
From: Jarnail Singh[/O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JARNAIL.A.SINGH6CEADABD-67E9-4ECA-94F2-005716658847]
Sent: Thur 08/01/2015 3:51:36 PM (UTC)
To: Jessica Madron; **GRO**
Subject: FW: BBC Inside Out Request for an Interview

FYI

From: Jarnail Singh
Sent: 08 January 2015 15:52
To: Mark R Davies; Belinda Crowe; Rodric Williams; Angela Van-Den-Bogerd; Tom Wechsler
Cc: Patrick Bourke; Mark Underwood1; Melanie Corfield; Chris Aujard; Ruth X Barker; 'Susan.BARTY'; **GRO**
Subject: RE: BBC Inside Out Request for an Interview

Mark

I had a look at this and I am concerned that POL is entering dangerous territory. This situation is not straight forward and cannot be easily simplified in a couple of lines.

Whilst Post office wish to say that there are no systemic faults, the second sight interim report which has been disclosed to the defendants and their legal representative's does mention two defects/ bugs which give rise to 76 branches being affected by incorrect balances or transactions. The fact that the bugs manifested in more than one location could be described as systemic but not system wide. Accordingly there are arguments over terminology used by second sight and it is important from criminal law perspective that POL does not misrepresent the content of the second sight report.

Not only have second sights use of terminology give raised to potential argument in relation to terms used by second sight. It also raises questions as to whether POL knew of the existence of those bugs. if so, to whom at POL Fujitsu communicated them. Those were certainly not known to me at POL legal until day or so prior to the publication of the second sight interim report. The difficulty here is made worse by the fact that Garth Jenkins, an employee of Fujitsu has been making statements for use in criminal proceedings which made no references to the very bugs which it is understood he told second sight about. People were prosecuted and pleaded guilty following the receipt of his statement which implied no bugs had been found. Of course it would be highly embarrassing for POL were it to be suggested that fujitsu had informed some part of POL and that information never reached the security team. Equally it is embarrassing were it to be suggested POL were kept in the dark by such an important supplier such as fujitsu. It follows these are very difficult topics from a criminal law perspective.

Suffice to say that POL instructed external lawyers to review prosecutions where there had been hearings since 1 January 2010. it has done this as it takes it prosecution duty of disclosure seriously and as a result of the review the disclosure of second sight report which has of course disclosed number of bugs at different locations to number of defendants and their representatives who had wish to argue that they had experience problems with horizon at their branches. POL is unaware of any application having been made for leave to appeal since these disclosures were made. Accordingly as result of the review which it commissioned, POL is confident it is not responsible for any miscarriages of justice in those cases.

Defendants have generally taken legal advice before entering plea. Whether or not defendant chooses to have legal advice at an earlier stage i.e. at point of interview under caution is of course different matter but never the less right which could have been exercised. I understand the security team when conducting an interview give the SPM the right to have a friend present and a solicitor/ legal representative when interview takes place away from a police station. If, however interview takes place when suspect is under arrest at a police station (which may be because a SPM was reluctant to cooperate with the investigation so assist of the police was sought) there is of course no right to have a friend present but have a right to independent legal advice, it is a right which a detained suspect has.

Hope this helps.

Jarnail

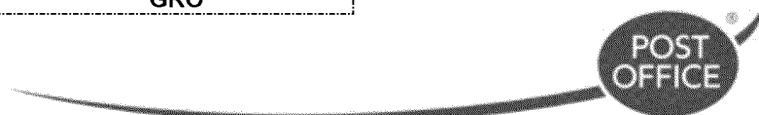
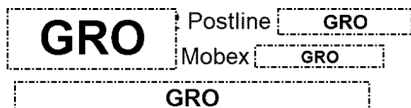
From: Mark R Davies
Sent: 08 January 2015 12:49
To: Belinda Crowe; Rodric Williams; Angela Van-Den-Bogerd; Tom Wechsler

Cc: Patrick Bourke; Mark Underwood1; Melanie Corfield; Chris Aujard; Ruth X Barker; 'Susan.BARTY@GRO'
Jarnail Singh
Subject: RE: BBC Inside Out Request for an Interview

Copying Jarnail to comment please where noted.

