

Jonathan Stephens Statement

1. I am Jonathan Stephens. I was appointed Permanent Secretary of the Department for Culture, Media and Sport (DCMS) in October 2006 (the appointments panel which recommended my appointment was chaired by Sir David Bell, then a Civil Service Commissioner, now an Assessor to the Inquiry). Previously I was Managing Director, Public Services, HM Treasury and I have served in HM Treasury, the Cabinet Office and the Northern Ireland Office since joining the Civil Service in April 1983. Particularly since being promoted to the Senior Civil Service in 1992, my roles have required frequent involvement with senior Ministers, Special Advisers and senior officials.

My Role

2. To help the Inquiry, I first set out the role and accountabilities of a Permanent Secretary in charge of a department.
3. As such a Permanent Secretary I have three main roles:
 - I am the principal adviser to the Secretary of State across the range of his functions, including on all decisions, matters of policy or questions of conduct.
 - I am responsible for the management of the Department, its staff and resources in support of Ministers and their objectives, including the management of all civil servants in the Department (but not Special Advisers).
 - As Accounting Officer, I am personally responsible to Parliament (through the Public Accounts Committee) for assuring Parliament about the sound management of public funds.
4. I am accountable as follows:
 - To the Secretary of State for the effective discharge by the Department of all its functions in support of the Government and its objectives;
 - To the Head of the Civil Service for my personal performance and the management and oversight of the Department and the civil servants employed (but not Special Advisers).
 - To Parliament for the proper, effective and efficient use of public money.
5. These respective roles and relationships are governed by the following codes:
 - The Ministerial Code¹ which sets out, for example, that Ministers are personally responsible for their actions and conduct.
 - The Code of Conduct for Special Advisers², which sets out the role and conduct expected of Special Advisers.
 - The Civil Service Code³, which sets out the requirements of the core values of the Civil Service: integrity, honesty, objectivity and impartiality.
6. Paragraphs 4 and 5 of the Code of Conduct for Special Advisers, set out the key principles concerning the role of Special Advisers and I set them out in full below:

"4. Special advisers are temporary civil servants appointed under Article 3 of the Civil Service Order in Council 1995. They are exempt from the general requirement that civil servants should be appointed on merit and behave with impartiality and objectivity so that they may retain the confidence of future governments of a different political complexion. They are otherwise required to conduct themselves in accordance with the

¹ <http://www.cabinetoffice.gov.uk/content/ministerial-conduct-and-guidance>

² <http://www.cabinetoffice.gov.uk/resource-library/special-advisers-guidance>

³ <http://www.civilservice.gov.uk/about/values>

Civil Service Code. As set out in the Ministerial Code, all appointments of special advisers require the prior written approval of the Prime Minister, and no commitments to make such appointments should be entered into in the absence of such approval. Their appointment ends at the end of the Administration which appointed them or when the appointing Minister leaves the Government or moves to another appointment. The responsibility for the management and conduct of special advisers, including discipline, rests with the Minister who made the appointment. It is, of course, also open to the Prime Minister to terminate employment by withdrawing his consent to an individual appointment.

5. Special advisers should conduct themselves with integrity and honesty. They should not deceive or knowingly mislead Parliament or the public. They should not misuse their official position or information acquired in the course of their official duties to further their private interests or the private interests of others. They should not receive benefits of any kind which others might reasonably see as compromising their personal judgement or integrity. They are required to declare details of gifts and hospitality received in accordance with the rules set out in their departmental staff handbooks. Departments will publish on a quarterly basis, information about gifts and hospitality received by their departmental special advisers. Special advisers should not, without authority, disclose official information which has been communicated in confidence in Government or received in confidence from others. The principles of public life set down by the Committee on Standards in Public Life, at Annex B, provide a framework for all public servants."

7. These Codes are drawn to the attention of Ministers on appointment by the Cabinet Secretary. I write to Special Advisers on their appointment to draw their attention to the Code of Conduct for Special Advisers – I wrote to Adam Smith on 14th May 2010 (this letter is attached). I also brief both Ministers and Special Advisers on the importance of abiding by these Codes and my availability to provide advice in any uncertainty. It is also my practice to explain to Special Advisers that, in all external dealings, they will be seen as representing their Department and Minister.

