

Frequently asked Questions

'Fit and Proper' in relation to broadcast licensees

18/07/11

Here is a list of frequently asked questions in relation to the ongoing Fit and Proper requirement on broadcast licensees. This summarises previously published information by Ofcom on the matter.

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.

Will Ofcom be investigating the hacking claims?

It is not for Ofcom to investigate matters which properly lie in the hands of other authorities, such as the police and the criminal or civil courts. Clearly we cannot and should not act whilst allegations are unsubstantiated. It would be unfortunate if action by Ofcom at this moment prejudiced any ongoing processes by the proper authorities or failed to take into account relevant information that was subsequently disclosed which may be relevant to a thorough and proper assessment.

What is Ofcom doing?

We have already written to and are now meeting 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.

What contact has Ofcom had with Parliament on the matter?

On 8 July 2011 Ofcom wrote to John Whittingdale, Chairman of the Culture, Media and Sport Committee, through which we are accountable to Parliament. The letter is available [here](#). In addition we are keeping Mr Whittingdale fully informed of our duties and powers in relation to this matter.

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 gathering information 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.

News Corporation has withdrawn its bid for BSkyB. Does this change anything in relation to ‘fit and proper’?

No. We have an ongoing duty to be satisfied that a licensee is fit and proper, which relates to the controlling directors and shareholders of any licensee. We have an ongoing duty to be satisfied that BSkyB (including its controlling directors and shareholders) is fit and proper to continue to hold its licences. News Corporation holds 39.14% of the shares in BSkyB, and therefore Ofcom must take account of News Corporation’s conduct in assessing whether BSkyB is and remains fit and proper as a licence holder, as well as the conduct of BSkyB itself.

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.