Mark Davies | Communications and Corporate Affairs Director

1st Floor, Banner Wing, 148 Old Street, London, EC1V 9HQ

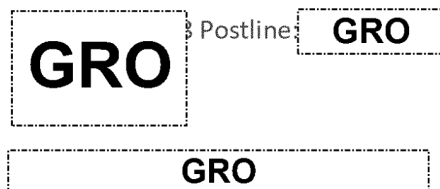


From: Belinda Crowe
Sent: 08 January 2015 10:57
To: Mark R Davies; Rodric Williams; Angela Van-Den-Bogerd; Tom Wechsler
Cc: Patrick Bourke; Mark Underwood1; Melanie Corfield; Chris Aujard; Ruth X Barker; 'Susan.BARTY@GRO'
Belinda Crowe
Subject: RE: BBC Inside Out Request for an Interview

Thoughts from me.

Best wishes
Belinda

Belinda Crowe
148 Old Street, LONDON, EC1V 9HQ



From: Mark R Davies
Sent: 08 January 2015 09:16
To: Belinda Crowe; Rodric Williams; Angela Van-Den-Bogerd; Tom Wechsler
Cc: Patrick Bourke; Mark Underwood1; Melanie Corfield; Chris Aujard; Ruth X Barker; 'Susan.BARTY@GRO'
Subject: RE: BBC Inside Out Request for an Interview

Hi

I have been thinking this through further this morning.

I think we should:

- Decline interview given confidentiality and events next week
- Offer at the same time at briefing session to deal with the complex questions they raise
- Answer the questions below (my first drafts are below)

Grateful for views.

Mark

Below is a summary of the issues that will be covered in the programme to which you may wish to respond:

1. Geoffrey Sturgess, expert in contract law will say that the Subpostmaster contract is unfair, and that the Post Office is unusually unfair in the way it enforces it - ie - holding subpostmasters are held personally liable for shortfalls in Horizon accounts, but the number of known problems with the system and complaints against it is not made clear to them when they sign the contract. The contract also allows POL to interview them under caution without legal representation.

We do not consider that the contract is unfair. It is:

- typical of contracts of agency, and broadly similar to those used in franchising arrangements throughout the UK;
- allocates risk in a way which:
 - should be expected where an agent (Subpostmaster) is entrusted to protect the assets of his/her principal (Post Office);
 - reflects the general law (e.g. the equitable duty of an agent to account to his principal); and
 - is used in the contracts which Post Office enters into with large commercial franchising partners

It is absolutely untrue to say that the contract allows interviews under caution without legal representation. This is simply incorrect. We follow PACE guidelines to the letter and any suggestion otherwise would be incorrect. We have absolute confidence in Horizon – we do not know what the “known problems” referred to are – what is known is simply that a small number of people are suggesting there are problems. No subpostmasters are forced to sign the contract. It is something they chose to do.

2. Professor Mark Button from the Centre for Counter Fraud studies will say that the Post Office has a unique 300 year history of investigating and prosecuting its staff and agents, and that these sorts of prosecutions, unlike those carried out by other public bodies like NHS Protect which use the CPS, are more likely to lead to miscarriages of justice.

We follow PACE guidelines. It is incorrect to say we have an ‘unique history’ of prosecuting. Post Office is not the only organisation which brings private prosecutions. Others include local authorities. The BBC used to do so too. Post office has seen no evidence which supports the suggestion that such prosecutions are more likely to lead to miscarriages of justice.

3. Sandip Patel QC will say "I think with what I have seen that there may be grounds for arguing that the Post Office ought to have known at the time... with due diligence... reasonable inquiry, that perhaps the system was not as reliable as they believed it to be. And so. If they'd failed to carry out that inquiry in circumstances when they should have, then it could be argued that the conviction as a result of that is unsafe."

This is the same quote from your One Show film. Our previous position stands. This statement is so caveated as to render it meaningless. It is a general statement which could apply to any set of circumstances and therefore impossible to answer.

4. Professor Charles McLachlan will say: It's absolutely clear that the makers of the system have admitted there are faults and those faults could lead to discrepancies that would make losses for post masters. There are subpostmasters who are unable to demonstrate they have not committed false accounting or fraud because

the Post Office has not released the information that could allow us to investigate this properly.

Incorrect.

