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11 January 2016

By Post and Email

Your ref CAS-3485119-74B6PG
Our ref SCB/THRE/MIT/111850.00038

Dear Sirs

NOT FOR BROADCAST

Panorama - Post Office Limited

We write further to the correspondence with Andrew Head, Executive Producer for BBC Panorama, regarding the Panorama programme broadcast on 17 August 2015 which related to our client, Post Office Limited.

For reference, we have enclosed copies of the previous correspondence with this letter, including our client's Stage 1a and 1b complaints.

Stage 1b response

Our client remains dissatisfied with the responses provided by Mr Head (on 19 October and 9 December 2015) to the issues raised in our client's Stage 1a and Stage 1b complaint letters and therefore wishes to escalate its complaint, in certain key areas, to Stage 2.

The previous correspondence deals with a range of different areas of complaint. This Stage 2 complaint is focused on two key elements of Mr Head's response.

However, it is important to recognise that, although certain aspects of our client's complaint are not pursued further in this Stage 2 complaint, our client does not agree with the conclusions drawn by Mr Head on any of the matters raised and does not accept that the programme was prepared or broadcast in compliance with the BBC Editorial Guidelines. Rather than investigating and reporting this matter in a

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neutral manner, as is clear from our previous correspondence, our client's input or offer of further information was either declined, without good reason, or ignored. The result was a programme which was neither balanced nor fair.

In relation a number of the areas of complaint, the disagreement appears to boil down to a difference of opinion regarding the manner in which the programme and its content is likely to have been perceived by viewers and the manner in which our client (and its broadcast statement) was treated. Inevitably, Mr Head, who effectively 'marked his own homework', adopted a position which led him to the conclusion that our client was treated fairly and that the viewers were not misled. Our client strongly disputes this.

Contributors

Paragraph 6.4.1 of the BBC Editorial Guidelines states as follows:

> "*We should treat our contributors honestly and with respect. Our commitment to fairness is normally achieved by ensuring that people provide 'informed consent' before they participate. 'Informed consent' means that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content.*
>
> *Before they participate, contributors should normally know:*
>
> - *why they are being asked to contribute to BBC content and where it will first appear*
> - *the context of the content*
> - *the nature of their involvement.*
>
> *The more significant their contribution, the more detail we should provide. However, we should normally expect to explain the following:*
>
> - *The kind of contribution they are expected to make. We should tell them in advance about the range of views being represented in the specific content to which they are contributing and, wherever possible, the names of other likely contributors...*"

In our letter of 15 September 2015, we referred to paragraph 6.4.1 in support of our complaint that our client was:

- never provided with sufficient information about the allegations to be made against it, nor was it provided with relevant details of the evidence upon which the BBC was basing its allegations;
- not provided with the identity of Mr Roll prior to broadcast, or indeed sufficient details of his role, involvement with Horizon and period of employment; and
- not provided with details of the nature of the contributions being provided by the other contributors.

In his response, dated 19 October 2015, Mr Head stated the paragraph 6.4.1 of the BBC Editorial Guidelines "*refers to the informed consent of contributors who take part in the programme*" and, furthermore, that "*since Post Office declined an interview this does not apply and the relevant guidelines are 6.4.25 and 6.4.26*".

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Our letter of 16 November 2015 queried this interpretation of the word "contributors". The response received on 9 December stated:

> "*...it is for the BBC to ultimately interpret and apply its own guidelines....I have confirmed that it is indeed the BBC's position that the intended meaning of the term "contributors" in guideline 6.4.1 governs the informed consent of people taking part in the programme and not to the fair treatment of organisations who are criticised (that being governed by other guidelines).*"

The interpretation that is therefore relied upon by Mr Head is that our client is not, and was not, a "contributor" to the programme.

However, we fail to understand how Mr Head can reach the conclusion.

