

DECISION UNDER SECTION 3(3) OF THE BROADCASTING ACT 1990 AND SECTION 3(3) OF THE BROADCASTING ACT 1996: LICENCES HELD BY BRITISH SKY BROADCASTING LIMITED

Legal framework

1. A provider of any “relevant regulated television service” must hold a licence under the Broadcasting Act 1990 (the “1990 Act”) or the Broadcasting Act 1996 (the “1996 Act”)¹. Depending on the type of television service in question, a provider may be licensed under either the 1990 Act or the 1996 Act. British Sky Broadcasting Limited (“Sky”) holds licences of various kinds under each of these Acts.
2. Under s.3(3) of each of the 1990 Act and the 1996 Act, Ofcom:
 - (a) shall not grant a licence to any person² 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.
3. Therefore, Ofcom has an ongoing duty to remain satisfied that broadcast licensees are fit and proper.
4. For its assessment of whether Sky remains fit and proper to hold broadcast licences, Ofcom has been considering the implications of information that has become available regarding unlawful activities at newspapers owned by News Group Newspapers Limited (“NGN”)³. This document sets out Ofcom’s findings in relation to that question, on the evidence available to date.
5. As Ofcom’s duty to be satisfied that licensees remain fit and proper is ongoing, should further material evidence become available, Ofcom would need to consider that evidence in light of its duty.

Process

6. Ofcom reached a provisional decision at a board meeting held on 10 July 2012. That provisional decision was sent to Sky, Sky plc and to James Murdoch on 30 July 2012. Sky provided written submissions on the provisional decision on 22 August 2012. James Murdoch provided written submissions on 17 August 2012 and 13 September 2012. Ofcom has considered their submissions and has taken them into account in reaching its final decision.
7. Certain information has been redacted from this decision in order to avoid any prejudice to ongoing criminal proceedings. The redactions are marked.

¹Section 13(1) of the 1990 Act. A “relevant regulated television service” is a service regulated by Ofcom under s.211 of the Communications Act 2003.

² A “person” may be any legal person, which would include an individual and a corporation. In this case, the licensee is the company British Sky Broadcasting Limited.

³ NGN is a wholly-owned subsidiary of NI Group Limited, formerly known as News International. NI Group Limited is wholly controlled by News Corporation, Inc.

The relevance of events at NGN to Sky's fitness and propriety

8. We consider that wrongdoing of the kind alleged to have taken place at the newspapers owned by NGN is in principle capable of being relevant to the fitness and propriety of a broadcaster, notwithstanding the fact that such wrongdoing was not related to the performance of broadcasting functions. If a broadcaster's fitness and propriety were measured only by reference to its performance or conduct as a broadcaster, this would mean that very serious wrongdoing by the licensee or those who controlled or influenced it, whatever its nature or gravity, was no impediment to the grant or retention of a licence, as long as the wrongdoing was unrelated to the licensee's broadcasting activities. We do not consider that this can be right. Ofcom is responsible for protecting public confidence in broadcasting and the public interest in there being an appropriately rigorous regulatory regime, through its powers and duties under the statutory scheme established by Parliament.
9. To date, there is no evidence that Sky was directly or indirectly involved in any of the wrongdoing either admitted or alleged to have taken place at *News of the World* ("NOTW") or *The Sun*. Sky has admitted to some instances of email hacking in two cases unrelated to the cases alleged to have taken place at NGN. Ofcom is currently considering these issues under the Broadcasting Code.
10. In contrast to some other UK regulatory regimes, Ofcom does not have any statutory responsibility for declaring individuals "fit and proper" (unless they are broadcast licensees themselves). The behaviour of persons (individuals or corporations) other than Sky can only be relevant to an assessment of Sky if such persons' relationship to Sky is such that Sky's fitness and propriety is affected by their character and conduct. Since Sky is a non-natural person, its fitness and propriety may be judged by reference to the conduct and character of any individual or individuals who exert influence over it. The conduct and character of any director, of any shareholder with a significant holding, and of any other person able to exert influence over the company are therefore relevant in principle to Ofcom's assessment.
11. Ofcom has therefore considered whether any such person, exercising a requisite degree of control over Sky, such that he, she or it exerts influence, has been implicated in, or tainted by, alleged or admitted wrongdoing or criminality at newspapers owned by NGN, in a way, or to an extent, which raises questions about Sky's ongoing fitness and propriety. For these purposes, Ofcom considers that the following individuals' and entity's character and conduct are in principle relevant, because they stand in a relationship to Sky of material influence or control such that they are able to exert influence over it:
 - (a) James Murdoch's conduct and character are relevant because:
 - (i) he is a director of the parent company, British Sky Broadcasting Group plc ("Sky plc"), which exercises complete control over Sky;
 - (ii) he is a director of News Corporation, which owns around 40% of the issued shares of Sky plc; and
 - (iii) the Murdoch family trust owns approximately 38% of the Class B stock of News Corporation, which owns around 40% of the issued shares of Sky plc.
 - (b) Rupert Murdoch's conduct and character are relevant because:
 - (i) he is Chairman and CEO of News Corporation, which owns around 40% of the issued shares of Sky plc; and

