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10 August 2015

By Fax and Post

BBC Programme Legal Advice  
British Broadcasting Corporation  
Room WC 2251  
White City  
London  
W12 7TS

Our ref SCB/THRE/MIT/111850.00038

Dear Sirs

**NOT FOR BROADCAST**

**Panorama - Post Office Limited**

We write in connection with the programme that we understand BBC Panorama is intending to broadcast on 17 August 2015 in relation to our client, Post Office Limited ("Post Office").

### Summary

As has been repeatedly highlighted to the BBC Panorama team in direct correspondence, our client has serious concerns regarding the manner in which this programme has been prepared, the content of the proposed programme and its purpose. These are set out in more detail below but, in brief, it is evident that the BBC is proposing to make a number of very serious and potentially significantly damaging allegations about Post Office and, in particular, its conduct in relation the prosecution of a number of postmasters. Despite this, Post Office has not been provided with sufficient detail of these allegations, nor has it been provided with sufficient information as to the evidence upon which such allegations are based to enable an informed response.

With all this in mind, it cannot be said that Post Office has been given a fair opportunity to respond, nor is it likely that Post Office's position will be fairly and accurately presented in the programme.

There is therefore a significant risk that that the programme will contain material which is unsubstantiated, untrue and likely to cause serious financial harm to our client.

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### **Allegations being made**

Our client is entitled to be given a fair opportunity to respond to any allegations of wrongdoing, iniquity or incompetence, or any strong or damaging critique.

By email of 12 June 2015, Matthew Bardo provided some limited information regarding the allegations that the Panorama programme is planning on making.

The email of 12 June 2015 stated:

*“Our evidence suggests that the Post Office may have unfairly used theft charges to put pressure on sub-postmasters to plead guilty to false accounting and/or repay apparent losses identified by the Horizon computer system. The evidence also suggests that the Post Office failed to consider or investigate the possibility that Horizon could be the cause of some of the losses. As you know, it has been suggested that these failings may have led to miscarriages of justice in some cases.”*

Such allegations clearly form a key element of your programme, as evidenced by the text provided to TV listings providers, such as Radio Times, which states:

*“Reporter John Sweeney meets a whistle-blower who says there were problems with the computer system. And he investigates claims that the Post Office charged some postmasters with theft even when the evidence didn't stack up.”*

These serious and potentially damaging allegations are strongly denied by Post Office and our client maintains that there is no basis for making such claims in any broadcast or otherwise.

Without the provision of any further supporting evidence or information as to the basis for the claims which would allow Post Office to provide a proper response, the list of allegations against Post Office was further expanded in a letter from Matthew Bardo dated 22 July. This letter included the additional, particularly damaging (and baseless) claims that Paula Vennells (our client's CEO) was personally “*implicated in miscarriages of justice and should resign*” and that Post Office is “*a bullying organisation that has abused its power*”. These particular allegations are discussed in more detail below.

Our client has repeatedly requested that the BBC provide details of the evidence upon which it seeks to rely to substantiate these, or indeed any other, allegations. We refer to Mark Davies' emails of 12 June, 16 June, 19 June and 23 June 2015. The matter then rested with Panorama for some time until further correspondence was sent by the Panorama team on 22 July. Mark Davies' requests for evidence were repeated in a letter dated 24 July 2015.

By response dated 27 July, Karen Wightman of the BBC stated that “*the BBC does not normally share the evidence upon which allegations are based...I am confident that you have been given sufficient detail in order to respond*”. It is therefore evident that the BBC does not intend to provide our client with any further detail beyond the vague list of bald assertions contained in Mr Bardo's letter of 22 July 2015.

It is difficult to understand how our client is supposed to respond to such serious allegations when there is no supporting evidence for them, nor, in many cases, any indication as to the basis upon which those allegations are being made. Our client is, in effect, being asked to defend itself from a position for which there is no support and to prove its ‘innocence’ in respect of allegations raised by individuals who clearly have an axe to grind with our client.



