POL00150228

From: Reid, Tom [GRO]
Sent: Mon 15/12/2014 1:33:37 PM (UTC)
To: Mark R Davies [GRO]
Cc: BARTY, Susan [GRO]; Helmer, Stuart [GRO] [GRO]; Rodric Williams [GRO]
Subject: FW: Post Office interview
Attachment: Letter to the BBC dated 15.12.14(202683562_2).DOCX

Dear Mark

Susan is away from the office today so she has asked me to send this out. However we have been in close touch with her by phone and email this morning and had her input on this letter.

With regard to the implications of the BBC making these allegations, the recent change in law has made it much more challenging for a business to succeed in a defamation action. In particular, it can be difficult to show the serious financial harm that is required. This letter therefore does not refer expressly to defamation, and instead emphasises concepts from the BBC editorial guidelines such as the right to reply and a fair and appropriate deadline for a response. However, do let us know if you would like us to consider this further.

Kind regards

Tom

Tom Reid
Associate

T GRO
F
E GRO

CMS Law.Tax

CMS Cameron McKenna LLP | Mitre House, 160 Aldersgate Street | London EC1A 4DD | United Kingdom

www.cms-cmck.com
www.law-now.com

From: Mark R Davies
Sent: 15 December 2014 10:30
To: Susan.BARTY [GRO]
Cc: Rodric Williams; Melanie Corfield; Ruth X Barker; Chris Aujard
Subject: Fwd: Post Office interview

HI Susan

I'm sending you below the long email chain I have had with the BBC over the weekend. As discussed we would now like to send a legal letter citing Ofcom guidelines. I think we are in a very reasonable position.

Given the questions posed by the BBC (which are at the end of this letter) I would very much welcome your view also as to the implications of the BBC making these allegations - my own media law view is that they are stepping into dangerous territory if some of these allegations are made.

Mark

POL00150228

Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO

Sent from my iPad
Begin forwarded message:

From: Mark R Davies GRO
Date: 15 December 2014 10:27:11 GMT
To: Ingrid Kelly GRO
Cc: Nick Wallis GRO, Jane French GRO, Melanie Corfield GRO, Ruth X Barker GRO
Subject: Re: Post Office interview

Hi Ingrid

I am aware of the complexities of making a programme. I remain perplexed, however, as to why you require a further 2.5 days after today to do so and are not prepared to incorporate a Post Office interview in that time.

Our spokesperson, as I have said, is involved in Mediation Scheme work all day today and tomorrow. I am not prepared to jeopardise that work to accommodate your unreasonable schedule.

Best wishes

Mark

Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO

Sent from my iPad
On 15 Dec 2014, at 09:34, "Ingrid Kelly" GRO wrote:

Dear Mark,

I am sure you are aware that making a programme involves far more than merely filming. As I have said it is not practically possible for the team to accommodate an interview after today.

As you maintain your designated interviewee cannot possibly accommodate an interview at any point today – despite our offer to be available either before or after their normal working day (though the former is clearly now redundant) then we too are in a difficult position.

If this person is the only person within the Post Office who is appropriate for interview, then I'd be grateful if you could ask them to consider being interviewed at the end of their working day today.

Failing that, then as I've said, we will fairly reflect the post office's position within the film whether or not you are on the sofa.

POL00150228

Regards

Ingrid

From: Mark R Davies GRO
Sent: 15 December 2014 08:58
To: Ingrid Kelly
Cc: Nick Wallis; Jane French; Melanie Corfield; Ruth X Barker
Subject: Re: Post Office interview

Dear Ingrid

You have singularly failed to set out why you need two full days to prepare your film and why the interview you requested must happen today. This is not reasonable.

We stand ready to take part yet you refuse to budge from a self imposed deadline and are unable to explain why you require more than 48 hours to prepare a film, having presumably shot most of it, including several interviews designed to traduce the Post Office's position. I note from his Twitter feed that Nick was filming for 10 hours on Thursday.

While we would like to appear in your film we reserve the right to ensure that, given the range of issues you are raising, we make the most suitable person available. She is not available today due to work on the Scheme. I am therefore stuck - do I place the Scheme and the interests of applicants ahead of your request? The answer here is obvious.

We will send you a statement and a very full document setting out the answers to the questions posed by Mr Wallis. I would request that given your refusal to accommodate a full and proper Post Office interview the statement is used in full.

