

Frequently asked Questions

'Fit and Proper' in relation to broadcast licensees - updated 10/05/12

Here is a list of frequently asked questions in relation to the ongoing Fit and Proper requirement on broadcast licensees.

What are Ofcom's duties in relation to 'fit and proper'?

We have a duty under the Broadcasting Acts 1990 and 1996 to be satisfied that any person holding a broadcasting licence is, and remains, fit and proper to hold those licences.

When you refer to 'person', who exactly is this?

It is the licensee (which, if it is a corporate body, will include controlling directors and shareholders) in relation to whom Ofcom has to be satisfied that it is fit and proper.

What sort of licences are relevant?

Licences – issued by Ofcom under the Broadcasting Acts - for TV and radio broadcasting.

Where does the 'fit and proper' test come from?

Under Sections 3(3) of each of the 1990 and 1996 Broadcasting Acts, Ofcom:

(a) shall not grant a licence to any person unless satisfied that the person is a fit and proper person to hold it; and

(b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence.

When would Ofcom consider whether a licence holder is fit and proper?

Our duty to be satisfied that any person holding a broadcast licence is and remains fit and proper to do so is ongoing.

What are relevant factors when considering whether a licence holder is fit and proper?

In considering whether any licensee is fit and proper Ofcom will take into account any relevant misconduct of those who manage and control the licensee.

What is Ofcom doing in relation to BSkyB?

Ofcom is continuing to assess evidence that may assist in discharging its duties. We have already written to and have met with relevant authorities to explain our duty to be satisfied that persons holding broadcasting licences are fit and proper. We have asked them to keep us informed of any information which may assist us in assessing whether BSkyB (including controlling directors and shareholders, News Corporation) is and remains fit and proper to continue to hold its broadcast licences and of the timescales of their investigations.

Has Ofcom contacted any of the parties asking for evidence as part of its fit and proper assessment of BSkyB?

As part of the ongoing assessment, Ofcom has contacted News Group Newspapers requesting documents which it understands are held by the company and which may be relevant to this assessment. BSkyB is party to this correspondence. The documents Ofcom is seeking relate to the civil litigation cases.

What does Ofcom think about the Culture, Media and Sport Committee report published on 1 May 2012 into phone hacking?

We are reading the Culture, Media and Sport Committee report. Ofcom has a duty under the Broadcasting Acts 1990 and 1996 to be satisfied that any person holding a broadcasting licence is, and remains, fit and proper to do so. Ofcom is continuing to assess the evidence that may assist it in discharging these duties. As part of this we are considering the Committee report.

What contact has Ofcom had with Parliament on the matter?

Ofcom is established in statute as an independent regulator and must reach its own decisions in light of the evidence. Last year, we wrote to Parliamentarians to inform it of our duties and powers in relation to this matter. Those letters can be found [here](#) and [here](#).

Is Ofcom launching a 'fit and proper' test?

It is not a question of 'launching' or 'invoking' a test, but an ongoing duty to satisfy ourselves that BSkyB remains a fit and proper holder of broadcast licences. As we noted above, we are continuing to assess evidence in relation to this ongoing duty.

If Ofcom found evidence that persons were unfit to hold a licence could you act ahead of the conclusion of a criminal investigation?

Yes.

Has Ofcom ever ruled that someone is not fit and proper?

In November 2010, Ofcom determined that Bang Media (London) Ltd and Bang Channels Ltd were not fit and proper persons to hold a licence. This was because of serious and repeated breaches of their licences, which demonstrated a disregard for their licence obligations and for the regulatory regime as a whole. We routinely assess all new applicants.

Ofcom has a duty to protect people's privacy. Why aren't you doing something about allegations of newspapers invading privacy?

Ofcom's legal duty is to protect members of public from unwarranted infringements of privacy in relation to the making and the content of licensed television and radio services. We have no jurisdiction in relation to infringements of privacy by newspapers.

If you have no jurisdiction in relation to infringements of privacy by newspapers, why did you write to News Group Newspapers?

Ofcom is seeking to obtain documents that were ordered to be disclosed in the civil litigation between numerous complainants and News Group Newspapers and which might be relevant to our assessment of fitness and properness for the purposes of the Broadcasting Acts 1990 and 1996.

Are you planning to contact any further relevant parties, asking them for evidence?

Ofcom will ask relevant parties for evidence as it feels necessary to equip itself to meet its duty to remain satisfied of broadcast licensees' fitness and properness.

When do you expect to conclude your fit and proper assessment of BSkyB?

Ofcom has an ongoing duty to be satisfied that broadcast licensees are fit and proper. Because this is an ongoing duty there is no fixed date by which Ofcom must draw a conclusion. Ofcom will assess all the relevant evidence and come to a decision in due course.