

Sexual harassment, denials and cover ups: evidence of a rotten corporate culture at Fox

Briefing for Ofcom

Avaaz, 30th March 2017

21st Century Fox under fire over harassment and cover-ups

In recent months, serious allegations of sexual harassment, other abuse and discrimination, and corporate misgovernance have been levelled at subsidiaries of 21C Fox. Many of these allegations are against the highest and most influential people at the organisation. Investigative news reports, victims' testimonies, and court documents paint a picture of a management with no meaningful accountability and no credible governance structure. The situation is so serious that federal prosecutors are now investigating.

On 6 July 2016, Fox News anchorwoman Gretchen Carlson filed a lawsuit against Fox News CEO Roger Ailes in the New Jersey Superior Court. After reportedly trying hard to campaign against the culture of harassment, she alleges that Ailes "sabotaged" her career because she "refused his sexual advances."¹ She was forced to file against Ailes and not Fox News because her contract had a clause that mandated employment disputes be resolved in private arbitration - an approach Fox News adopts repeatedly, denying victims their day in court.

¹ Paul Blake. 'Former Host Andrea Tantaros Hopes to Bring 'Accountability' to Fox News.' *ABC News*, 4 October 2016. <http://abcnews.go.com/Business/host-andrea-tantaros-hopes-bring-accountability-fox-news/story?id=42550838>. Accessed 29 March 2017.

After Carlson went to court, Fox News hired law firm, Paul, Weiss, Rifkind, Wharton & Garrison to investigate. Reportedly, 25 women came forward to complain,² but there are several serious concerns about the quality of this investigation:

- Paul, Weiss moved the investigation to its own offices because of concerns that the Fox offices were bugged.³
- The terms of reference for this investigation are unknown as are its findings. Even shareholders were not sent it, although millions of dollars of liability may ride on it.
- Sources have told the media that its focus was too narrow and did not “look deeply into phone and e-mail records throughout the company to unearth evidence of a culture of sexual harassment.”⁴

Roger Ailes had been reporting to James and Lachlan Murdoch since June 2015. Roger Ailes' biography had been published a year before in which a victim, Randi Harrison, went public with her allegations of harassment.⁵ These should have been early signs of trouble, but there is no evidence in the public domain that the Murdochs questioned Roger Ailes about this. The abuse continued in 2015 when Ailes was directly reporting to them.⁶

21C Fox claim to meet the "highest standards of corporate conduct"

In a preliminary briefing to the Department of Culture, Media, and Sport, in December 2016 21C Fox's lawyers insisted that it “has adopted strong governance measures and controls to ensure it meets the highest standards of corporate conduct.”

² Gabriel Sherman. 'The Rise and Fall of Fox News CEO Roger Ailes'. *NPR*, 26 July 2016. <http://www.npr.org/2016/07/26/487483534/the-rise-and-fall-of-fox-news-ceo-roger-ailes>. Accessed 29 March 2017.

³ J K Trotter. 'Report: Murdoch Family Plans to Remove Fox News CEO Roger Ailes After Sexual Harassment Suit' *Gawker*, 18 July 2016. <http://gawker.com/report-murdoch-family-plans-to-remove-fox-news-ceo-rog-1783858572>. Accessed 29 March 2017.

⁴ Sarah Ellison. 'It's a Disaster. It's a Nightmare.' Is a Civil War Brewing Inside Fox News?' *Vanity Fair*, 21 March 2017. <http://www.vanityfair.com/news/2017/03/inside-fox-news-after-megyn-kelly-nbc-scandal>. Accessed 29 March 2017.

⁵ Callum Borchers. 'Book: Roger Ailes has been soliciting sex from female journalists since the 1980s'. *The Washington Post*, 6 July 2016. https://www.washingtonpost.com/news/the-fix/wp/2016/07/06/book-roger-ailes-has-been-soliciting-sex-from-female-journalists-since-the-1980s/?utm_term=.91e5f1d6e8d3. Accessed 29 March 2017.

⁶ Sherman, Gabriel. "The Revenge of Roger's Angels." *NYMag*, 2 September 2016, <http://nymag.com/daily/intelligencer/2016/09/how-fox-news-women-took-down-roger-ailes.html>. Accessed 8 March 2017.

They added that, as of April 2012, 21C Fox had established an “enhanced global compliance programme, including a global compliance steering committee.” They claimed that these arrangements ensured “the rapid escalation of material issues” from “individual businesses ... to the Independent directors of the Audit Committee and the full Board.”⁷

Ofcom confirmed that corporate governance failings could form part of its reviews of 21C Fox in the context of this merger, in its reply to Hausfeld, acting for Avaaz, on 14th March 2017. This letter stated that: “In considering whether a person had a ‘genuine commitment’ to the attainment of standards set out in Section 319, Ofcom would be entitled, if we considered it relevant to do so, to consider the track record of that person in establishing and maintaining appropriate governance and compliance arrangements in relation to the legal and regulatory regimes to which they are subject, including respect for rights of privacy or compliance with the criminal law in relation to journalistic conduct”.⁸

Additionally, in its 2012 review of BSkyB licences, Ofcom confirmed that “should further material evidence become available, Ofcom would need to consider that evidence in light of its duty” to be satisfied that licensees remain fit and proper.⁹ Much of the evidence and analysis in this briefing is also relevant for that assessment.