5. Some subpostmasters say when they were accused of being responsible for losses and told Post Office managers/investigators Horizon was creating discrepancies, they were told by the Post Office they were the only ones having any problems, despite a number of other subpostmasters having raised concerns, and despite the Post Office having been aware of other people affected by problems such as the Calendar Square issue and others.

There is no evidence of that anyone has been told that they were the only ones having problems. The fact that we have a helpline and a range of other arrangements available to spmrs is acknowledgement of the fact that spmrs do need assistance about a range of matters. But it does not follow that there are systemic faults in the system.

6. We will run a clip of James Arbuthnot MP saying in Parliament: "The Post Office has built up the hopes of subpostmasters so the scheme has their support. It has broken its word to Members of Parliament in so many different respects that it is frankly bewildering. There are many ways to describe it, but I think the best is to say that the Post Office has been duplicitous. It has spent public money on a mediation scheme that it has set out to sabotage."

Incorrect in every way. It is very disappointing that Mr Arbuthnot feels that way.

Further questions that may form part of the programme:

1. What is the process for interviewing subpostmasters when criminality is suspected? Is it, or has it been since 2000 possible for subpostmasters to be interviewed (as stated in their contracts) under caution without legal representation? Was/is it the case (as written in the subpostmaster contract) that subpostmasters are instead only allowed 'friends' who had/have to be Post Office staff/agents or NFSP representatives and were/are not allowed to speak except by way of offering a written statement? Is it the case that this interview has been / is followed by a PACE interview at which legal representation is allowed and during which reference is made to answers given in the previous interview? We have been told of specific cases in which this happened. We have a copy of the subpostmaster contract. What is/was the Post Office policy/procedure?

[Legal please provide a line]

2. Andrew Bridgen MP in Westminster Hall referred to the case of Michael Rudkin who claims he saw live Horizon figures in a sub post office being remotely altered at a Fujitsu office in Bracknell. What is your explanation for Michael Rudkin's account of what happened there? Is it, or has it been since 2000 possible for any person or process (eg transaction reversal) to remotely alter the balance of Horizon accounts of a sub post office without the knowledge of the subpostmaster? Why was the fact that the visit took place initially denied by POL?

This is not possible.

3. James Arbuthnot MP said in Westminster: "Julian Wilson, of the Redditch constituency, was told by Post Office staff that if there was money over at the end of the day, he should put it in an envelope and put that envelope in the safe, and then use that money to pay later shortfalls. It is so obvious that that amounts to false accounting, on the instructions of the Post Office itself, that it is bewildering. He kept asking for audits but the Post Office said, "We'll audit you when we think you need an audit." And yet he gets prosecuted and decides to plead guilty." David Jones MP said "Does the hon. Gentleman not agree that a lot of subpostmasters who were subsequently prosecuted for false accounting had in effect been encouraged to engage in false accounting by Post Office support staff? In other words, was not the Post Office itself counselling and procuring an act of false accounting?" Albert Owen MP said "that the Post Office encouraged people to commit false accounting, and then it penalised them in the hardest way possible-by taking their

livelihoods and reputations from them and destroying their standing in the proud communities we represent"
Is it, or has it been since 2000 Post Office policy to instruct subpostmasters to commit false accounting? Have
helpline staff encouraged subpostmasters to commit false accounting?

This is untrue.

4. The Post Office has disputed James Arbuthnot MP's assertion that "the Post Office has been arguing in recent months at the working group stage to exclude 90% of the cases coming before the working group". What is the correct percentage in Post Office's view?

It is public record that we have declined to mediate in two cases. That is not 90% by any measure.

5. How is the mediation process progressing and when would you expect to have concluded all the cases currently put forward for mediation?

Refer you to A Hooper letter.

6. Has any compensation been paid in relation to cases being mediated (We don't need individual details as we respect the issue of confidentiality). How much compensation in total (if any) has been paid to date to subpostmasters participating in the mediation?

[Answer – assume confidential to WG] Refer to the letter from A Hooper. A number of cases have been resolved prior to mediation and the details of those mediated are confidential.

7. What avenues will be open to subpostmasters to deal with disputes related to Horizon once the mediation scheme closes?