Ways of Working

8. I hope it will also be helpful context to set out the general ways of working in the Department on an issue such as the bid by News Corporation to increase its holdings in BSkyB.
9. Although I am the Secretary of State's principal adviser, with ultimate responsibility for all the advice provided by the Department, I discharge that responsibility by ensuring that processes are in place for officials on my behalf to provide appropriate advice. In particular, on key issues I ensure that a lead policy official is identified and supported by an appropriate team, including specialist expertise where needed. It is then the role of the lead official to oversee and take responsibility for the advice provided to the Secretary of State.
10. I become personally involved when:
 - Officials consult me for some reason to ensure I am content with the advice they are offering: I would then usually ensure my views are reflected in their advice or, occasionally, offer direct advice of my own.
 - I choose to involve myself in a particular issue, usually either because it is of central concern to Ministers or the Department, or it provides a good opportunity to monitor the relationship between Ministers and the Department. I then seek not to supplant the lead policy official but to support him or her and the relevant Minister.
 - Ministers ask for my personal advice, or want my general involvement in a particular issue, usually reflecting its priority or sensitivity: I would always seek to give my personal

advice or attend relevant meetings if requested, or discuss the issue with the lead official and satisfy myself that I was content with the support and advice being offered.

11. DCMS is a small department so in practice I expect to see the Secretary of State, Special Advisers and key officials on most working days and they are able to, and do regularly, consult me on any issue of concern. Nevertheless, our routine work is to deal with major and complex issues – such as the London 2012 Olympics and Paralympics, for which we are lead Government Department or the Communications Act 2003 (which introduced the plurality provisions to the merger regime).
12. In addition, in order to ensure the smooth running of the Department in support of Ministers:
 - The Secretary of State and I generally meet weekly to discuss progress on key issues or any points of concern.
 - I chair an informal regular meeting, usually weekly, between Special Advisers and lead Departmental officials for the same purpose.
 - I separately review progress with key officials, either collectively or individually.
13. Through these arrangements, I ensure Ministers receive objective advice. It follows from the process I describe above that the main source of advice on any issue is not me personally but officials in the policy team responsible. I rarely need to put personal written advice to Ministers. Whether or not I am personally involved, or offer personal advice direct to Ministers, I am still, as I note above, responsible for all the advice offered by the Department.
14. Ministers working styles vary greatly. Jeremy Hunt's approach on priority issues (of which the News Corporation/BSkyB bid was one) is to receive written advice and then to want to discuss the advice, issues and options in more detail directly with the policy officials and, if appropriate, legal advisers concerned, and often agree actions or take decisions in this meeting. A Special Adviser almost always participates in such a discussion to assist in understanding or testing the advice, and in particular to contribute to advice on handling with stakeholders, Parliament or the media. Decisions and actions are recorded by a Private Secretary. Jeremy Hunt's preference is usually to set an ambitious pace, and to focus on achieving practical actions.
15. Relationships between Special Advisers and their Departments also vary greatly. It is a significant advantage to have a Special Adviser who understands the issues, has an effective relationship with the Minister, understands and abides by his proper role and works well with the Department. In my judgement at the time, Adam Smith met those requirements well.

Handling of the bid

16. I turn now to the Department's specific handling of the proposed bid by News Corporation for BSKyB, and my involvement. Much of the advice and communications applied equally to the Secretary of State, Special Advisers and other officials involved which is why I deal with them all together. In doing so I will address the points raised by the Inquiry at paragraph 2(a) to (e) of its letter of 17th May 2012. Insofar as I refer to documents in this Statement these have, with very limited exceptions, been disclosed to the Inquiry with the Statement of Jeremy Hunt. In accordance with the Inquiry's wishes I have not disclosed them again save where it seems to me to be necessary to do so for ease of understanding of my Statement.