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Matthew Bardo's email of 17 June refers to "*information obtained as a result of [the BBC's] investigation*" and the letter of 22 July 2015 suggests that the new allegations have arisen out of continued analysis of "*information and material*". However, in many cases, no further information has been provided to our client, nor any indication as to what the evidence supporting some of these allegations might be. Unless our client is provided with proper details of the evidence upon which all of the allegations are based, then our client cannot be said to have been granted a fair opportunity to respond.

Karen Wightman's email of 27 July 2015 suggests that some of these allegations are statements made by contributors and do not necessarily represent the view of the BBC. This, however, offers little comfort to our client. By airing such damaging comments, the BBC would clearly be adding its own authority to such a view and giving it credence. The absence of evidence may not be appreciated by the viewing public who are likely to assume, as stated in paragraphs 3.4.1 and 3.4.2 of the BBC Editorial Guidelines, that the BBC has taken some steps to corroborate such evidence and that the BBC has taken steps to "*check and verify information, facts and documents, where required to achieve due accuracy*". We would remind you that contributors who express contentious and challenged views should be rigorously tested. Broadcasting any such statements will mislead the public.

Furthermore, to broadcast individual allegations in the absence of supporting evidence, and in the face of the wealth of evidence and information provided to the BBC by our client, including at an on-the-record briefing, is to give undue weight to a minority view contrary to paragraph 4.4.2 of the BBC Editorial Guidelines. We would remind the BBC that, in this particular case, many of the contributors cannot be described as impartial.

#### **Allegation against Ms Vennells and the allegation that Post Office is a "bullying organisation"**

These two new allegations are particularly concerning and, furthermore, are highly defamatory.

We note that these allegations are apparently statements made by an individual (or individuals). We would repeat the comments made above in respect to these statements being made by individuals who are not being impartial. We would also wish to make clear that these allegations are entirely without any basis and the BBC has provided no supporting evidence. Our client strongly denies these allegations.

Post Office's reputation with its postmasters, its customers and the businesses with which it has a commercial relationship is of the utmost importance to the business and has an immeasurable financial value. The broadcast of any such baseless allegations would damage this reputation and cause serious financial harm to our client.

Similarly, Ms Vennells' professional reputation is likely to be damaged by the broadcast of any allegation which personally accuses her of wrongdoing. In the event of the broadcast of such a statement, we will be advising Ms Vennells to seek advice regarding a defamation claim against the BBC.

#### **Horizon**

The list of allegations provided by Matthew Bardo on 22 July includes various allegations regarding our client's Horizon system, including allegations that the Horizon system has or had technical issues which are likely to have led to errors in the accounting at various branches. The Panorama team, despite our client's requests, have not provided any evidence to support such an allegation nor have they accepted our client's offer of a demonstration of the system. The allegation is untrue and without basis. The Horizon





system is used to process six million transactions every day and, over its lifetime, has had some 500,000 users. The number of users alleging faults is miniscule in this context. Nonetheless, Post Office has conducted detailed investigations and an independent review to assess whether computer errors have caused cash to go missing in a small number of branches. Such investigations have demonstrated that the system operates and operated as it should and Post Office has seen nothing to suggest that any branch has been held responsible for a loss that was caused by a fault in the Horizon system.

As stated in an email from Mark Davies of Post Office to Karen Wightman on 4 August 2015, the Horizon system is independently audited and meets or exceeds industry accreditations. In particular: Ernst & Young produce an annual ISAE3402 service auditor report over the Horizon processing environment; each year Bureau Veritas perform ISO27001 certification; and Information Risk Management (IRM) accredit Horizon to Payment Card Industry Data Security Standards on an annual basis.

Furthermore, there is some suggestion in Mr Bardo's letter that an allegation will be made that it is possible to access the Horizon system remotely and that data may have been altered causing branch losses. This is an extremely serious allegation, effectively alleging some form of fraud offence, and it is strongly denied. It is not possible for Post Office or Fujitsu to remotely edit transactions as they were recorded by branches. Horizon is and has been subject to extensive independent audits, checks and balances. There is no evidence that branch data has been inappropriately accessed or edited remotely. Any allegation to this effect is untrue and highly damaging.

We note that an employee of Fujitsu is due to contribute to the programme. However, our client has not been provided with any information regarding this individual or of the nature of this contribution. We repeat that Post Office has seen nothing to suggest that any branch has been held responsible for a loss that was caused by a fault in the Horizon system.