Matter for SPMRs

8. What is the Post Office's response to James Arbuthnot's opinion that "There should be an investigation by the Criminal Cases Review Commission off its own bat, and even those who have pleaded guilty should be able to take advantage of such an investigation." Does the Post Office plan to review convictions of subpostmasters between 1999 and 2013 in the light of reports from Second Sight and other forensic accountants commissioned by subpostmasters

It is open to anyone who has been prosecuted to appeal their conviction or apply to the CCRC. Post Offices has reinvestigated all cases in the Scheme and would, where appropriate, disclose any information that comes to light in relation to any prosecution which may assist the defendant. It takes these responsibilities seriously. – Jarnail?

9. When was the last time the Post Office asked its SPMRs/staff what it thinks of Horizon and how does know that it's Postmasters are happy with it/find it a good system to use?

We constantly review.

10. Is it true Horizon is in the process of being replaced? If so, why?

We constantly update software. Matter of public record.

Mark Davies | Communications and Corporate Affairs Director

1st Floor, Banner Wing, 148 Old Street, London, EC1V 9HQ

GRO Postline **GRO**

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Mobex

GRO

GRO

POST
OFFICE

From: Belinda Crowe

Sent: 08 January 2015 05:28

To: Rodric Williams; Angela Van-Den-Bogerd; Mark R Davies; Tom Wechsler

Cc: Patrick Bourke; Mark Underwood1; Melanie Corfield; Chris Aujard; Ruth X Barker; 'Susan.BARTY@GRO'
Belinda Crowe

Subject: Re: BBC Inside Out Request for an Interview

And apologies from me. In my previous email I referred to JFSA considering mediation. I meant litigation.
Belinda

GRO

From: Rodric Williams

Sent: Wednesday, January 07, 2015 06:58 PM

To: Belinda Crowe; Angela Van-Den-Bogerd; Mark R Davies; Tom Wechsler

Cc: Patrick Bourke; Mark Underwood1; Melanie Corfield; Chris Aujard; Ruth X Barker; Susan BARTY

GRO

Subject: RE: BBC Inside Out Request for an Interview

All,

I haven't yet looked at the detail of the email, but see the BBC want to film the interview by next Friday 16 January to run on Monday 19 January.

There is a lot happening next week which could impact the future of the Scheme and our approach to the complaints, namely the Working Group face-to-face meeting on Wednesday 14th and JFSA meeting on Sunday 18th. I therefore think it important to properly consider and work through the possible outcomes of those events (e.g. that JFSA/postmasters decide to go to Court) before making public statements on these issues.

Not really a legal issue I know, but given the BBC's approach to date, the close engagement it has with JFSA, and the timing of the piece, I smell a rat....

Rod

GRO

From: Belinda Crowe

Sent: 07 January 2015 18:11

To: Angela Van-Den-Bogerd; Mark R Davies; Tom Wechsler; Rodric Williams

Cc: Patrick Bourke; Mark Underwood1; Melanie Corfield; Chris Aujard; Ruth X Barker; Belinda Crowe

Subject: RE: BBC Inside Out Request for an Interview

My only concern with this at this stage is that JFSA have now said explicitly that they are considering mediation. My view is that we should take a legal view about whether we are in danger of this being sub judice.

Best wishes

Belinda

Belinda Crowe

148 Old Street, LONDON, EC1V 9HQ

GRO

Postline: **GRO**

GRO

From: Angela Van-Den-Bogerd
Sent: 07 January 2015 15:05
To: Mark R Davies; Tom Wechsler
Cc: Belinda Crowe; Patrick Bourke; Mark Underwood1; Melanie Corfield; Chris Aujard; Ruth X Barker
Subject: Re: BBC Inside Out Request for an Interview

Mark,

Yes I can make myself available. I'm in London tomorrow so perhaps we can pick up and co-ordinate diaries.

Thanks
Angela

GRO

From: Mark R Davies
Sent: Wednesday, January 07, 2015 02:56 PM
To: Tom Wechsler
Cc: Belinda Crowe; Patrick Bourke; Mark Underwood1; Angela Van-Den-Bogerd; Melanie Corfield; Chris Aujard; Ruth X Barker
Subject: Re: BBC Inside Out Request for an Interview

I agree Tom. My view is that we offer an interview to take place back end of next week. We also offer a session to go through their questions in detail as background.

Angela, are you available next week at all? We may need you for some of this.