i) **Prior to 21st December 2010:**

17. The Department's only involvement in advice to the Secretary of State before responsibility was transferred from the Department for Business, Innovation and Skills (BIS) was in a submission to the Secretary of State on 12th November 2010, copied to Adam Smith and relevant officials. This responded to a request from the Secretary of State for advice on what, if any, role he had in considering the bid. The recommendation explained that responsibility rested solely with the Secretary of State for Business, Innovation and Skills and summarised the advice as follows:

"There is no role in the process for the DCMS so we would recommend that you do not have any external discussions on the B Sky B media merger nor write to SofS BIS about it. If you want to contribute, you could write a letter stating facts backed up with evidence, provided it recognises the final decision is for the Business Secretary of State acting alone. However this carries risks to the robustness of the decision."

18. I saw that advice, and, as set out in exchanges recorded by my Private Office, asked some questions about it which were answered by further advice. I was content with the advice that was put up to the Secretary of State and content for the Secretary of State to know that I had been consulted. These exchanges are attached to my statement.

ii) **Transfer of responsibility:**

19. The next involvement that I had was on 21 December, the day responsibility was transferred from the Department for Business Innovation and Skills to the Department for Culture, Media and Sport, when I was at home on the first day of my Christmas leave. I was rung by Jeremy Heywood, then Permanent Secretary at No 10. He explained the background and that the Prime Minister was minded to transfer responsibility. He asked for an immediate view as to whether Jeremy Hunt had made any public comment on the proposed merger which might appear to be pre-judging it. I was aware only of the Secretary of State's public comments on 15th June, the day the bid was announced. I spoke to the Secretary of State to check whether he was aware of any other comments: he was not. My office also checked with Special Advisers. At this stage, until I told Jeremy Hunt, he was unaware that responsibility might be transferred. I passed those public comments back to Jeremy Heywood, who was consulting lawyers and the Cabinet Secretary. An official announcement transferring responsibility was made by No 10 shortly thereafter.

20. In a subsequent conversation with the Secretary of State (I think later that day but it might have been the following day), we discussed and agreed on the importance of handling the merger in a way that was fair and robust to legal challenge. I said that he would need to be careful in his dealings with News Corporation and that this would require a more formal relationship with them while he was considering the merger.

iii) **Establishing the process to consider the bid:**

21. Given the circumstances surrounding the transfer of responsibility, I was particularly conscious of the need to establish robust processes to support the Secretary of State's new responsibilities. I also had to oversee the immediate transfer of some 70 or so staff from BIS to DCMS, with their responsibilities and budgets. I identified Jon Zeff, then Director, Media, as the lead policy official and he ensured that the relevant BIS officials and lawyers were present at a meeting the next day (the 22nd December) with the Secretary of State. I also

attended that meeting, along with Jon Zeff, a DCMS lawyer, and Adam Smith. A note of this meeting is attached to this statement for ease of reference.

22. At that meeting BIS officials briefed the Secretary of State on his functions and responsibilities, the decision already taken and the next steps. In particular they reinforced the advice in the Department's submission to the Secretary of State of 12th November that this was a quasi-judicial process and set out what that required. In the next internal meeting with the Secretary of State, Special Advisers and officials, on 5th January 2011, preceded by advice from DCMS officials of 4th January 2011 (attached), the same requirements were reinforced.
23. Taken together, the written advice offered on 12th November and on 4th January 2011, and the oral advice offered in the meetings on 22nd December and 5th January, including by legal advisers, established in my view clear requirements for how the process needed to be conducted, namely that this was a quasi-judicial process, in which decisions were now for the Secretary of State alone to take, on the basis of objective assessment of the evidence available to him, taking account of all the relevant considerations and ignoring any which were irrelevant. He needed to take an even-handed approach, giving all sides an appropriate opportunity to make representations, ensuring that the process was without bias or the appearance of bias.
24. In these and subsequent meetings the Secretary of State accepted and reinforced the need to have a process that was seen to be fair and robust to legal challenge. I strongly approved of these requirements, which were in my judgement clear to all participating in these meetings including the Secretary of State, Special Advisers, departmental officials and lawyers.
25. By the meeting of 5th January, the key elements of the process to support the Secretary of State's decision-taking were also in place:
 - a. A lead policy official, supported by a small team of less than five policy officials;
 - b. Full involvement within this team and in meetings with the Secretary of State of departmental lawyers, plus the early engagement of external counsel, expert in media and competition law, who attended most meetings with the Secretary of State.
 - c. The involvement of his Special Adviser, Adam Smith, who supported the Secretary of State in understanding and working through the advice and process.
 - d. Advice from external and independent regulators, particularly OFCOM, which the Secretary of State determined he would be careful to seek before any substantive decision, even when not legally required, and which he wished to give full and appropriate weight to.
 - e. Regular meetings with the Secretary of State of the key policy officials, lawyers and Special Advisers, joined when appropriate by representatives of the independent regulators.
 - f. The Secretary of State received written advice in advance of these meetings, and further oral advice including from counsel in the meetings and then agreed action points to be followed up.
 - g. Specific action points routinely fell to policy officials, lawyers, the Secretary of State's Private Office and, on occasion, to Adam Smith.
26. I am not aware of any guidance which suggests that it is inappropriate for Special Advisers to be involved in decisions of this sort. In my experience, Ministers expect their Special Advisers to be involved in all key decisions, particularly those with significant Parliamentary, press or public interest. However, when involved in a quasi-judicial decision, Special