We did indeed suggest that we have a slot on your sofa. I didn't imagine for a moment this would mean a scenario where our points would not be reflected through interview in your film. It provides no real opportunity for the Post Office to respond to the serious and unfounded allegations you plan to make.

Best wishes

Mark
Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO

Sent from my iPhone

POL00150228

On 14 Dec 2014, at 22:38, "Ingrid Kelly" GRO wrote:

> As i have said unfortunately the team cannot accommodate a filmed interview beyond monday. Far from asking you to prioritise us over the scheme, we've said we can accommodate the interview as early or late tomorrow as necessary to suit your allotted person so as not to interfere with their working day. If neither you nor any other spokesperson can be available then, as ever, we can accept a written response. Appearing live in the studio on the sofa after the film was your suggestion which we were happy to accommodate. Should you no longer wish to do that then while it is disappointing, it is your decision. The offer remains open.
>
> Regards
>
> Ingrid
> On 14 Dec 2014, at 21:19, "Mark R Davies"
> GRO wrote:
>
> > Hi Ingrid
> >
> > Thanks for this. I am struggling to understand why it "needs" to be on Monday, particularly as, for the reasons set out in my earlier emails, we are unable to provide a suitable spokesperson on Monday due to competing business priorities related to the Scheme and applicants. It would be ironic indeed if we were to relegate these responsibilities.
> >
> > As I've also said, and as Nick has acknowledged, your sofa slot will not provide a suitable forum for the Post Office to respond to the very serious and unfounded allegations you plan to make in what will now inevitably be a film which does not present a full and rounded picture. It would be extremely unfair to suggest as you do now that a minute or two in the studio will provide suitable opportunity for the Post Office's position to be fairly reflected.
> >
> > Given the circumstances therefore we could not appear in the studio.
> >
> > I ask you again to please reconsider your refusal to accept a Post Office spokesperson for your film on a more reasonable deadline.
> >
> > Many thanks
> >
> > Mark
> > Mark Davies
> > Communications and Corporate Affairs Director
> > Mobile: GRO
> >
> > Sent from my iPhone

POL00150228

On 14 Dec 2014, at 17:53, "Ingrid Kelly" GRO wrote:

Dear Mark,

As I've said if you or a colleague wish to be interviewed for the film then it needs to be on Monday. You may feel late Tuesday is reasonable but as i've made plain from the outset, beyond Monday is not possible for us. As i've also said any monday interview can be as early or as late as you wish. Should neither you nor your colleague be available for a filmed interview tomorrow then we are content with a statement for the film as we had last week. As things stand, you yourself will be on the sofa on wednesday and able to reflect the Post Office's position.

Regards

Ingrid

On 14 Dec 2014, at 10:28, "Mark R Davies" GRO wrote:

Hi Ingrid

It isn't about your schedule disappointing us at all, it is about our reasonable offer, repeated again here, to provide an interview for your programme and your reluctance to accommodate us in a reasonable timescale.

It is a little baffling that you are not prepared to allow us reasonable time to respond with an interview. While I appreciate the demands of filming, editing and clearing at your end, we are able to offer an interview for your programme a full 24 hours before you broadcast. That seems eminently reasonable to me and I am sure it is logistically achievable.

Without Post Office input by interview into the film and the

POL00150228

opportunity to respond to the detailed points and allegations made it will clearly be impossible, as Nick has accepted, to respond fully in the studio in a two or three minute slot. I do not think in those circumstances we could appear in the studio: the film will be very skewed without our voice in it.

Given the work my colleague must undertake on behalf of the Scheme and applicants this week, I will have to check with her, but I think it might be possible to conduct an interview in the late afternoon on Tuesday.

I think she will be out of London but I am sure this can be overcome. Do let me know what time would be suitable and I will confirm a location.

Best wishes
Mark
Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO

Sent from my iPhone
On 13 Dec 2014, at 17:40, "Ingrid Kelly" GRO wrote:

> Hi Mark,
>
> I'm sorry if our schedule disappoints and inconveniences you or the post office but we won't be postponing. You have the allegations and our schedule. You can respond within the film by a statement if no one appropriate is

POL00150228

available for interview on monday - and of course you yourself will be responding on the sofa after the item airs.