### **Contributors**

In his letter of 22 July 2015, Matthew Bardo has provided a list of contributors.

As you will be aware, paragraph 6.4.1 of the BBC Editorial Guidelines (the "Guidelines") states that *"contributors should normally know: ...the context of the content [and] the nature of their involvement"*. Furthermore, the BBC *"should tell [contributors] in advance about the range of views being represented in the specific content to which they are contributing and, wherever possible, the names of the other likely contributors"*. Similar provisions are, of course, also contained in the Ofcom Broadcasting Code.

While our client has been provided with the names of the other contributors, the nature of their contribution has not been made clear.

In the case of the "legal expert", Professor Mark Button, our client has not been provided with any information as to his proposed contribution and no detail of Professor Button's expertise nor the basis upon which he is qualified to speak about these individual cases. Indeed, Professor Button does not appear to be a qualified lawyer, nor does he appear to have practical experience of criminal law and procedure, let alone experience of the individual cases featured in our programme. We have written to you previously regarding a piece broadcast during the One Show where a barrister, Mr Patel QC, was asked to contribute on similar issues. In that particular instance, the contribution provided by Mr Patel QC was heavily caveated and it was evident that Mr Patel QC was speaking with little background knowledge. Nevertheless, the manner in which such a contribution was made implied that Mr Patel QC



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has some genuine insight into the legal cases. We are concerned that similarly damaging remarks will be given by Professor Button and broadcast in respect of the Panorama programme. Viewers will inevitably assume that such an “expert” has an in-depth knowledge of each of the individual cases referred to. This does not appear to be true in respect of Professor Button. It should be noted that although Post Office wrote to Mr Patel QC after the broadcast of the One Show requesting the disclosure of any evidence relied upon to assist Post Office in complying with its disclosure duties, no response was ever received. A similar letter has been sent to Professor Button. Again, our client has received no response.

We also note that the BBC is intending to include a contribution from Ian Henderson of Second Sight Support Services Limited. We would refer you to our letter of 19 June 2015 and remind you that Second Sight is under certain duties of confidence. Equally, our client has made you aware that certain materials provided to the BBC by third parties are confidential (including those protected by our client’s legal privilege). The BBC is under a similar duty of confidence in respect of confidential material it has received from third parties. The BBC should be aware of these duties of confidence and similarly be aware of the risk that the broadcast of confidential material may constitute a breach of confidence.

It would also appear that much of your investigation is based upon information contained in Second Sight’s report. As our client has made you aware, Second Sight’s review was not a criminal case review. It is important to recognise that Second Sight are accountants, not experts in criminal law or procedure. This should be made clear in your programme. To do otherwise would potentially be misleading to viewers and, of course, damaging to Post Office.

#### **Constraints on our client / Individual cases**

As you are aware, legal investigations are currently ongoing in relation to individual postmasters’ cases by the CCRC. In addition, as the BBC has previously been advised, each applicant to the case review and mediation scheme was given an assurance that they would be afforded absolute confidentiality. A similar agreement was reached with the Justice for Subpostmasters Alliance, Second Sight Support Services Limited and others involved in the establishment of the scheme. Our client intends to honour that promise and is therefore unable to provide any comment for broadcast on individual cases. Our client’s position in this respect should be accurately reflected in any programme and not portrayed in any way as a “refusal” to comment. No adverse inference should be drawn in relation to our client’s inability to comment in the broadcast programme. To do so would mislead viewers and be unfair and seriously damaging to our client.

Matthew Bardo’s letter of 22 July 2015 suggests that the BBC is intending to refer to the individual cases of Seema Misra, Jo Hamilton and Noel Thomas and contains various allegations purportedly arising from investigation of these cases. Notwithstanding the point raised above regarding individual cases, our client maintains that the appropriate procedures were followed in all of these cases. None of these individuals has chosen to appeal their convictions, an option that remains open to them. These cases have been referred to the CCRC. Post Office maintains that this is the appropriate forum in which to deal with any allegations of a miscarriage of justice.