Advisers are subject to exactly the same requirements as apply to Ministers and departmental officials.

27. Against the background of his general working style and focus on ambitious pace and action, I particularly noted that, on this issue, the Secretary of State adapted this style and was quickly concerned to ensure that the process was conducted, and seen to be conducted, fairly and carefully and the proper procedures followed, regardless of the outcome. He was anxious to ensure that expert legal advice was available to him, and followed at all key stages. He also took the initiative to involve both OFCOM and OFT, as independent regulators, even when there was no statutory requirement to do so. While wanting the process to proceed expeditiously, he did not set arbitrary deadlines and stressed the independent regulators should take the time they needed.
 28. I attended many of the early internal meetings with the Secretary of State to satisfy myself that the process was effective, met the Secretary of State's and my requirements, and was being conducted properly (for example, I attended briefing meetings on 22nd December 2010 and 24th January 2011, a meeting with OFCOM and the OFT on 2nd March 2011 and a further internal meeting that day to consider next steps). I judged that it was a sound and robust process in which everyone involved clearly understood the key requirements.
- iv) **Contacts with News Corporation.**
29. The Secretary of State's approach to News Corporation was influenced by the circumstances in which he assumed responsibility for the bid. He considered that these required him to take particular care to remove any perception of unfairness to News Corporation and to ensure overall a fair and objective process, which was robust to legal challenge. As a result he determined it was important to be seen to meet with News Corporation, in the first instance, and other interested parties when appropriate, to hear directly their points of view, rather than deal with them only through written representations.
 30. While the advice given to the Secretary of State emphasised the need to be seen to approach all views in an even-handed way and without bias, it did not require equal contacts with each party. For example, once the Secretary of State decided he was minded to refer the bid to the Competition Commission, his first obligation was to inform the adversely affected parties, namely News Corporation and BSkyB, in order to give them an opportunity to make representations.
 31. Another example is once News Corporation offered to make undertakings-in-lieu (UILs) and the Secretary of State decided he must consider whether the issues with plurality might be addressed as a result. It then became important to establish what were the strongest form of UILs News Corporation were prepared to offer – this necessarily involved intensive contacts between News Corporation, the Department, and the two regulators. It did not involve equal contact with opponents of the bid because, until the Secretary of State was satisfied that the offered UILs could meet the plurality concerns raised by OFCOM, he remained minded to refer the bid.
 32. Following the Secretary of State's announcement of 3rd March 2011, and again following his announcement of 30th June 2011, he consulted extensively on draft UILs, giving an opportunity for all interested parties to express their views. His concern to ensure these consultations were genuine, extensive and carried out quickly prompted his e-mail to me of 12th March 2011 (attached to my statement for ease of reference) expressing concern at lack of progress in undertaking the consultation process, particularly as regards opponents

of the bid. The Department's advice to him of 10th March 2011 (which was not seen by the Secretary of State until 14th March 2011) is also attached.