- (ii) his family trust owns approximately 38% of the Class B stock of News Corporation, which owns around 40% of the issued shares of Sky plc.
- (c) News Corporation's corporate conduct and character are relevant, in light of News Corporation's approximate 40% shareholding in Sky plc.

12. In considering whether Sky remains fit and proper to hold broadcasting licences, Ofcom has therefore had regard to evidence relating to the conduct or character of these persons, and to the extent of influence which they exert over Sky.

Evidence

13. Ofcom has had regard to the evidence available from a variety of sources, in particular evidence that has been:

- (a) published by the Culture, Media and Sport Select Committee ("CMSC");
- (b) published by the Leveson Inquiry; and
- (c) disclosed to Ofcom by NGN from documents disclosed in the civil litigation⁴.

James Murdoch⁵

14. Ofcom considers on the basis of the evidence available to date and for the reasons set out in this decision that James Murdoch's conduct in relation to events at NGN repeatedly fell short of the conduct to be expected of him as a chief executive officer and chairman⁶. However, Ofcom considers that the evidence available to date does not provide a reasonable basis to conclude that James Murdoch deliberately engaged in any wrongdoing.

Background

15. James Murdoch had no role at NGN or its parent company News International⁷ until December 2007/January 2008, which was almost a year after the sentencing of Clive Goodman and Glenn Mulcaire for phone hacking. However, he became Executive Chairman (of both companies) when the previous Executive Chairman Les Hinton moved to the *Wall Street Journal* in January 2008 and he remained in that role at NGN until September 2011⁸. In addition to his role as Executive Chairman, he acted as chief executive officer of News International from Les Hinton's departure until at least the end of June 2009 (when it was announced that Rebekah Brooks would take the role). Rebekah Brooks' formal start date as chief executive officer of News International was September 2009. He remained as Executive Chairman of News International until February 2012.

⁴ In order to equip ourselves with all information relevant to our duty, Ofcom sought voluntary disclosure from NGN of certain documents disclosed in the civil proceedings in front of Mr Justice Vos. NGN provided these documents.

⁵ See paragraph 9(a) for his relevance to Sky.

⁶ James Murdoch was CEO of NGN and News International from Les Hinton's departure in January 2008 until at least the end of June 2009.

⁷ Now NI Group Limited.

⁸ The date he stood down from NGN.