We do not consider that there is any useful or legitimate purpose in subjecting these cases to trial by television, particularly in circumstances in which our client is not being provided with full information as to the allegations being made and/or the basis of the allegations, in circumstances where our client is unable to provide comment and where the BBC clearly is not in possession of all the necessary





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information (in contrast to the CCRC). In the circumstances of your proposed broadcast, there is also clearly no urgency in broadcasting these allegations. None of the featured postmasters is serving a custodial sentence and there is no reason for this programme to not to await the CCRC's conclusions. Indeed, there is every reason that the BBC should await its outcome.

**Our client's contribution**

As you will be aware, our client has declined to put forward a representative for interview. While our client was initially willing to provide an interviewee, in light of the manner that Panorama has conducted itself to date, our client had deep concerns regarding the manner in which any such interview is likely to be conducted.

By way of example, on 9 June 2015, as mentioned above, our client provided Panorama with a detailed on the record briefing aimed at providing further information and putting forward Post Office's position on the allegations/concerns that the BBC wished to raise. Despite having this opportunity, it is now evident, having read the BBC's email of 12 June and letter of 22 July 2015, that the programme is intending to make other serious allegations against Post Office which were not raised at the briefing. One can only assume that, rather than seeking to present a balanced assessment of this matter, the BBC is seeking to delay allegations until an interview in the hope that this will provide it with a more sensational story. This is clearly demonstrated by Matt Bardo's email of 17 June 2015 at 12:05pm which was apparently sent to Mark Davies of Post Office in error. This states "*The central point for discussion is how much information it is appropriate to give in advance of an interview in this case*". The only real inference that can be drawn from this email is that the Panorama team wish to withhold certain requested information from Post Office prior to the interview.

To be clear, in declining the interview, our client is not waiving its right to comment on the allegations being raised against it, nor is Post Office saying that it will not agree to an interview in the future. In fact, to the contrary, it is vital that our client's position on each allegation is fairly and accurately reported in the BBC's programme as required by paragraph 6.4.26 of the Editorial Guidelines.

Our client has already provided some detailed comments on the allegations that it has been made aware of, including detailed comments provided at the on the record briefing on 9 June 2015. It is important that the points put forward during that briefing are accurately and fairly reflected in any programme. In addition, our client has provided a detailed statement which reflects its position and which should be fully referenced in your programme. As stated above, the correspondence to date suggests that the BBC proposes to make some serious allegations of wrongdoing, iniquity or incompetence against Post Office. Our client must therefore be given a fair opportunity to respond.

**Previous correspondence with the BBC**

We would additionally note that the subject of the Panorama programme is a topic which has been covered on a number of occasions by the BBC. We refer by way of example to the One Show broadcast on 17 December 2014 and the coverage on a number of BBC outlets on 20 April 2015. It would appear, based on the limited information that our client has been provided, that the issues and allegations being raised in the current programme are neither new, nor, despite suggestion to the contrary, does it appear that the BBC is presenting any new evidence to support such allegations.



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The fact that the BBC repeatedly makes these allegations without any actual evidence to substantiate them and, on many occasions, without accurately reflecting Post Office's position is extremely damaging to our client. As you will appreciate, the more serious the allegation, the more the public will be misinformed and the more the subject of the allegations will be harmed, if the allegation is not true.

The allegations which we understand are to be raised are extremely serious and are untrue and are therefore likely to cause serious harm to the reputation of our client.

As the BBC should be aware from previous correspondence, some six million different transactions are conducted through the Horizon system every day, by some 78,000 users without major incident. Furthermore, Post Office delivers products and services for a wide variety of third party organisations using the Horizon system and has major franchise partnerships with several big retailers which use the Horizon system.

Any programme broadcasting the serious allegations that to date the BBC Panorama team have made would be highly damaging to Post Office's business and would be likely to cause our client serious financial loss.

We would request that you notify our client immediately in the event of any changes to the programme or its broadcast.

In the meantime, all our client's rights are reserved.

Yours faithfully

**GRO**

**CMS Cameron McKenna LLP**

cc: BBC Panorama, Zone D, 4th Floor, BBC Broadcasting House, Portland Place, London, UK, W1A 1AA.