

Message

From: Mark R Davies [GRO]
Sent: 15/12/2014 16:16:36
To: Jane French [GRO]
CC: Ingrid Kelly [GRO]; Clare Hoban [GRO]; Melanie Corfield [GRO]; Ruth X Barker [GRO]
Subject: Re: Right of Reply

NOT FOR PUBLICATION

Dear Jane

Further to my last email, just to reiterate: we have offered to make an interviewee available in plenty of time for you to include their interview in your piece. You have declined that offer. As we have made clear in previous correspondence, including a letter sent to your legal team a short while ago, a brief sofa interview, conducted after a film in which you make extremely serious allegations, is not an adequate right of reply.

We will shortly send you a detailed response to your email of Friday. If you proceed with the broadcast we expect this response to be broadcast in full. However, with regard to the specific points you raise below:

1. You are misleadingly conflating two entirely different interview processes. On occasion we conduct interviews under caution, with investigators. These are always carried out in accordance with the code of practice of PACE: interviews are recorded on tape and people can seek legal advice and have their legal representatives present. These interviews are in connection with suspected criminal conduct. Before these interviews, a person is always reminded of their right to have legal representation present and signs confirmation of the position.

These are not the same as meetings about a sub-postmaster's contract, which are to explore, for example, non-compliance matters such as money being potentially put at risk through failure to follow security procedures. This will usually be as part of a process to decide whether or not there has been a serious enough breach for the contract to be terminated. Another person can attend with the sub-postmaster. This can be a friend, or another sub-postmaster or assistant, or a representative of the National Federation of Sub-postmasters. They can make a statement in support and working practice is that they can speak on behalf of the sub-postmaster, if the sub-postmaster agrees to this.

The basis on which this extremely serious allegation is being made is therefore incorrect and misleading. This is why we believe you should not proceed until you have allowed us a proper right to reply.

2. Mr Patel's comments imply that the Horizon system is unreliable. As we have emphasised, this is a system used daily, without problems, by many thousands of sub-postmasters. Any suggestion that the system is unreliable is simply wrong. Even if there are some outlying cases in which the system has not worked perfectly, it is unreasonable to assume from this alone that there may be unsafe convictions.

In general terms, we are extremely concerned about the wider implication that Post Office is not following legal procedures. This is an extremely serious and potentially damaging allegation. However it is clear from your comments below – and in particular your failure to distinguish interviews under caution from general contractual discussions - that you do not understand the processes Post Office uses. This is yet another reason why the broadcast should be postponed until you are fully appraised with the facts and we have been allowed a proper right to reply; however, no broadcast should include these serious allegations.

Best wishes

Mark

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

Sent from my iPhone

On 15 Dec 2014, at 14:37, "Jane French" **GRO** wrote:

Dear Mark,

You will note that our letter of last week raised both the points I have highlighted and are not new. I should emphasise that you still have the offer of a right of reply in the studio following the MPs adjournment debate on Wednesday which is the reason the story is being covered on this day.

5) We understand from the Subpostmaster contract and from speaking to former Subpostmasters who have been through the process that Subpostmasters are not allowed a legal representative when they are interviewed under caution by Post Office investigators. Instead they are allowed one companion who must be a Post Office employee, who is not allowed to speak. Does this still happen? If so, why does the Post Office think it is fair? Also, we are aware that Post Office conducts PACE interviews at which Subpostmasters are allowed legal representation. Could you explain in what circumstances you think it appropriate to interview someone under caution but with legal representation, and why this is not available to Subpostmasters in the interviews which usually precede them?

8) We will also include opinion from Sandip Patel QC who specialises in areas including business fraud and cyber crime. He will say he believes that innocent people might have been wrongly convicted. He will also say there may be grounds for arguing that the Horizon system (incorporating the business processes around it) is not as reliable as the Post Office believed it to be. He goes on to say that if the PO had failed to carry out a proper inquiry in circumstances when they should have, then some of the convictions of some of the Postmasters in the mediation scheme might be unsafe.

Jane French
Editor, Current Affairs
BBC South
GRO

From: Mark R Davies [GRO]
Sent: 15 December 2014 14:24
To: Jane French
Cc: Nick Wallis; Ingrid Kelly; Ruth X Barker; Melanie Corfield
Subject: Re: Right of Reply

Dear Jane

I've set out at length how the timetable set out by the BBC for a response on these incredibly serious allegations is unreasonable.

We will send you our statement in due course.

We will also respond in detail to the allegations you are making, the seriousness of which are only underlined by the further segments you are sharing with me now.

Indeed our ability to respond adequately to the points being made is being further hampered by this drip feed of information, which only points to the unreasonableness of your position.

We will now pick up these additional points in our response to you.

Best wishes

Mark

Mark Davies
Communications and Corporate Affairs Director
Mobile: [GRO]

Sent from my iPhone

On 15 Dec 2014, at 14:10, "Jane French" [GRO] wrote:

Dear Mark,

I have left a message on your voicemail as I'm keen to discuss your right of reply within the film we are making for The One Show. It is currently our intention to summarise your position as follows:

"The Post Office say they are fully committed to a confidential mediation scheme they have set up with the Subpostmasters and do not wish to prejudice that process by discussing individual cases.
They say where money appears to be missing they have a duty to investigate, and there is no evidence of any systemic problem with the Horizon computer system. They note that millions of transactions are carried out every day on Horizon by upwards of 80-thousand users across the Post Office branch network without any problem."

It would be most useful if you could also send us your response to the areas laid out in our letter of last week especially if there are other areas you felt we should include so that we can consider this. The deadline for a written reply was midday today, however I am concerned that if you don't intend to take up the offer of a studio response it would

be good to get a fuller view of the Post Office point of view and with this in mind we can accommodate more information if it gets to us by the end of today. Perhaps you could let me know if you have ruled out the studio appearance?

Obviously we are still happy to include an on camera interview if it can be done today.

In particular I would be interested to understand the Post Office position on questioning subpostmasters without the right to legal representation. We have an interview with Geoffrey Sturges, a contract lawyer in which he says:

"The investigatory arm seems to have power to question under caution as if this were a full blown criminal investigation, yet the subpostmaster is not allowed to have anyone with them other than someone from the Post Office and that person is not allowed to speak".

We would also welcome your comments on the opinion of Sandip Patel QC:

"NW": Do you believe that in any of these cases there may have been unsafe convictions?

SP: Yes. 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."

Many thanks for your help in these matters.

Jane French

Editor, Current Affairs

BBC South

GRO

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