The Taylor settlement

16. In June 2008, James Murdoch authorised the settlement of a claim for phone hacking brought by Gordon Taylor against NGN. There is conflicting evidence, including on oath, as to what James Murdoch was actually told at this point about the possibility that *News of the World* employees other than Clive Goodman had been involved in unlawful activity⁹.
17. There is more than one possible explanation of the inconsistency between the accounts given variously by Tom Crone, Colin Myler and James Murdoch of what James Murdoch was told at the meeting on 10 June 2008 at which he authorised settlement of the Taylor case. These three individuals may have had different understandings at the time of what was being communicated, their recollections several years after the events took place may be imperfect, or one or more of them may not be telling the truth. We do not consider that the evidence given by Tom Crone or Colin Myler is sufficient to demonstrate that James Murdoch was made fully aware of the implications of the evidence disclosed in the Taylor litigation at the time he authorised the settlement.¹⁰
18. Nor, in our view, can it reasonably be concluded on the available documentary evidence that there was an awareness on James Murdoch's part either that evidence existed indicating the involvement in unlawful activities of journalists other than Clive Goodman, or that the desire to preserve confidentiality was a key factor in the settlement¹¹. There is some documentary evidence that James Murdoch was aware of the Taylor claim prior to 10 June 2008. There is some documentary evidence that Tom Crone and Colin Myler intended to brief James Murdoch in more detail, but there is no documentary evidence showing that they actually did¹². In particular, Colin Myler forwarded to James Murdoch the email chain of 7 June 2008, which contains information that ought to have caused him significant concern¹³. However, James Murdoch's evidence is that he did not read the chain to its end and there is no evidence to contradict his account¹⁴.
19. Nevertheless, it is clear, on his own account, that James Murdoch was aware in 2008 that new evidence had emerged which meant that his lawyers considered it necessary to settle Gordon Taylor's claim and that an opinion from leading counsel was being

⁹ Transcript of oral evidence given by James Murdoch and Rupert Murdoch to Culture Media and Sport Select Committee ("CMSC"), 19 July 2011; Letter to CMSC from Tom Crone, 6 August 2011; letter to CMSC from Colin Myler, 10 August 2011; letter to CMSC from James Murdoch, 11 August 2011; transcript of oral evidence given by Tom Crone and Colin Myler to CMSC, 6 September 2011; letter to CMSC from Colin Myler, 31 October 2011; letter to CMSC from Tom Crone, 5 November 2011; transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011; letter to CMSC from Tom Crone, 1 December 2011; letter to CMSC from Colin Myler, 1 December 2011; letter to CMSC from James Murdoch, 12 December 2011; transcript of oral evidence given by Tom Crone to Leveson Inquiry, 13-14 December 2011; transcript of oral evidence given by Colin Myler to Leveson Inquiry, 14-15 December 2011; letter to CMSC from James Murdoch, 12 March 2012; statement to Leveson Inquiry by James Murdoch, 16 April 2012; transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012.

¹⁰ [We note that the CMSC found that Tom Crone and Colin Myler had misled the Committee in the course of their evidence][X].

¹¹ See documents attached to letter from Farrer & Co to the Chairman of the CMSC, 31 October 2011; written evidence submitted by Linklaters LLP to the CMSC, 12 December 2011, written evidence submitted by Linklaters LLP to the CMSC, 20 December 2011.

¹² See email from Crone to Myler 24 May 2008 at 18:10, attaching briefing note and email from Crone to Pike 24 May 2008 at 19:25, JCP1 to JCP4 of documents attached to letter from Farrer & Co to the Chairman of the CMSC, 31 October 2011; see also written evidence submitted by Linklaters LLP to the CMSC, 12 December 2011.

¹³ Written evidence submitted by Linklaters LLP to the CMSC, 12 December 2011.

¹⁴ Letter to CMSC from James Murdoch, 12 December 2011.

sought¹⁵. The sum he approved in settlement was at least £425,000 in damages, plus costs of around £200,000¹⁶ - i.e. damages 70% higher than the highest “likely” figure that leading counsel had put on Taylor’s claim in his Opinion¹⁷. On James Murdoch’s own account, the sum represented a very significant proportion of the annual budget for such settlements¹⁸. Yet he did not ask to see the opinion from leading counsel¹⁹ or to have sight of, or a full description of, the range of evidence on which the advice to settle was based²⁰. In relation to the Taylor settlement, on the evidence available to Ofcom, we consider that James Murdoch’s exercise of responsibility was less than we would expect to see exhibited by a competent Chief Executive Officer.