Court records show sexual and racial abuse and a lack of accountability

Avaaz researched a number of court cases dealing with allegations of sexual harassment at Fox News Network (and Fox5), a subsidiary of 21C Fox. A stark pattern of corporate negligence and management failure emerges, with a number of alleged incidents occurring after 2012.¹⁰ This pattern has strong echoes of years-long attempts by executives to mislead authorities, investors, staff and the public about phone hacking and other illegal activity in the UK.

⁷ Allen & Overy. ‘Offer by 21C Fox for the Remaining Shares in Sky PLC: Preliminary Briefing to the Department for Culture, Media & Sport.’ 20 December 2016, pa 2.10 and 2.11.

⁸ Letter from Mark Sweeney, Director Government and Parliament, Ofcom, to Hausfeld, 14th March 2017.

⁹ Ofcom “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”.

¹⁰ The following cases were reviewed: Tantaros Andrea vs. Fox News network, LLC (157054/2016); Correa-Lapolla, Hilda G vs Fox News Network LLC (160441/2016) <https://iapps.courts.state.ny.us/webcivil/FCASSearch>. Accessed 27 March 2017. Ujkic v. Twenty-First Century Fox, Inc. et al (1:16-cv-09608-AJN); Carlson v. Ailes (2:16-cv-04138-JLL-JAD) <https://pcl.uscourts.gov/search>. Accessed 27 March 2017.

One former female employee compared Fox News to a “sex-fuelled Playboy Mansion-like cult”¹¹ or a “boys’ club” permeated “with vulgarity and pervasive sexism”.¹² Court documents seen by Avaaz describe a “nightmare of sexual harassment”¹³ that was left unchecked and unabated at the company. They show that complaints at 21C Fox subsidiaries were not properly addressed, and the women in question report faced retaliation by their employers for daring to complain.

Former Fox News host Andrea Tantaros, who is suing Fox News Network, accuses the network of retaliation after she complained of sexual harassment. Her case has also been forced into arbitration.¹⁴ Besides the CEO, Roger Ailes, Ms. Tantaros’ suit mentions a number of other Fox News executives who marginalised and removed her from the air after she complained, suggesting a culture of misogyny and sexual objectification.

The Complaint filed by her legal team is explicit, stating that “this Complaint is not just about Ailes; it also gives life to the saying that the “fish stinks from the head.” The Complaint alleges: “Ailes did not act alone. He may have been the primary culprit, but his actions were condoned by his most senior lieutenants, who engaged in a concerted effort to silence Tantaros by threats, humiliation, and retaliation.”¹⁵

This is echoed throughout additional legal claims. Hilda G. Correa-Lapolla and Maureen Walsh, two make-up artists working at Fox News, claimed in their Summons + Complaint that “this hostile environment was created and condoned, at the very highest level, by former President of Fox News, Roger Ailes, and advanced by other Fox News executives throughout the organisation”.¹⁶

In a case brought by Fox 5 employee Lidija Ujkic, professionally known as Lidia Curanaj, it is alleged that in a private interview, Roger Ailes asked her to “stand up and twirl around for him,” in one allegation of sexual harassment. However, her Complaint adds that Fox’s international investigation “unearthed evidence that sexual harassment of women employees extended

¹¹ Tantaros Andrea vs. Fox News network, LLC (157054/2016).

¹² Hilda G vs Fox News Network LLC (160441/2016).

¹³ Tantaros Andrea vs. Fox News network, LLC (157054/2016).

¹⁴ Berthelsen, Christian, Dolmetsch, Chris and Sakoui, Anousha. “U.S. Probing 'Sexual Harassment Issues' at Fox, Lawyer Says.” Bloomberg, 15 February 2017. <https://www.bloomberg.com/news/articles/2017-02-15/u-s-probing-sexual-harassment-issues-at-fox-lawyer-says>. Accessed 8 March 2017.

¹⁵ Tantaros Andrea vs. Fox News network, LLC (157054/2016).

¹⁶ Hilda G vs Fox News Network LLC (160441/2016).

beyond Ailes and his immediate circle” and that the top-down harassment spread throughout Fox, permeating the work environment across departments.”¹⁷

Ms Ujkic also alleges that defendants discriminated against her on the basis of her race and/or ethnicity, denying her a full time position, cutting her hours, and subjecting her to a hostile work environment. She claims that the Fox 5 News’ Director made numerous offensive and discriminatory remarks about her nationality. Believing her to be of Albanian descent, he allegedly said that “all Albanians are doormen or criminals” and referring to her as “Ms. Albania.” In fact Ms Ujkic comes from Montenegro.¹⁸ Ms Ujkic also claims that she was discriminated against as a result of becoming pregnant. Her Complaint notes: “Among Fox5 management, negative attitudes about pregnancy and bias against women were openly expressed. By way of example only, opinions and comments were made in the newsroom that included, “after these young girls [are hired], they get married,” “turn 30,” start “wanting babies” and “cause problems.”¹⁹

Ms. Ujkic’s claims about discrimination based on her race are echoed in a recent case filed by two women on 28th March 2017 against Fox News and 21C Fox, where they claim they were subjected to “top-down racial harassment” in the Fox News payroll department by Judith Slater, the company’s comptroller. The two black women, payroll manager Tichaona Brown and payroll coordinator Tabrese Wright, accuse Ms Slater of making a number of racially-charged comments, which include suggesting black men are “wife beaters” and that black people want to physically harm white people. Ms. Wright said Ms. Slater once asked if her three children were all “fathered by the same man.”²⁰

The plaintiffs allege that Ms Slater’s superiors did little to confront her behaviour, which resulted in a work environment that led to “severe and pervasive discrimination and harassment.” Ms Wright, who spoke up about the alleged conduct, was recently transferred out of the payroll department, a move the lawsuit describes as a demotion (although the company describes it as

¹⁷ Ujkic v. Twenty-First Century Fox, Inc. et al (1:16-cv-09608-AJN).

