails vigilance, attention to detail, a certain scepticism and a willingness to listen and act upon signs and warnings. Given the scale and persistence of wrongdoing at these companies it is not appropriate to assess the management or the relevant personalities merely on how they responded once criminality became public knowledge. Account must be taken of their failure to recognise the collapse of standards while it was happening.

The report dwells on various commitments in writing made by these companies with relation to governance, ethics and conduct. Similar documents and codes existed in MFT-dominated companies in 2000-2011, so it follows, and indeed it is obvious, that they have limited standing in their own right: what matters is whether, how effectively and how consistently they are enforced. That in turn depends on the personalities who administer them. All three of these personalities are today instrumental in the application of these codes and yet all three have failed to uphold basic governance standards in very significant ways in the past. The CMA must therefore address more fully the question of whether these individuals, and others chosen and promoted by them, are fit to be trusted.

## **Conclusion**

The CMA's provisional finding that Sky, Fox and the MFT 'have a genuine commitment to the attainment of the broadcasting standards objectives' thus stands on faulty foundations. The report seriously underestimates or underplays the scale of wrongdoing at News International, and thus the failure of corporate governance. It relies for evidence of reform on a false standard – the standard set by an unreformed industry rather than the standard set by an independent public inquiry and endorsed by all parties in Parliament. And it gives insufficient weight to the presence at the top of this group of companies



of individuals whose record is so gravely tarnished by past governance failure that they cannot be trusted to uphold standards effectively in the future.

The CMA has explicitly recognised that corporate governance is relevant to its considerations in these matters. The failures of corporate governance discussed here must raise grave doubts about the commitment and ability of these companies to maintain standards that reflect the interests of the public, or even to maintain standards that are on the right side of the law. It follows that those failures must weigh heavily in the CMA's considerations relating to the attainment of broadcasting standards, and notably standards in such matters as impartiality and accuracy.

It is the view of Hacked Off that when the CMA reassesses these factors and gives them their appropriate weight it must inevitably conclude that the governance record of MFT-dominated companies is such that they cannot be judged to have a genuine commitment to the attainment of the broadcasting standards objectives.

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