The response to the Guardian article

20. In July 2009, the *Guardian* published an article about the Taylor settlement, entitled “*Murdoch papers paid £1m to gag phone hacking victims*”, which described “suppressed evidence” showing that “Mulcaire had provided a recording of the messages on Taylor’s phone to a NOTW journalist who had transcribed them and emailed them to a senior reporter, and that a NOTW executive had offered Mulcaire a substantial bonus for a story specifically related to the intercepted messages.”²¹ Within 2 days, News International issued a statement saying that it had carried out “a thorough investigation” since the story broke, that various allegations were unsupported by any evidence, including the allegations that NOTW journalists either hacked any individuals’ phones themselves or instructed third parties to do so, and that the *Guardian* had made “irresponsible and unsubstantiated allegations”²². In a letter the same day to the CMSC, News International said that the *Guardian* had “substantially and likely deliberately misled the British public”.²³
21. James Murdoch’s evidence is that he received a copy of the article²⁴ (and later read the “for Neville” email itself²⁵), but that he was overseas at the time the article was

¹⁵ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1464; transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.37 lines 4 and 12-13.

¹⁶ Letter from Farrer & Co to CMSC, 2 September 2011; email chain ending Colin Myler to James Murdoch on 7 June 2008, attached to written evidence submitted by Linklaters LLP to the CMSC, 12 December 2011.

¹⁷ §17 of the Opinion of Michael Silverleaf QC, 3 June 2008, JCP20 to JCP26 of documents attached to letter from Farrer & Co to the Chairman of the CMSC, 31 October 2011.

¹⁸ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.41 lines 6 to 9.

¹⁹ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1514; letter from James Murdoch to CMSC, 12 March 2012; Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.37 lines 12-13.

²⁰ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1514; letter from James Murdoch to CMSC, 12 March 2012.

²¹ This is a description of two documents: first, an email which became known as the “for Neville email”, which is reproduced in full at Ev 295 to Ev 302 of Volume II of the CMSC’s Second Report of Session 2009–10, *Press standards, privacy and libel* of 2010, and second a contract between NOTW and Paul Williams (an alias), reproduced at Ev 303.

²² News International Statement on Guardian article, 10 July 2009.

²³ Letter from Rebekah Wade to John Whittingdale MP, 10 July 2009, reproduced by the Guardian, 6 July 2011, <http://www.guardian.co.uk/media/interactive/2011/jul/06/rebekah-brooks-email>.

²⁴ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1632.

²⁵ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011, Q1539, Q1629.

published²⁶ and that the response to it was handled by Rebekah Brooks²⁷. He has said that he asked questions and was assured that a full investigation had been carried out previously. He has said that he relied on a police statement, issued in response to the article, to the effect no further investigation was required²⁸.

22. From the evidence available, it is not possible to reach a view as to whether James Murdoch authorised or was involved in News International's press statement of July 2009. However, we note that on his own account, James Murdoch (who was chief executive officer of News International at the time) entrusted the handling of the response to the *Guardian* article to an incoming and not yet formally appointed chief executive officer who (as far as we are aware) had no personal knowledge of the Taylor settlement. James Murdoch continued to rely upon subordinates who had between them obtained his consent to settle the Taylor case without querying why they had not provided him (as should have been apparent when James Murdoch read the *Guardian* article) with the information referred to in that article, namely, that evidence in Taylor's case related not simply to one previously convicted journalist, but to "a NOTW journalist", a "senior reporter" and a "NOTW executive".
23. There is no evidence that James Murdoch took the necessary steps to apprise himself of the information he needed (some of which he knew existed) to carry out his duties responsibly following publication in a national newspaper of such nature and detail about the settlement he had personally authorised the previous year. We consider that James Murdoch's failure to apprise himself of this information, given the information which he accepts he knew, fell short of the exercise of responsibility to be expected of the chief executive officer and the chairman.

Events in 2009-2010

24. In July 2009, Max Clifford issued proceedings against NGN in which he alleged that his phone had been hacked by NGN journalists. NGN settled those proceedings in February or March 2010. In February 2010, information became publicly available which made clear that the number of hacking victims was likely to be far in excess of what had previously been acknowledged²⁹.
25. By his own account, despite what he had by then learned of the Taylor case and the subsequent concerns raised publicly about its settlement, James Murdoch (who was by then Executive Chairman of NGN and News International) asked no questions about who Max Clifford's case implicated³⁰ and took no role in its settlement³¹.
26. Also in February 2010, the CMSC published its report which accused the newspaper group of "collective amnesia", stated that it was "inconceivable" that no one but Clive Goodman was aware of the activity, noted that the idea that Clive Goodman was a "rogue reporter" acting alone had been directly contradicted by the summing up of Mr Justice Gross on sentencing Glenn Mulcaire, and observed that there had been no evidence of systematic questioning of relevant individuals, no full review of their emails, no investigation of who the "others" might be to whom Mr Justice Gross had referred,

²⁶ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012 p.49 lines 20-21.