¹⁸ Ujkic v. Twenty-First Century Fox, Inc. et al (1:16-cv-09608-AJN).

¹⁹ Ujkic v. Twenty-First Century Fox, Inc. et al (1:16-cv-09608-AJN).

²⁰ Niraj Chokshi. ‘2 Black Women Sue Fox News, Claiming Racial Discrimination’. New York Times, 28 March 2017. https://www.nytimes.com/2017/03/28/business/media/fox-news-racial-discrimination-lawsuit-slater.html?_r=0. Accessed 29 March 2017.

a lateral move). While the suit claims that Ms. Brown was fired, the company reportedly said she remains employed. According to the suit, both women declined a settlement offer from Fox.²¹

The plaintiff's lawyers, Douglas H. Wigdor and Jeanne Christensen of the Wigdor law firm, said in a statement: "We are confident that the good men and women of the Bronx will hold Fox accountable for what we believe to be its abhorrent racist conduct, reminiscent of the Jim Crow era."²²

Evidence indicates that those right at the top of the organisations knew what was going on in their newsrooms. In Ms. Tantaros' case, the Complaint notes: "that those ultimately in control of Fox News, Rupert Murdoch and his sons... are plainly not disturbed by Ailes' conduct and the retaliatory conduct by Fox News senior executives." It carries on: "[T]he Murdochs have been misleading the public into believing that they are taking action. In fact, they have done the opposite."²³

Ms. Tantaros' Complaint notes that the Murdochs ushered him out of the company with a \$40 million golden parachute. The Complaint concludes that "in any responsible company, Ailes's employment agreement...would have been terminated for cause, with no further compensation."²⁴

²¹ Niraj Chokshi. '2 Black Women Sue Fox News, Claiming Racial Discrimination'. *New York Times*, 28 March 2017. https://www.nytimes.com/2017/03/28/business/media/fox-news-racial-discrimination-lawsuit-slater.html?_r=0. Accessed 29 March 2017.

²² Niraj Chokshi. '2 Black Women Sue Fox News, Claiming Racial Discrimination'. *New York Times*, 28 March 2017. https://www.nytimes.com/2017/03/28/business/media/fox-news-racial-discrimination-lawsuit-slater.html?_r=0. Accessed 29 March 2017.

²³ Tantaros Andrea vs. Fox News network, LLC (157054/2016).

²⁴ Tantaros Andrea vs. Fox News network, LLC (157054/2016).

Retaliation instead of redress

In a responsible company that meets the “highest standards of corporate conduct,”²⁵ one would expect complaints of sexual harassment to be listened to and acted on appropriately. Yet, it is notable when reviewing these cases, that the women not only felt ignored, but allegedly faced retaliation.

According to Ms. Tantaros’ Complaint, she faced sexual harassment and retaliation “despite multiple ongoing complaints by Tantaros, her agent, and her entertainment attorney.”²⁶

Allegedly, after making complaints, she was removed from the air upon the “outrageously false and pretextual claim” that her unpublished book violated Fox News’ rules for books authored by its employees. Ms. Tantaros’ was also allegedly accused of manufacturing claims of sexual harassment. The Complaint is particularly damning here: “As a matter of common sense, it is hard to imagine an employer not firing an employee for breaching a material term of her employment agreement and then making false claims of sexual harassment. Yet, here, Fox News has continued to pay Tantaros her salary in the hope that the fear of losing her income will keep her quiet.”²⁷

Allegations of retaliation are echoed in other legal cases. According to her Summons + Complaint, Ms. Correa-Lapolla met with Human Resources in September 2014 to discuss how she had been treated, after first complaining to a number of her colleagues. Only approximately one month after this meeting, in October 2014, her employment was terminated for alleged “misconduct”.²⁸

According to Ms. Ujkic’s Complaint, she put Fox 5 on notice of her claims of unlawful discrimination on November 8th, 2016. The document adds: “Immediately following receipt of [her] complaints of unlawful discrimination, Fox 5 began retaliating against her by significantly

²⁵ Allen & Overy. ‘Offer by 21C Fox for the Remaining Shares in Sky PLC: Preliminary Briefing to the Department for Culture, Media & Sport.’ 20 December 2016, pa 2.10 and 2.11.

²⁶ *Tantaros Andrea vs. Fox News network, LLC (157054/2016)*.

²⁷ *Tantaros Andrea vs. Fox News network, LLC (157054/2016)*.