Regards

Ingrid
On 13 Dec 2014, at 17:07, "Mark R Davies" GRO GRO wrote:

> Hi Ingrid That is very disappoin ting. To stress we would like to offer a spokespe rson for your program me's pre-recorded film and are able to but not in the timetable you suggest.
>
> Our position is very reasonabl e. I assume the program me will return after Christmas . What is

POL00150228

the urgent reason for being unable to give us the time we need?

You plan to make a series of complex and very serious allegations about Post Office Ltd, all of which can be answered in detail. I do not understand why your timescales are such that you cannot accommodate an interview for a film 24 hours before broadcast. You are asking for 48 hours for your own internal processes.

Nick has himself suggested that a

POL00150228

sofa slot would not really give us the opportunity to answer the very complex range of allegations he is making. We agree and clearly would be unable to take part in the studio if our position is not reflected in the pre-recorded film.

It cannot be fair to feature a series of other interviews in the film, all of which were presumably filmed last week in good time for your deadlines, without giving Post Office, which is

POL00150228

very firm in its position, the opportunity to respond. There are two sides to every story, as you know.

I would like to ask you to reconsider your position please.

Best wishes
Mark
Mark Davies
Communications and Corporate Affairs Director
Mobile: 07436 034032

Sent from my iPhone
On 13 Dec 2014, at 12:24, "Ingrid Kelly"


wrote:

POL00150228

I'm afraid not. The programme is off air for a fortnight and will run on weds. If you really can't do an pre recorded interview on monday then as you'll be on the sofa on weds, you'll be able to respond then.

Regards

Ingrid
On 13 Dec 2014, at 12:15, "Mark R Davies" <GRO> wrote:

Hi Ingrid

Many thanks for this.

In that case please can I formally request that the item is held until it is possible for the Post Office to respond on film? There is no urgency or need to broadcast this item on Wednesday, especially as the Mediation Scheme is continuing. Due to pressing and competing business priorities related to the mediation scheme and involving applicants to it, we cannot provide suitable representation until late Tuesday afternoon at the earliest.

I appreciate your own legal and other processes - you will appreciate our own.

I am formally offering you this interview with a senior manager who leads on the issues you are discussing and think it is reasonable for the Post Office to have the opportunity to put forward its position in a reasonable timescale.

We also stand ready to put a spokesperson up live in the studio.

Best wishes

Mark

Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO

POL00150228

Sent from my iPhone
On 13 Dec 2014, at 09:48, "Ingrid Kelly" GRO wrote:

Hi Mark,
I'm afraid the practicalities mean a filmed interview wd need to be done on monday to be incorporated into the piece. The lawyers and editorial advisory teams all need to take their time checking the Item so it's a rather cumbersome process. The interview can be as early or as late as suits but it does need to be monday i'm afraid.

best

ingrid
On 13 Dec 2014, at 09:29, "Mark R Davies" GRO wrote:

Hi Nick

Many thanks for your email.

As you will appreciate you have raised a broad range of issues which range across legal, IT and network support. We are very keen to be able to respond to all these issues in detail, particularly as there are some really fundamental points raised in your questions.

To that end we are working to ensure that we can provide you with the best possible response. As mentioned in my previous email, as well as input from the suppliers of our IT system and a legal view on the serious points you raise, we need (and I think this is reasonable) to provide you with a spokesperson who can speak across this range of issues.

We are dealing however on Monday and Tuesday with mediation scheme matters which relate to applicants. So we can absolutely be available later on Tuesday or on Wednesday

POL00150228

morning.

I do appreciate the challenges you have around filming and editing of course but I am sure you will appreciate the challenges from our side as well.

I suggest we speak first thing Monday morning and hopefully you will be able to come back to me on the timescale above and I will be able to update you too on where we are - please be assured we will do everything we can to ensure we give you the opportunity to interview the Post Office on these important matters.

Best wishes

Mark

Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO

Sent from my iPhone
On 12 Dec 2014, at 20:43, "Nick Wallis" GRO wrote:

Hi Mark

Thanks for your email. I am delighted you are inclined to offer studio live *and* pre-recorded filmed interviews.

As Ingrid (cc'd) has confirmed the planned transmission date for both would be Wed 17 Dec, to coincide with the planned Westminster Hall adjournment debate on the Post Office called by James Arbuthnot MP.