²⁷ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.77 line 25 to p.78 line 4.

²⁸ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.50 lines 5 to 13.

²⁹ *The Guardian News of the World pair hacked into 100 mobile accounts* 1 February 2010.

³⁰ Letter from James Murdoch to CMSC, 1 December 2011.

³¹ Statement to Leveson Inquiry by James Murdoch, 16 April 2012, §16.22.

and that the newspaper's enquiries had been far from "full" or "rigorous", as the CMSC and the PCC had previously been assured³². News International issued a statement accusing the CMSC of pursuing "a party political agenda" and stating that certain of its members had "repeatedly violated the public trust"³³.

27. By his own account, James Murdoch read the CMSC report³⁴, but did not regard the response to the Select Committee as his direct responsibility³⁵, and therefore relied on what he was told about it³⁶. We consider this lack of action by the chairman of News International in response to a widely publicised highly critical Select Committee report to be both difficult to comprehend and ill-judged. He has said, in relation to it, "I regret that the company moved into an aggressive defence so quickly...if I could do it again, I would direct the management of the company to do things differently"³⁷.
28. Over the following months, proceedings were issued against NGN by a number of persons who thought their phones had been hacked³⁸. [There is evidence that potentially relevant hardware and email archives may have been destroyed/deleted by NGN at a time when litigation was ongoing against it³⁹][X]. James Murdoch has given evidence to the Leveson Inquiry that he assumed that information relevant to the litigation was being preserved⁴⁰. We have no evidence that this is not the case.
29. On 1 September 2010, the *New York Times* published an article which said "a dozen" reporters had said that hacking was pervasive at NOTW, [with the knowledge of the editor⁴¹][X]. On 3 September 2010 a former NOTW reporter gave an interview to BBC Radio 4 in which he claimed that the practice was "endemic" [and that the editor had specifically asked him to hack into other people's phones] [X]. James Murdoch's evidence to the Leveson Inquiry is that the police had reiterated that the original investigation "had been a success", and he was told by executives at NOTW both that the *New York Times* article contained "little that was new" and that there was "no basis for the allegations that were being made"⁴².
30. In November 2010, Sienna Miller served Particulars of Claim on NGN⁴³. Her allegations were described in detail in a *Guardian* article entitled "*Phone hacking approved by top News of the World executive – new files*" on 15 December 2010. [There is evidence that a NOTW journalist named in Sienna Miller's claim was suspended the day after the

³² House of Commons: Culture Media and Sport Committee, *Press standards, privacy and libel* Second Report of Session 2009-10 summary, paragraphs 437, 440, 441, 442.

³³ Statement by News International, 24 February 2010.

³⁴ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011 Q1541.

³⁵ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.51 lines 1 to 5.

³⁶ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.51 lines 5 to 9.

³⁷ Statement to Leveson Inquiry by James Murdoch, 16 April 2012, §15.2.

³⁸ Skylet Andrew, 23 April 2010, Nicola Phillips, 10 May 2010, Andy Gray, 8 June 2010, Ciara Parkes, 13 June 2010, George Galloway, 9 July 2010, Kelly Hoppen 23 July 2010 (Source: *Mulcaire v NGN* [2011] EWHC 3469 (Ch); Kelly Hoppen statement made via solicitors: 27 January 2011; Parkes statement in open court, 19 January 2012).

³⁹ [CONFIDENTIAL Witness statement of Paul Cheesbrough, 21 December 2011.] [X]

⁴⁰ Statement to Leveson Inquiry by James Murdoch, 16 April 2012, §22.1.

⁴¹ "*Tabloid Hack Attack on Royals, and Beyond*", *New York Times*, 1 September 2010.