²⁸ *Hilda G vs Fox News Network LLC (160441/2016)*.

cutting her hours”²⁹ Since putting Fox 5 on notice of her claims, the document notes that she has “often been scheduled to work only two days per week, less than ever before.”³⁰

Ms. Carlson also alleges that Ailes “retaliated against her in various ways...including by terminating her employment on June 23, 2016, and prior thereto, by, among other things, ostracizing, marginalizing and shunning her after making clear to her that these “problems” would not have existed, and could be solved, if she had a sexual relationship with him.”³¹

Fox News’ media department staff, particularly Irena Briganti, who was in charge of Fox’s Media Relations for years, are frequently cited as masters of retaliation techniques. Fox’s media relations office has been compared to an “internal security service” famous for “attacking its own employees.” According to reports, it would “leak highly negative and personal stories to journalists about their own employees that were somehow on the wrong side of Ailes. Women felt that if they came forward - either publicly or even privately inside the company - that they would be blacklisted and smeared.”³²

Briganti was present during some of the department’s more dubious actions, such as the time the department reportedly gave false information to a reporter in order to discredit him, or the time it reportedly circulated an unflattering photo of an employee who had stepped out of line.³³ She is also named as a defendant in Tantaros’ Complaint and is described as “in charge of Fox News’s media relations, to turn Fox News’ widely-reported, vindictive media relations department against Tantaros.”

Allegations against her include her failing to provide media support for Tantaros, denying requests by prominent and credible media to interview Tantaros, setting up an interview with Tantaros’ in which she was objectified and asked outrageous questions about her breasts, and repeatedly crafting and placing insulting stories about Tantaros based on unfounded leaks from Fox News sources. Briganti’s deputy, Carly Shanahan, also allegedly emailed an offensive

²⁹ *Ujkic v. Twenty-First Century Fox, Inc. et al* (1:16-cv-09608-AJN).

³⁰ *Ujkic v. Twenty-First Century Fox, Inc. et al* (1:16-cv-09608-AJN).

³¹ *Carlson v. Ailes* (2:16-cv-04138-JLL-JAD).

³² Gabriel Sherman. ‘The Rise and Fall of Fox News CEO Roger Ailes’. *NPR*, 26 July 2016. <http://www.npr.org/2016/07/26/487483534/the-rise-and-fall-of-fox-news-ceo-roger-ailes>. Accessed 29 March 2017.

³³ Erik Wemple. “Report: Powerful Fox News PR boss Irena Briganti has been muzzled’ *Washington Post*, 21 July 2016. https://www.washingtonpost.com/blogs/erik-wemple/wp/2016/07/21/report-powerful-fox-news-pr-boss-irena-briganti-has-been-muzzled/?utm_term=.3cbba5d2cf43. Accessed 29 March 2017.

interview with Tantaros in Headline and Global News with the headline, “Sean Hannity Has Nice Things to Say about Andrea Tantaros, but Not Everybody Does,” to all Fox News Senior Management in 2015, an action that the Complaint claims was “highly unusual” and “plainly designed to demean Tantaros.” While Tantaros claims she complained to Briganti and other executives, no action was allegedly taken about the “negative media and social media assault.”³⁴

The full extent of the sexual harassment epidemic is unknown

The full extent of the sexual harassment epidemic inside Fox News is not yet clear to people outside the company, for the following reasons:

- A. New York state has a 3-year statute of limitations on sexual harassment. Roger Ailes’ biographer reports that “many others (victims) who left or were forced out of the company before the investigation came away with far less - in some cases nothing at all.”³⁵
- B. The company’s forced arbitration clause shields Fox from scrutiny as has been reported by workplace and women’s rights experts.³⁶
- C. The company has not released information about its internal investigation which looked compromised from the very beginning.

There is a strong pattern of keeping information away from the public and from regulators. As part of its review, Ofcom should ensure it gets the full picture from the company, from concerned shareholders, federal authorities and from lawyers representing the victims.

At an event at the US Capitol on 7 March 2017 with Ms. Carlson and others gagged by forced arbitration, Democrat Senator Al Franken raised concerns that Ms. Carlson and other victims of similar abuse at 21C Fox and other companies are “forced into a private justice system that is inherently biased towards corporations. Corporations can write the rules. Everything can be done in secret, without public ruling.”³⁷

³⁴ *Tantaros Andrea vs. Fox News network, LLC (157054/2016)*.

³⁵ Gabriel Sherman. ‘The Rise and Fall of Fox News CEO Roger Ailes’. *NPR*, 26 July 2016. <http://www.npr.org/2016/07/26/487483534/the-rise-and-fall-of-fox-news-ceo-roger-ailes>. Accessed 29 March 2017.

³⁶ Martin, Emily. “Keeping Sexual Assault Under Wraps.” *US News*, 28 September 2016, <https://www.usnews.com/opinion/articles/2016-09-28/fox-news-forced-arbitration-keeps-sexual-harassment-under-wraps>. Accessed 8 March 2017.

³⁷ “Sen Franken, Top Dems Push Legislation to Crack-Down on Unfair Forced Arbitration Clauses.” YouTube, 1:53, <https://www.youtube.com/watch?v=NhjRYuXX7hQ>. Accessed 8 March 2017.

During years of this all-pervasive culture of abuse and harassment, victims clearly had nowhere to turn to except the courts -- where the company's powerful lawyers then forced their cases back into arbitration. Even seemingly powerful, famous, high-profile women like Gretchen Carlson, Megyn Kelly, Andrea Tantaros and others suffered in silence for years - giving the lie to 21C Fox's claim that there were mechanisms for "rapid escalation."