Mark
Mark Davies
Communications and Corporate Affairs Director
Mobile: **GRO**

Sent from my iPhone

On 7 Jan 2015, at 12:33, "Tom Wechsler" **GRO** wrote:

I was just talking to Mel about this and we broadly agree. We also wonder whether there is merit in getting Jane French in first for a "frank" discussion. You will be more expert than me on that.

On a Scheme point, Brown is awaiting mediation. Featuring his case does not help that process although the fact it has progressed to that point may help with rebuttal of certain points.

T

Tom Wechsler
GRO

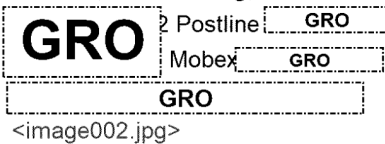
From: Mark R Davies
Sent: 07 January 2015 12:24
To: Belinda Crowe; Patrick Bourke; Mark Underwood1; Angela Van-Den-Bogerd; Tom Wechsler
Cc: Melanie Corfield; Chris Aujard; Ruth X Barker
Subject: FW: BBC Inside Out Request for an Interview

All

As expected, the One Show folk are back with questions below and the request for us to take part in a filmed interview. Mel and I will consider next steps, but I think we need to agree this and use it as a strong opportunity to put this to bed (alongside other steps). Please can you consider and feed any thoughts in to me.

Best wishes
Mark

Mark Davies | Communications and Corporate Affairs Director
<image001.png>
1st Floor, Banner Wing, 148 Old Street, London, EC1V 9HQ



From: Jane French [GRO]
Sent: 07 January 2015 11:46
To: Mark R Davies
Cc: Nick Wallis
Subject: BBC Inside Out Request for an Interview

Dear Mark,

Thank you for your input into our programming for the One Show. I am now writing to invite you to give us a filmed interview for our regional current affairs programmes Inside Out which will be reporting the subject on January 19th on BBC One. The programme will include a number of comments and allegations made by MPs in the adjournment debate of 17th December 2014, the full transcript of which is here: <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141217/halltext/141217h0001.htm>

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A number of Inside Out programmes across England will be taking cases from their patches as illustration of the issues and will be exploring some of the questions posed in Westminster.

My understanding is that you are not prepared to comment on specific cases so every case that will be covered is not listed in this letter. If however the PO does wish to comment on every case that we propose to feature then please let us know by return. By way of example in the South we would expect to feature Jo Hamilton's case among others and in the North East it is likely that we would feature the

case of Tom Brown as mentioned in the adjournment debate by Kevan Jones MP, in the East Midlands Michael Rudkin and allegations made by Andrew Bridgen MP, in the West Midlands Julian Wilson whose case was raised by a number of MPs.

We could accommodate a Post Office spokesperson for a pre-recorded interview on any day in any UK location between now and the 16th of January.

Below is a summary of the issues that will be covered in the programme to which you may wish to respond:

1. Geoffrey Sturgess, expert in contract law will say that the Subpostmaster contract is unfair, and that the Post Office is unusually unfair in the way it enforces it - ie - holding subpostmasters are held personally liable for shortfalls in Horizon accounts, but the number of known problems with the system and complaints against it is not made clear to them when they sign the contract. The contract also allows POL to interview them under caution without legal representation.
2. Professor Mark Button from the Centre for Counter Fraud studies will say that the Post Office has a unique 300 year history of investigating and prosecuting its staff and agents, and that these sorts of prosecutions, unlike those carried out by other public bodies like NHS Protect which use the CPS, are more likely to lead to miscarriages of justice.
3. Sandip Patel QC will say "I think with what I have seen that there may be grounds for arguing that the Post Office ought to have known at the time... with due diligence... reasonable inquiry, that perhaps the system was not as reliable as they believed it to be. And so. if they'd failed to carry out that inquiry in circumstances when they should have, then it could be argued that the conviction as a result of that is unsafe."
4. Professor Charles McLachlan will say: It's absolutely clear that the makers of the system have admitted there are faults and those faults could lead to discrepancies that would make losses for post masters. There are subpostmasters who are unable to demonstrate they have not committed false accounting or fraud because the Post Office has not released the information that could allow us to investigate this properly.
5. Some subpostmasters say when they were accused of being responsible for losses and told Post Office managers/investigators Horizon was creating discrepancies, they were told by the Post Office they were the only ones having any problems, despite a number of other subpostmasters having raised concerns, and despite the Post Office having been aware of other people affected by problems such as the Calendar Square issue and others.
6. We will run a clip of James Arbuthnot MP saying in Parliament: "The Post Office has built up the hopes of sub-postmasters so the scheme has their support. It has broken its word to Members of Parliament in so many different respects that it is frankly bewildering. There are many ways to describe it, but I think the best is to say that the Post Office has been duplicitous. It has spent public money on a mediation scheme that it has set out to sabotage."