As Jane (cc'd) explained to you on the phone and as I am sure you understand, we need to set a time for the pre-recorded interview well in advance of the planned transmission date as

POL00150228

the interview will have to be edited and go through all the usual processes before being delivered to the One Show for broadcast. It is in no one's interest to rush this.

As Ingrid may have mentioned (and I defer to her on exactly how things may be happening on Wednesday), any studio guest you nominate will most likely be allotted around three minutes interview time, but with Victoria Wood, Michael Ball, a children's choir already booked on Wednesday and the unpredictability of a live studio environment, the interview might get curtailed, or the discussion itself might veer off topic, despite everyone's best efforts.

Could I therefore urge you to fix up a date and time as soon as possible to film a pre-recorded interview where we can ask you, and give you the opportunity to answer, a series of questions on the subjects raised below in a calm and controlled environment.

The interview will, of course, be edited, but we will be scrupulous in our duty of fairness towards the interviewee and the answers they give. Furthermore, whether either, both or no proposed interviews end up being broadcast, we will be taking all reasonable steps to ensure the Post Office's perspective on the serious matters below is properly represented.

I hope all that makes sense. Just to ensure you are clear on the internal division of labour surrounding the two proposed interview opportunities, Ingrid will deal with you re the arrangements re the possible live interview on the One Show sofa, whilst Jane and I can work with you to arrange a pre-recorded interview at a location

POL00150228

of your convenience.

I hope to hear from you soon re a proposed pre-recorded interview location/date/time and interviewee. I am happy to liaise with you over the weekend to book it in in good time.

Yours,

Nick

From: Mark R Davies [GRO]
Sent: 12 December 2014 18:47
To: Ingrid Kelly
Cc: Jane French; Nick Wallis; Melanie Corfield; Ruth X Barker
Subject: Re: Post Office interview

Ah - thanks Ingrid. That does give us more time. Many thanks for clarifying.

Best wishes
Mark
Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO

Sent from my iPhone
On 12 Dec 2014, at 18:34, "Ingrid Kelly" <GRO> wrote:

No Mark that's my mistake in the voicemail. as per my text - it is weds! Apologies all. Ingrid
On 12 Dec 2014, at 18:32, "Mark R Davies" <GRO> GRO> wrote:

Dear Jane,

Thank you for

POL00150228

your time today. Just to follow up my previous email, I can confirm that the Post Office would welcome the opportunity to respond in your film and in the studio to the very serious and detailed allegations being made in the email we received from Nick Wallis (copied below for ease of reference).

I understand from Ingrid Kelly that you are now planning to air this item on Monday evening. This comes as a surprise as you indicated Tuesday or Wednesday when we spoke earlier.

Either way, given the very serious nature of the allegations being made, and the requirement to give us reasonable time to respond, we do not believe we can meet your deadline of noon on Monday for an interview to be conducted.

We are inclined

POL00150228

to offer an interview but our spokesperson, who is leading the investigations process on the matters you reference, is involved in mediation scheme work on Monday and Tuesday. I am sure you will recognise that this work, which involves scheme applicants, is very important.

She could be available later in the week and as she is best placed to speak for the business on the complex range of issues you have raised, I believe it is reasonable to ask you to hold off on broadcasting your item until such time as we are able to respond properly.

Moreover, our spokesperson is able to respond to the specific issues you raise in a way no other colleaguein our business can given her role and first hand knowledge of the specifics Nick

POL00150228

has referred to. I would also stress again, however, that Post Office cannot comment on individual cases.

The Ofcom guidelines on matters like this make clear that we should be given reasonable time to consider and make our response to requests such as this. What constitutes a reasonable time must surely take the urgency of a situation into account. There is no urgency here, especially in the light of your broadcast last week and the ongoing nature of the mediation scheme, not to mention the point I raised on the phone about potential compromise of cases going through the scheme. Given that the programme is broadcast every evening it seems reasonable to me to ask for the timescales to be extended so that we can respond properly.

POL00150228

I look forward to hearing from you. I am also copying this to Ingrid Kelly who kindly left me a voicemail this afternoon confirming that we could indeed have a slot in the studio to answer questions on your film. I also copy Nick Wallis, and Mel Corfield and Ruth Barker from the Post Office press office.

I am happy to discuss this over the weekend.