And the image of Murdoch companies run by Murdoch's acolytes and friends is further bolstered because instead of summarily dismissing Ailes' for horrific abuse, Rupert Murdoch decided to pay him \$40 million and retain him as an "adviser", as reported by Ailes biographer.

On his departure, Rupert Murdoch praised Ailes saying, "Roger Ailes has made a remarkable contribution to our company and our country. Roger shared my vision of a great and independent television organisation and executed it brilliantly over 20 years."³⁸ Rupert Murdoch significantly increased his involvement by taking over as acting CEO after Ailes' departure.

Roger Ailes' biographer argues that Ailes' entire management team enabled harassment and abuse, but Rupert Murdoch "rejected calls to conduct a wholesale housecleaning, promoting a few of Ailes' loyalists."³⁹ Rupert Murdoch seemed to fully trust Ailes without holding him to account, approving his budget without question year after year.

Murdoch has a track record of backing senior employees despite illegal or unacceptable activities. For example, of phone hacking in the UK, Murdoch said, "I do not accept ultimate responsibility. I hold responsible the people that I trusted to run it and the people they trusted."

In a secret recording of Rupert Murdoch privately addressing Sun journalists in London in March 2013, he was heard to hint that he would rehire any journalist found guilty of crimes, saying: "What you're asking is, what happens if some of you are proven guilty? What afterwards? I'm not allowed to promise you – I will promise you continued health support – but your jobs – I've

³⁸ Beard, Lanford. "Fox News Boss Roger Ailes Quits Network amid Gretchen Carlson Sexual Harassment Lawsuit." *People*, 21 July 2016, <http://people.com/tv/roger-ailles-leaves-fox-news-amid-gretchen-carlson-sexual-harassment-claims/>. Accessed 8 March 2017.

³⁹ Sherman, Gabriel. "The Revenge of Roger's Angels." *NYMag*, 2 September 2016, <http://nymag.com/daily/intelligencer/2016/09/how-fox-news-women-took-down-roger-ailles.html>. Accessed 8 March 2017.

got to be careful what comes out – but frankly, I won't say it, but just trust me.”⁴⁰

Subsequent events bore out this hint. News Corp re-hired Nick Parker after his conviction for handling an MP's stolen phone, and in apparent contradiction of The Sun's apology to the court on that matter. And then re-hired Rebekah Brooks as News UK CEO, even after major doubts about her character and fitness to run a company were raised in court.

Hush money payments

The concerns about corporate governance go beyond the harassment itself to encompass the way the company responded. Roger Ailes biographer has stated that two sources at Fox have told him that Fox News has secretly settled sexual harassment claims with at least another 4 women after Roger Ailes left, during the time that Rupert Murdoch has been acting CEO.⁴¹

Fox disclosed last year that it had spent about \$35 million to settle claims and 36 “potential litigations” surrounding Ailes.⁴² However, the company is accused of failing to disclose previous payments in accordance with Securities and Exchange Commission requirements.

Two specific corporate governance arise from these decisions around payments:

- A. Did senior management and Board members know about these payments and if not, why not?
- B. If senior management and Board members knew about these payments, were they ignoring an ongoing culture of abuse? Although the amounts paid were small (eg. a payment for \$3.15 million paid to a victim named Laurie Luhn is being investigated) relative to the over billion dollar annual revenue being generated by Fox News; the ongoing series of payments, rather than the size of the payments reveal a larger management problem that should be of interest to senior management, and indeed to investors.

⁴⁰ Davies, Andy. “Revealed: the Rupert Murdoch tape.” *Channel 4 News*, 3 July 2013, <https://www.channel4.com/news/murdoch-rupert-tape-police-the-sun-journalists>. “Rupert Murdoch tape: read extracts from the transcript.” *The Guardian*, 4 July 2013, <https://www.theguardian.com/media/2013/jul/04/rupert-murdoch-tape-extracts-transcript>. Both accessed 8 March 2017.

⁴¹ Sherman, Gabriel, Twitter, 10 January 2017, <https://twitter.com/gabrielsherman/status/818883065577701377>. Accessed 8 March 2017.

⁴² Stephen Battaglio. ‘Federal probe of Fox News sex harassment payoffs heading to a grand jury’ *The LA Times*, 15 March 2017. <http://www.latimes.com/business/hollywood/la-fi-ct-fox-news-grand-jury-20170315-story.html>. Accessed 29 March, 2017.

In February 2017, it emerged in a court case that the US Attorney's office in Manhattan is investigating whether 21C Fox⁴³ should have disclosed to investors that it made secret settlement payments to female staffers who alleged sexual harassment. The investigation centers on whether Fox's settlement payments to women alleging harassment were so material that they should have been disclosed to investors.⁴⁴ Shareholder law firms, Goldberg Law PC⁴⁵ and Scott and Scott⁴⁶ publicly declared they are investigating Fox for breaches of fiduciary duties. Ofcom should ask these law firms for their documentation and findings as part of its analysis.

Arbitration clauses in victims' employment contracts have been designed to protect the company so victim statements don't emerge in public to spell out the colossal corporate governance failures. We urge Ofcom to specifically look at how these problems festered for so many years and emerged only in 2016, years after 2012 when 21C Fox claims that their mechanism for "rapid escalation of material issues" was in place.