⁴² Statement to Leveson Inquiry by James Murdoch, 16 April 2012, §§14.2 and 14.3.

⁴³ *Miller v NGN* Statement in open court 7 June 2011.

Guardian article appeared⁴⁴. Evidence suggests that an internal investigation began only around 10 January 2011⁴⁵ [X].

31. Evidence is not available as to the precise date on which James Murdoch was made aware of Sienna Miller's claim or the evidence she relied on. James Murdoch has given evidence to the Leveson Inquiry to the effect that he insisted that NGN should move quickly to reopen an internal investigation into the issues arising out of evidence in Sienna Miller's claim, to take action against any employees that were implicated in wrongdoing, and immediately to suspend them, and to bring in new counsel to get to the bottom of what was really going on⁴⁶. Having reviewed the relevant evidence relating to this period as a whole, we note that the only one of these steps taken in 2010, (and that only after the publication of the *Guardian* article of 15 December 2010), was the suspension of a journalist. In light of the events which occurred in 2009 to 2010, in particular the publication of the CMSC report, the growing civil litigation and the *New York Times* article, we find it difficult to comprehend James Murdoch's lack of action, given his responsibility as chairman.

Corruption

32. Ofcom has not seen any evidence suggesting any involvement by James Murdoch in alleged corruption at *The Sun*, involving the bribery of public officials.

Ofcom's conclusions

33. In our view, the evidence available to date does not provide a reasonable basis to find that James Murdoch knew of widespread wrongdoing or criminality at NOTW or that, by allowing litigation to be settled and by allowing NGN and News International executives to make the representations they did, he was complicit in a cover up.
34. However, a company director is required to exercise reasonable care, skill and diligence in the exercise of his functions⁴⁷. He may delegate, but has a duty to supervise appropriately. We consider James Murdoch's conduct, including his failure to initiate action on his own account on a number of occasions, to be both difficult to comprehend and ill-judged. In respect of the matters set out above, in our view, James Murdoch's conduct in relation to events at NGN repeatedly fell short of the exercise of responsibility to be expected of him as CEO and chairman.
35. James Murdoch has apologised for his conduct. He has acknowledged in a letter of 12 March 2012 to the CMSC that "wrongdoing should have been uncovered earlier. I could have asked more questions, requested more documents and taken a more challenging and sceptical view of what I was told, and I will do so in the future"⁴⁸. He has said that "I do think - and I share responsibility for this and I am sorry for it - the company took too long to come to grips with these issues"⁴⁹. We agree.

⁴⁴ [CONFIDENTIAL Letter from Colin Myler to Ian Edmondson, 17 December 2010.] [X]

⁴⁵ [CONFIDENTIAL Email from Will Lewis to Paul Cheesbrough, 10 January 2011, CONFIDENTIAL EMAIL FROM Bill Akass to Bill Akass, 11 January 2011] [X].

⁴⁶ Transcript of oral evidence given by James Murdoch to Leveson Inquiry, 24 April 2012, p.53 lines 4 to 10.

⁴⁷ Section 174 Companies Act 2006.

⁴⁸ Letter from James Murdoch to CMSC, 12 March 2012.

⁴⁹ Transcript of oral evidence given by James Murdoch to CMSC, 10 November 2011 Q1643.

36. We consider that the events set out above raise questions regarding James Murdoch's competence in the handling of these matters, and his attitude towards the possibility of wrongdoing in the companies for which he was responsible.

Rupert Murdoch

37. Rupert Murdoch⁵⁰ was a director of NGN throughout the period during which NGN has admitted hacking. He stood down from NGN in September 2008. He was a director of News International from before 1995 to July 2012.

38. We do not consider that the evidence currently available to Ofcom provides a reasonable basis on which to conclude that Rupert Murdoch acted in a way that was inappropriate in relation to phone hacking, concealment or corruption by employees of NGN or News International.

News Corporation⁵¹

39. We are conscious that there are other ongoing investigations by other public agencies. However, we consider that the evidence currently available to Ofcom does not provide a reasonable basis for Ofcom to reach any conclusion that News Corporation acted in a way that was inappropriate in relation to phone hacking, concealment, or corruption by employees of NGN or News International.