Best wishes

Mark

Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO
GRO

From: Nick Wallis
GRO
Sent: 12 December 2014 11:53
To: Melanie Corfield
Subject: Interview request

Dear Melanie,

1) Thank you for

POL00150228

your help with The One Show item transmitted on Tuesday 9thDecember. We are now preparing a second film which is due to go out on The One Show on BBC1 at around the same time next week. We would be most grateful if the Post Office would be prepared to offer an interview expressing its point of view in the continuing dispute with some Subpostmasters over Horizon and associated issues. This would need to be recorded by noon on Monday but we would be able to meet you at your location of choice and we can do it over the weekend if that is the only option.

2) The film we are broadcasting once again refers to concerns over Horizon. This time it features the story of Steve Phillips from Nelson in South Wales who is having problems with

POL00150228

the system, as well as interviews from a group of former subpostmasters including Noel Thomas, Jo Hamilton, Julian Wilson, who say they felt under pressure to sign off incorrect accounts even though they did not understand how sums could be missing.

Mr Phillips says he and other Subpostmasters live in fear of being told to pay back losses neither you or they can explain, and he adds that he and other Subpostmasters do not trust Horizon. This latter point of trust in Horizon by Subpostmasters is one which has come up many times with other former Subpostmasters we have spoken to.

3) In our film former Postmasters say it is difficult to investigate the causes of shortfalls for which they are held liable,

POL00150228

because of the way Horizon and associated POL processes and policy function. They say in order to open for business the day after the close of a trading period they had to agree to pay back alleged shortfalls (either by settling to cash or settling centrally, which implies payment later). They say this put them in a very difficult position.

4) We ask one former Subpostmaster why she pleaded guilty to false accounting in court when she believed herself to be innocent. She tell us she felt she couldn't defend herself because she didn't have proper records, that the Post Office had taken some potentially useful items and paperwork away during their investigation and she felt she would be prosecuted for theft as well as false accounting if she had not pleaded guilty to the latter.

POL00150228

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

POL00150228

not available to Subpostmasters in the interviews which usually precede them?

6) We would also like to put to you some opinion about the Post Office's approach to investigating and prosecuting subpostmasters. We are in possession of expert opinion from a professor in criminal justice which implies the Post Office's dual function as investigator and prosecutor, and its 300 year cultural history of using it against its agents is unique. That's not to say he thinks you are the only organisation with prosecuting powers, but that you have a unique culture of prosecuting your agents. He implies this approach lacks the checks and balances of a typical prosecution by the CPS. In his opinion this creates a situation where miscarriages of justice are more

POL00150228

likely to occur.

The Post Office has assured us in a Freedom of Information Act request that it uses the Crown Code for Prosecutors. Can you please explain how this code was applied in the following cases: Jackie McDonald, Damian Owen and Tom Brown. In these cases the Post Office pursued its own prosecution despite no prosecution having been brought by the CPS after police investigations. If you are unable to unable to comment on individual cases, please comment on cases like this in general.

7) There is also a point raised by Geoffrey Sturgess, a business contract expert. He believes Subpostmasters should be told about the history of known problems with Horizon (such as the Calender Square issue and others raised in

POL00150228

Second Sight's Interim Report) which have led to shortfalls in Subpostmaster accounts and the history of other allegations against Horizon before they are allowed to sign the Subpostmaster contract.

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

POL00150228

Postmasters in the mediation scheme might be unsafe.

9) With more than a hundred MPs now saying they have no confidence in the mediation scheme we would like to ask the Post Office what it thinks is the correct way to move forward and find an equitable resolution to the concerns of subPostmasters up and down the country.

10) In summary, we have found a number of experts in their field who have concerns about the Horizon system, the PO's investigations and prosecutions function and the fairness of the Subpostmaster contract. It suggests there is the possibility that the way the Post Office goes about its business or did go about its business needs some proper explanation. One MP described the nature of the relationship between the Post

POL00150228

Office and SPMRs as "feudal", yet you call them your "life blood".

The content of the proposed programme is not set in stone. This is an opportuninty for the Post Office to respond to the widespread criticism it is currently facing. I am seeking a senior member of staff from the Post Office who can explain everything from the Post Office's perspective so that we can get to the bottom of what has happened to these people. If you will not appear on camera then we ask that you provide a substantive response to the issues raised above by noon this coming Monday 15 Dec.

Thank you

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