Echoes of the UK

Just as the US Attorney's Office is now investigating payments that Fox made in the US, the Privileges Committee raised concerns about a the culture of paying off employees guilty of criminal offences to deter them from co-operating with the police and prosecution authorities. After Roger Ailes was fired, the management discovered that some employees at Fox had high-

⁴³ Folkenflik, David, Fountain, Nick. "Federal Inquiry Said to Focus on Whether Fox News broke law in harassment payouts." *NPR*, 16 February 2017, <http://www.npr.org/sections/thetwo-way/2017/02/16/515509093/lawyer-alleges-fox-news-is-under-federal-investigation-related-to-sexual-harassment>. Accessed 5 March 2017.

⁴⁴ Berthelsen, Christian, Dolmetsch, Chris, Sakoui, Anoushka. "U.S. Probing 'Sexual Harassment Issues' at Fox, Lawyer Says." *Bloomberg*, 15 February 2017 <https://www.bloomberg.com/news/articles/2017-02-15/u-s-probing-sexual-harassment-issues-at-fox-lawyer-says>. Accessed 6 March 2017.

⁴⁵ Reporter. 'INVESTOR ALERT: Goldberg Law PC Announces an Investigation of Twenty-First Century Fox, Inc. and Advises Investors to Contact the Firm'. *Business Wire*, 2 September 2016. <http://www.businesswire.com/news/home/20160902005716/en/INVESTOR-ALERT-Goldberg-Law-PC-Announces-Investigation>. Accessed 29 March 2017.

⁴⁶ Reporter, 'Scott+Scott, Attorneys at Law, LLP Announces Investigation of Twenty-First Century Fox, Inc. (FOX)'. *Business Wire*, 7 September 2016. <http://www.businesswire.com/news/home/20160907006228/en/ScottScott-Attorneys-Law-LLP-Announces-Investigation-Twenty-First>. Accessed 29 March 2017.

paying jobs with very little responsibility or influence. This could be a way Roger Ailes kept these employees from blowing the whistle on the culture inside the organisation.⁴⁷

In the US, some of the alleged hush money payments were authorised by Mark Kranz, who was the CFO at Fox News between 2004 - 2016. He has now been offered immunity from prosecution in exchange for his co-operation into the investigation into other hush money payments.⁴⁸ In the UK, News International Chief Executive Les Hinton authorised similar payments. In both cases, senior staff were authorising payments that should have been of material interest to management concerns around corporate governance - but the payments seem to have gone unquestioned by the board.

Similarly, the failure to investigate and address serious allegations of sexual harassment at Fox in the US resembles the way that News Corporation addressed phone hacking in the UK.

For many years after phone hacking allegations were first reported and the police started investigating in 2006, News Corporation executives claimed that phone hacking was done by one rogue reporter. The outsized settlement payments News Corporation was forced to make to Gordon Taylor and Max Clifford to buy their silence showed that they realised that the issue was far wider than one reporter and they needed to prevent these cases coming to court. Yet they continued to insist in public on their one bad apple line. Holding this line included obstructing access to evidence by law enforcement and deleting millions of emails from company servers after litigation had started. Assistant Commissioner of police, Peter Clarke told MPs on the Home Affairs Committee that his police search team had met “hostility and obstruction” when they went to News of the World offices with a search warrant. The Committee concluded “It is almost impossible to escape the conclusion ... that [News executives] were deliberately trying to thwart a criminal investigation”.⁴⁹

⁴⁷ Gabriel Sherman. ‘The Rise and Fall of Fox News CEO Roger Ailes’. *NPR*, July 26, 2016. <http://www.npr.org/2016/07/26/487483534/the-rise-and-fall-of-fox-news-ceo-roger-ailes>. Accessed 29 March 2017.

⁴⁸ Matthew Garrahan. ‘Ex-Fox News CFO offered immunity from prosecution’. *Financial Times*, 28 March 2017. <https://www.ft.com/content/dfb45266-13c5-11e7-80f4-13e067d5072c?emailId=58da858a21b8e3000405c22c&segmentId=ce31c7f5-c2de-09db-abdc-f2fd624da608>. Accessed 29 March 2017.

⁴⁹ House of Commons Home Affairs Select Committee, “Unauthorised tapping into or hacking of mobile communications, Thirteenth Report of Session 2010-12”, <http://www.parliament.uk/documents/commons-committees/home-affairs/CRCFinalReportEmbargoed.pdf>

This is summarised by Lord Justice Leveson as follows:

“... if the explanation of James and Rupert Murdoch is correct, far from simply limiting external damage to reputation, one or more parts of the management at the News of The World was engaged in a determined cover-up to keep relevant information about potential criminal activity within the organisation from senior management within News International. If News Corporation management, and in particular Rupert Murdoch, were aware of the allegations, it is obvious that action should have been taken to investigate them. If News Corporation were not aware of the allegations which, as Rupert Murdoch has said, have cost the corporation many hundreds of millions of pounds, then there would appear to have been a significant failure in corporate governance and in particular in the effective identification and management of risks affecting NI and, thus, the corporation.”⁵⁰

In both the US and the UK, News Corporation and 21C Fox have borne down heavily upon anyone who held information that could be damaging to the companies. Instead of bolstering their corporate governance, they often went after employees and outsiders either with bullying tactics, hush money, or as in the case in the US, forced arbitration, denying many victims of sexual harassment their day in court.