In particular:

- We do not consider "*people taking part in the programme*" and "*organisations who are criticised*" to be mutually exclusive groups. It is perfectly possible for an organisation to be criticised in a programme and yet still take part in the programme and its preparation.
- We fail to see how the term contributor can be interpreted to relate to parties who provide a contribution by means of a recorded interview and not parties who provide a contribution by means of a written statement. Under the simple dictionary definition of the term, both parties, in this example, are providing content for the programme for broadcast. Furthermore, in the introduction to section 6 of the Editorial Guidelines it is stated that "*much of this section concerns the process of recruiting <u>those who participate in or are otherwise involved in our content</u>*" [Emphasis added]. It is unclear whether this is intended to be a definition of "contributor" but, if so, it clearly envisages that there are a range of ways in which a party may "be involved" in the content.
- In any event, our client's contribution was broader than a simple written statement. A detailed and lengthy on-the-record briefing (which we understand was recorded, albeit not filmed for broadcast) was provided to members of the Panorama team in advance of broadcast. If the nature of possible contributions is a spectrum ranging from a recorded interview (which is clearly a "contribution" for the purposes of paragraph 6.4.1 of the Editorial Guidelines) and a written statement (which Mr Head purports is not a "contribution"), then it is wholly unclear where the tipping point lies on the spectrum to turn a contribution into a "contribution". In our view, even if a written statement is insufficient (which we strongly dispute), the on-the-record briefing should be sufficient to render our client a "contributor". Certainly, content provided by our client contributed to and was used in the programme.
- Furthermore, if one follows Mr Head's interpretation of paragraph 6.4.1, it is unclear precisely *when* a party ceases to become (or, indeed, becomes) a "contributor". Paragraph 6.4.1 clearly envisages that a party can be a "contributor" in advance of providing a contribution and, indeed, in advance of such party reaching a conclusion over whether to provide a contribution at all. Logically, all parties who are approached with the request to provide an interview (or, more precisely, a "contribution") either <u>are</u> contributors or should be treated as if they are contributors given that a contribution is being sought. In other words, until the relevant party has come to a

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definitive reasoned decision not to take part in the content at all, such party should be treated in accordance with paragraph 6.4.1. Our client's definitive decision not to provide a representative for interview was only provided to the Panorama team on 4 August 2015. Therefore, even if a recorded interview is the benchmark for a "contribution", up until such date, the BBC was required to comply with paragraph 6.4.1 in its dealings with our client. This time period covers the vast majority of our complaint regarding the level of information and disclosure that was provided to our client in advance of broadcast.

For the purposes of our Stage 2 complaint, we are therefore seeking clarification from the Editorial Complaints Unit regarding:

(a) the meaning of the term "contributor" for the purposes of paragraph 6.4.1 of the Editorial Guidelines and the nature of the "contribution" that is required to render a party a "contributor";

(b) the approach that the BBC is required to adopt with parties from whom it is seeking a contribution prior to any such party reaching a reasoned decision on whether to take part in the BBC's content (i.e. should the BBC comply with paragraph 6.4.1 in such a situation?);

(c) whether our client was, at any stage, a "contributor" for the purposes of paragraph 6.4.1 and, if so, precisely when this definition applied to our client (bearing in mind that the material it provided was used in the programme).

In this regard, we would also note the following:

- The corresponding section of the Ofcom Broadcasting Code (July 2015 edition) states at paragraph 7.2 that "*broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes...*". Furthermore, under paragraph 7.3, "*where a person is invited to make a contribution to a programme...they should normally, at an appropriate stage...be informed about the areas of questioning and, wherever possible, the nature of other likely contributions...*". The Ofcom Code therefore clearly envisages that the requirement to provide relevant information to contributors relates not only to people who provide a recorded interview for a programme but also people who are invited to make a contribution. Our client would fall within such a definition of a contributor.

- It is also noteworthy that the Ofcom Guidance Notes to Section 7 contain some guidance on the term contributor (albeit in the context of a different paragraph (7.9)). The guidance states that "*[the term] "contribute" can include an interview, live or recorded, or a report of a written or oral statement or comments*". By extension, a "contributor" would include a party that provides an interview and also a party that provides a written statement or comments for inclusion in a programme.

Our client strongly disputes that it was ever treated in a manner which was in compliance with paragraph 6.4.1 of the Editorial Guidelines, either before or after it reached the reasoned decision not to provide a recorded interview.

For the avoidance of doubt, our client does not agree that paragraphs 6.4.25 or 6.4.26 of the Editorial Guidelines were complied with for reasons clearly set out in our Stage 1a and 1b complaints.