33. The need for extensive contacts with News Corporation to advance consideration of the bid was reflected in contacts by the Department and other bodies at key levels:
- i. The Secretary of State had formal meetings and correspondence to set out the process and his approach. These meetings were attended by members of the small team of policy officials and departmental lawyers involved, and by Adam Smith. A record was taken by Private Office.
 - ii. OFCOM and OFT engaged extensively with News Corporation, in order to advise the Secretary of State on the issues to be addressed and the effectiveness of the proposed remedies.
 - iii. Discussions over legal issues, for example the technical drafting and detail of proposed UILs, were conducted between a departmental legal adviser and News Corporation's legal representatives.
 - iv. In addition, some of the small team of policy officials and Adam Smith were in contact with News Corporation to ensure they understood the process and its requirements.
34. The need for these extensive contacts reflected the development of the consideration of the bid – if the Secretary of State had decided he was not minded to refer the bid, or News Corporation had not offered UILs and the bid had proceeded to the Competition Commission, such extensive contacts would not have been required. There was therefore no formal appointment of specific individuals as points of contact – rather, within the overall process, as the need for specific contacts arose, those were tasked to, or picked up by, individuals in accordance with their role in the bid. In my experience, this is normal practice in handling a significant and fast-moving issue. My understanding is that other Departments dealing with such issues equally do not make separate or specific arrangements over contacts with the interested parties.
35. Co-ordination across these contacts was achieved through the lead policy official and his team, and through the Secretary of State's regular meetings which brought together those involved, with progress as a result of such contacts being reported to these meetings.
36. The overall conduct of the bid, including what it was appropriate to discuss or consult with News Corporation, was overseen through the process the Secretary of State and I had established, particularly his regular meetings. These, with legal advisers present, regularly discussed how to deal with News Corporation and those opposing the merger in a way that was both open and fair, and was legally robust. Separate from these meetings, and the advice offered in written submissions and orally in the meetings, I was not asked for, and did not offer, separate advice on contacts with News Corporation. The safeguards that existed included:
- The clear requirements the Secretary of State and I had established at the beginning of the process, and which were repeatedly returned to throughout discussion of the bid.
 - The presence of legal advisers and independent Counsel in most, if not all, meetings and the insistence by the Secretary of State on closely following legal advice at all stages.
 - My availability as a source of advice to Ministers, Special Advisers and officials.
37. I did not myself attend any meetings with News Corporation nor did I have any communications with News Corporation, or anyone acting on their behalf, during the bid. I

did, however, attend a News Corporation reception on 16th June 2010 but, to my knowledge, did not speak to anyone from News Corporation there.

Oversight of Adam Smith

38. As the Code of Conduct for Special Advisers makes clear, the tasks to be undertaken by Special Advisers are determined by Ministers, who are responsible for their conduct. Oversight and tasking of Adam Smith therefore was for the Secretary of State. I approved of, and helped establish, the process to support the Secretary of State's decision-making, which included a role for Adam Smith which I saw as a normal and acceptable part of such a decision-making process. I also knew that Adam Smith was in contact with News Corporation, on questions of process and procedure, and was content with this. As early as August 2011, when records of meetings between the Secretary of State and News Corporation were published, it was a matter of public record that Adam Smith was involved.
39. I was not aware of anything to suggest his contacts went beyond proper matters of process and procedure. Nor did his contributions in meetings with the Secretary of State that I attended suggest any improper contact or influence. Nor did officials, including any Departmental lawyer, raise any such concerns with me. The first suggestion that the contacts went beyond what was proper was 24th April 2012 with the release of emails from Frederic Michel (and this was the first occasion I recall mention of Michel by name). The following morning I told the Secretary of State I thought the number, extent, depth and tone of contacts suggested by those e-mails went beyond what was acceptable.
40. I believe that the facts stated in this Statement are true.

[Redacted signature box]

Jonathan Stephens

Permanent Secretary

Department for Culture, Media and Sport

Date: 22 May 2012