Matt Driscoll, a News of The World reporter who won a bullying case against the paper, but faced retaliation that led to mental health difficulties, concluded “I came to believe, along with other journalists, that the newspaper group were confident that they were indeed untouchable, because they were sure they had government and police fighting their corner. Thus they felt they were almost beyond the reach of the law. These powerful contacts were the reason why some on the News of the World felt they could leave their morals and their respect of ethics at the door when they clocked in each morning”.⁵¹

⁵⁰ The Leveson Inquiry, “AN INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS”, November 2012, pp. 348-349, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270939/0780_i.pdf. Accessed 8 March 2017.

⁵¹ Matt Driscoll, Written Statement to Leveson Inquiry, 12 December, 2011, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Matthew-Driscoll.pdf>.

A tale of two scandals - similarities between the UK and US record

First signs of trouble	
Phone Hacking at News International, UK	Sexual harassment at Fox News, USA
Two News of the World (NoTW) journalists convicted for phone hacking. Editor Andy Coulson resigned.	Anchor Gretchen Carlson sues Fox News CEO Roger Ailes for sexual harassment. Roger Ailes resigns with \$40 million.
Cover-up and hush money	
News Group Newspapers, reportedly pays more than £1 million to stop revelations of its journalists' involvement in phone hacking.	Fox News settles claims worth almost \$35 million to victims of sexual harassment, in private and via forced arbitration.
Harbottle and Lewis, News International's lawyers, review internal emails but declare NoTW editor knew nothing about the hacking.	Law firm Paul, Weiss brought in to conduct an internal inquiry but findings never made public and remit too narrow.
Floodgates open	
News International insists on "one rogue reporter" defence after early phone hacking arrests.	Fox News gets rid of Roger Ailes' after "golden parachute" payment but no further action against other alleged abettors.
A tide of news reports about widespread hacking at News International papers.	More than 25 women came forward with revelations of harassment after Carlson.
Rupert Murdoch issues ads apologising for "serious wrongdoing."	Fox News issues apology to Gretchen Carlson.
NoTW and Sun reporters arrested and convicted.	Fox News settles several lawsuits seeking redress for harassment and retaliation.
Justice denied, authorities step in	
Internal investigations implicate noone	Internal investigation not made public.
A Select Committee of MPs finds News International guilty of covering up criminal activity, buying silence with payoff, and withholding evidence from Parliament. Judge-led public inquiry established.	US Attorney's office steps in to investigate forced arbitration settlements.

The Defence

In the court documents that Avaaz has reviewed, Fox News and additional defendants deny the allegations levied against them by plaintiffs. Despite the fact that substantial patterns arise amongst the allegations this brief has uncovered, the documents repeatedly refer to a number of the women in question as liars determined to gain publicity and sell merchandise at the expense of the defendants.

Ms. Tantaros is accused of running a “shameless publicity campaign” in “a desperate attempt to sell books and speeches and otherwise raise money.” Her allegations are described as “absurd,” the suggestion that the Paul, Weiss internal investigation was bugged based on “baseless paranoia,” and her Complaint is said to be “full of lies and half truths.” Fox News denies the fact that she ever complained about Mr Ailes sexually harassing her, or that she had been retaliated against, and notes that she expressed gratitude to him in her book - as if that could disprove her allegations. They argue that she engaged in “shameful” behaviour and explain that if defendants ever did comment on her looks, it was most likely because: “Ms. Tantaros plastered pictures of herself in a bikini all over the internet (actually nearly nude), and many people at Fox News were shocked and perplexed by this; there was certainly talk.”⁵²

A similar defence was deployed in other cases. Ms. Carlson is described as pedalling a “false narrative designed to advance her ongoing publicity campaign,”⁵³ while Ms. Ujkic’s allegations are described as “prejudicial, irrelevant, and time-barred.”⁵⁴ Fox News denied that it retaliated against Ms. Correa-Lapolla or her colleague, noting that an investigation had been done into their conduct which found them to be “bullies,” and that all subsequent actions, including termination, were “based on legitimate, non-discriminatory and non-retaliatory business reasons.”⁵⁵

A significant part of Fox’s defence focuses on compelling the courts to move the issue of alleged sexual harassment towards arbitration. In Ms. Tantaros’ case, the defence argues that “this case clearly belongs in arbitration.” The defence adds: “Ms. Tantaros has sued her employer and several current and former officers and employees based on events she alleges

⁵² *Tantaros Andrea vs. Fox News network, LLC* (157054/2016).

⁵³ *Carlson v. Ailes* (2:16-cv-04138-JLL-JAD).

⁵⁴ *Ujkic v. Twenty-First Century Fox, Inc. et al* (1:16-cv-09608-AJN).