Further questions that may form part of the programme:

1. What is the process for interviewing subpostmasters when criminality is suspected? Is it, or has it been since 2000 possible for subpostmasters to be interviewed (as stated in their contracts) under caution without legal representation? Was/is it the case (as written in the subpostmaster contract) that subpostmasters are instead only allowed 'friends' who had/have to be Post Office staff/agents or NFSP representatives and were/are not allowed to speak except by way of offering a written statement? Is it the case that this interview has been / is followed by a PACE interview at which legal representation is allowed and during which reference is made to answers given in the previous interview? We have been told of specific cases in which this happened. We have a copy of the subpostmaster contract. What is/was the Post Office policy/procedure?

2. Andrew Bridgen MP in Westminster Hall referred to the case of Michael Rudkin who claims he saw live Horizon figures in a sub post office being remotely altered at a Fujitsu office in Bracknell. What is your explanation for Michael Rudkin's account of what happened there? Is it, or has it been since 2000 possible for any person or process (eg transaction reversal) to remotely alter the balance of Horizon accounts of a sub post office without the knowledge of the subpostmaster? Why was the fact that the visit took place initially denied by POL?
3. James Arbuthnot MP said in Westminster: "Julian Wilson, of the Redditch constituency, was told by Post Office staff that if there was money over at the end of the day, he should put it in an envelope and put that envelope in the safe, and then use that money to pay later shortfalls. It is so obvious that that amounts to false accounting, on the instructions of the Post Office itself, that it is bewildering. He kept asking for audits but the Post Office said, "We'll audit you when we think you need an audit." And yet he gets prosecuted and decides to plead guilty." David Jones MP said "Does the hon. Gentleman not agree that a lot of sub-postmasters who were subsequently prosecuted for false accounting had in effect been encouraged to engage in false accounting by Post Office support staff? In other words, was not the Post Office itself counselling and procuring an act of false accounting?" Albert Owen MP said "that the Post Office encouraged people to commit false accounting, and then it penalised them in the hardest way possible-by taking their livelihoods and reputations from them and destroying their standing in the proud communities we represent" Is it, or has it been since 2000 Post Office policy to instruct subpostmasters to commit false accounting? Have helpline staff encouraged subpostmasters to commit false accounting?
4. The Post Office has disputed James Arbuthnot MP's assertion that "the Post Office has been arguing in recent months at the working group stage to exclude 90% of the cases coming before the working group". What is the correct percentage in Post Office's view?
5. How is the mediation process progressing and when would you expect to have concluded all the cases currently put forward for mediation?
6. Has any compensation been paid in relation to cases being mediated (We don't need individual details as we respect the issue of confidentiality). How much compensation in total (if any) has been paid to date to subpostmasters participating in the mediation?
7. What avenues will be open to subpostmasters to deal with disputes related to Horizon once the mediation scheme closes?
8. What is the Post Office's response to James Arbuthnot's opinion that "There should be an investigation by the Criminal Cases Review Commission off its own bat, and even those who have pleaded guilty should be able to take advantage of such an investigation." Does the Post Office plan to review convictions of subpostmasters between 1999 and 2013 in the light of reports from Second Sight and other forensic accountants commissioned by subpostmasters
9. When was the last time the Post Office asked its SPMRs/staff what it thinks of Horizon and how does know that it's Postmasters are happy with it/find it a good system to use?
10. Is it true Horizon is in the process of being replaced? If so, why?

We would also obviously welcome any other general or specific comments the Post Office would like to make about the parliamentary debate or other points you feel it is important for us to consider.

Regards

Jane French
Editor, Current Affairs
BBC South

GRO