40. However, we would be concerned if statements, which have surfaced from time to time in the course of the Leveson Inquiry and the work of the CMSC, that News Corporation and its subsidiaries have exerted pressure over politicians and others in support of News Corporation's commercial interests, went beyond the legitimate area of political debate and transgressed into inappropriate pressure or behaviour related to furthering News Corporation's commercial interests. News Corporation has a large shareholding in Sky plc and has made assertions in other contexts about the degree of control it exercises over it⁵². Should further material evidence or findings become available we will take them into account in relation to our continuing duty.

Conclusion

41. As set out in paragraph 9 above, there is no evidence that Sky was directly or indirectly involved in any of the wrongdoing either admitted or alleged to have taken place at *NOTW* or *The Sun*.

42. James Murdoch has ceased to be Chairman of Sky plc, but remains a non-executive director. He is also an executive director of News Corporation, which owns around 40% of the issued shares of Sky plc; and the Murdoch family trust owns approximately 38% of the Class B stock of News Corporation. We have therefore considered the implications of our views about his conduct for our assessment of the ongoing fitness and propriety of Sky to hold a broadcast licence.

⁵⁰ See paragraph 9(b) for his relevance to Sky.

⁵¹ See paragraph 9(c) for its relevance to Sky.

⁵² §§2.4, 4.8, 4.11 Preliminary briefing by News Corporation to the Department of Business, Innovation and Skills and the Office of Communications, 20 July 2010; p.2 Further submission to the Secretary of State – Public interest: News Corporation – British Sky Broadcasting, 29 September 2010; §4.4 News Corporation/British Sky Broadcasting Group Plc: Submission to Ofcom (non-confidential version), 23 November 2010.

43. While we consider that any director or large minority shareholder will count as exerting influence for these purposes, his or her influence may be limited, or may be moderated by other directors or shareholders, in such a way that conduct on the part of that individual is not in fact sufficient to render the company as a whole unfit or improper. The extent to which such conduct impugns a company's fitness and propriety will depend on the degree of influence that individual has, the individual's position, the nature of the conduct in question and other circumstances.
44. Ofcom has reviewed the compliance history of Sky channels over the period 2006-2012. Our view is that (without prejudice to the outcome of any current investigations⁵³) Sky's compliance record in broadcasting matters has been good. We recognise that this period includes James Murdoch's tenure as chief executive officer (November 2003 to December 2007) and later as non-executive chairman (December 2007 to April 2012) of Sky and he must be given credit in this regard. We recognise that during James Murdoch's tenure Sky continued to be a successful company.
45. Sky plc's board has been subject to several recent changes. In addition to James Murdoch, it comprises 11 non-executive and two executive directors. James Murdoch is no longer the chairman; that role is now held by Nicholas Ferguson. The other non-executives are experienced individuals who would be expected to be capable of exercising effective independent oversight. Only three board members besides James Murdoch hold roles outside Sky plc which are linked to News Corporation. We have obtained an account from Sky plc of its governance structure, including the arrangements for board oversight of risk management and other controls within the business.
46. In the circumstances, and notwithstanding our views in relation to James Murdoch's conduct, we do not consider, having taken into account all the relevant factors, that on the evidence available to date Sky is no longer fit and proper to hold broadcast licences. Whilst we consider that James Murdoch's conduct in various instances fell short of the standard to be expected of the chief executive officer and chairman, we do not find that James Murdoch's retention as a non-executive director of Sky means that Sky is not fit and proper to hold broadcast licences. We recognise that whether it is appropriate for James Murdoch to be a director in light of the events is a matter for the Board and shareholders of Sky.
47. Our duty to be satisfied that a licensee is fit and proper is ongoing. Further evidence may become available in the future, which Ofcom would be obliged to consider in order to fulfil its duty. In particular, Ofcom considers that the findings of the Leveson Inquiry and the results of pending criminal proceedings (including evidence given in such proceedings) could be relevant to its performance of its duty under section 3(3).

⁵³ Ofcom is currently considering Sky's admitted instances of computer hacking under the Broadcasting Code.