⁵⁵ *Hilda G vs Fox News Network LLC* (160441/2016).

occurred in the workplace, and she previously signed an Employment Agreement requiring arbitration of all such disputes.” It adds that such provisions “cover sexual harassment and retaliation claims.”⁵⁶ This argument is echoed in Ms. Carlson’s claims when the defence claims that her application “is yet another misguided ploy to avoid her contractual obligation to arbitrate her employment-related claims against Defendant Roger Ailes.”⁵⁷ Ms. Carlson of course eventually settled her case for \$20 million and a rare and public apology from Fox News.⁵⁸

Conclusion and recommendations

As part of its bid to take over all of Sky, 21C Fox is determined to position itself as different and better than News Corporation was when the previous bid failed in 2011. That bid failed because of a series of revelations about phone hacking and other illegality, revelations which News Corporation attempted to cover up for several years. But there are some clear and disturbing patterns of corporate misgovernance that have emerged in both the phone hacking and sexual harassment scandals:

- The company first presented a picture that portrayed the problem as limited to just a few bad apples
- “Hush money” payments were a common way to silence employees who knew too much and victims who could threaten to go to court
- Investigations, litigation and media reports made those denials of restricted wrongdoing untenable, revealing the full scale of the disaster in both cases
- Public authorities stepped in to investigate further, ie. the Leveson enquiry and the US Attorney’s Office
- Senior management and the Murdoch family claim never to know what is going on. The House of Commons Culture, Media and Sports Committee, in the case of News International, declared this “inconceivable.”⁵⁹
- But the Murdoch-run businesses are not chastened. The wrongdoing continues - yet another Sun journalist was arrested last year and both in the US and UK, the companies are facing lawsuits worth millions.

⁵⁶ *Tantaros Andrea vs. Fox News network, LLC* (157054/2016).

⁵⁷ *Carlson v. Ailes* (2:16-cv-04138-JLL-JAD).

⁵⁸ Sarah Ellison. ‘Fox Settles With Gretchen Carlson for \$20 Million - And Offers an Unprecedented Apology’. *Vanity Fair*, 6 September 2016. <http://www.vanityfair.com/news/2016/09/fox-news-settles-with-gretchen-carlson-for-20-million>. Accessed 29 March 2017.

⁵⁹ Indu Chandrasekhar, Murray Wardrop and Andy Trotman. ‘Phone Hacking: Timeline of the Scandal’. *The Daily Telegraph*, 23 July 2012. <http://www.telegraph.co.uk/news/uknews/phone-hacking/8634176/Phone-hacking-timeline-of-a-scandal.html>. Accessed 29 March 2017.

Ofcom has confirmed that as part of its broadcasting standards public interest test it “would be entitled, if we considered it relevant to do so, to consider the track record of that person in establishing and maintaining appropriate governance and compliance arrangements in relation to the legal and regulatory regimes to which they are subject, including respect for rights of privacy or compliance with the criminal law in relation to journalistic conduct”.⁶⁰

21C Fox’s representatives have told the Secretary of State that the company has adopted “strong governance measures and controls to ensure it meets the highest standards of corporate conduct,” including the establishment of a new global compliance steering committee in 2012. But the evidence submitted here argues otherwise, and Ofcom will need to obtain documentation from the company, and from plaintiffs about these cases to satisfy itself about 21C Fox’s compliance record and culture.

Multiple plaintiffs allege that their complaints of sexual harassment were not only ignored, but also actively retaliated against. As subsidiaries of 21C Fox, these complaints should have been rapidly escalated to the Independent directors of the Audit Committee and the full Board via the steering committee in place since 2012. As part of its investigation, Ofcom should investigate whether there is a record of this escalation, how this compliance mechanism works in practice, and whether plaintiffs’ employment and civil rights have been respected. In short, whether 21C Fox’s representations are accurate and whether the company’s claims to meet the “highest standards of corporate conduct” are true. We believe the testimonies cited in this briefing to be representative of the 25 or so testimonies from Fox staff who spoke to Paul, Weiss and some who have spoken to the media.

This should include, but not be limited to, contacting representatives of the plaintiffs, shareholders, contacting the US Attorney’s Office and other relevant US law enforcement offices, plus requesting the following documents from 21C Fox besides others that Ofcom sees fit:

1. Details of issues that were rapidly escalated from individual businesses to the “Independent directors of the Audit Committee and the full Board” since 2012 as claimed by Allen and Overy in their 20 December briefing note to DCMS.

⁶⁰ Letter from Mark Sweeney, Director Government and Parliament, Ofcom, to Hausfeld, 14 March 2017.

2. Minutes of meetings that discussed corporate governance failures in relation to the conduct of CEO Roger Ailes and others accused of sexual harassment.
3. Details of any internal inquiry after revelations in 2014 of Fox News CEO Roger Ailes' assault on Randi Harrison, including evidence from internal emails etc. that he was questioned or actions initiated.
4. Terms of reference and findings of the internal investigation into sexual harassment by law firm Paul, Weiss, as well as ascertaining whether there is any evidence that defendant Roger Ailes interfered with the investigation.
5. Reasons for the Paul, Weiss investigation being moved outside Fox News offices.
6. Fox News submissions as part of its cooperation with the US Attorney's Office.
7. The Relevant human resources documents setting out 21C Fox's approach to forced arbitration of sexual harassment and other abuse claims by its employees.
8. Documents chronicling any "hush money payments" paid out to women who made discrimination claims against the company. This should include any payments settled in private.

Ofcom should also request the following documents from shareholder firms Scott & Scott and Goldberg Law PLC:

1. Progress and findings of investigation (if complete) by shareholder firms into breach of fiduciary duties by Fox's directors and officers.