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Mr Roll's identity

Linked to the above point is our client's complaint regarding the refusal to disclose Mr Roll's identity to our client prior to broadcast and, furthermore, the failure to provide other pertinent details about Mr Roll such as the dates of Mr Roll's employment which, for reasons explained in our previous correspondence was highly pertinent. Paragraph 6.4.1, if applicable, specifically refers to providing "*wherever possible, the names of other likely contributors*".

By his letter dated 19 October 2015, Mr Head states that "*[paragraph 6.4.1] does...give programme makers the right to withhold names [of other likely contributors] where appropriate*". This is not what paragraph 6.4.1 states. Paragraph 6.4.1 states that the names should be provided "*wherever possible*", not that these details may be withheld "*where appropriate*". Mr Head's letters have failed to explain why it was not possible to provide such details to our client. Even if Mr Head's test of 'appropriateness' is adopted we have received no valid justification for the argument that it was appropriate to withhold such details.

Mr Head's letter of 19 October 2015 stated that:

> "*You were concerned that the BBC did not provide the name and employment dates of Richard Roll...As you may know, a solicitor from the Post Office did contact two of our contributors (Professor Mark Button and Ian Henderson) prior to broadcast. We wanted to report the whistleblower's honestly held beliefs because we believed they were important and in the public interest. Therefore we were keen to ensure that this testimony was not unduly affected by external pressure*".

The clear inference from the reference to the contact made with Professor Button and Mr Henderson and its position in this paragraph was that, in light of this contact, the BBC was concerned about the sort of approach that our client would be likely to make to Mr Roll if his identity was revealed. When it was subsequently pointed out to Mr Head that the correspondence with Professor Button postdated the refusal to disclose Mr Roll's identity and that the correspondence with Mr Henderson was in respect of a contractual obligation owed by Mr Henderson to our client (where no such contract exists between our client and Mr Roll) and so could not have impacted on the decision not to provide Mr Roll's name or details, Mr Head stated that the contact with Professor Button and Mr Henderson "*did not form the basis of our justification for withholding Mr Roll's identity*". This statement is patently inconsistent with the wording of his letter of 19 October 2015 and, if it did not form the basis of the justification, then it is unclear why this was even mentioned in the 19 October 2015 letter.

Furthermore, it has never been explained to us on what basis the BBC reached the conclusion that "*Post Office might...approach [the BBC's] interviewees and apply pressure to them*". Nor has it ever been explained why the evidence which enabled the BBC to reach this conclusion was sufficient to mean that it was not "*possible*" to provide Mr Roll's identity or sufficient to mean that it was "*appropriate*" to withhold disclosure.

We would request that the BBC provide this explanation.

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"External pressure"

Mr Head's letter of 9 December 2015 states that "*Post Office may not be in the best position to judge whether or not [external pressure] should be brought to bear upon interviewees in our programme. What the Post Office regards to be "due pressure" and what a contributor to a BBC investigation experiences when subjected to it, may not be equivalent*".

Any allegation, whether by inference or otherwise, that our client places "undue pressure" on third parties to attempt to influence their contribution to a BBC programme or otherwise is an extremely serious allegation. The BBC has not justified the making of such an allegation, nor is it able to justify such an allegation.

If such an allegation is to be repeated, published or broadcast, it is important to recognise that our client is fully prepared to take all necessary steps to protect its reputation.

Other points

As noted above, our client's complaint in respect of the BBC Panorama programme clearly extends beyond the limited elements of the complaint that we are taking forward to Stage 2. Our client, nonetheless, maintains its position and disagrees with the arguments put forward by Mr Head in his letters of 19 October and 9 December 2015. The omission of reference to any of the other elements of our client's complaint should not be misconstrued as agreement with or acceptance of Mr Head's stated position.

Next Steps

Our client considers that the issues described above were not dealt with appropriately at Stages 1a and 1b. Our client therefore wishes to escalate these aspects of its complaint to Stage 2. If no satisfactory response is received our client reserves its right to further escalate its complaint to the BBC Trust.

We look forward to receiving your response within the targeted 20 working days.

Yours faithfully

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