

British Broadcasting Corporation TVCA, 1<sup>st</sup> Floor, Broadcasting House, Ormeau Avenue, Belfast, BT2 8HQ

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## **BBC Northern Ireland**

19<sup>th</sup> October 2015

Dear Sirs,

Thank you for your letter of 15 September, in which you raised a number of concerns as part of a formal complaint about the BBC Panorama programme, "*Trouble at the Post Office*". I was the Executive Producer of the programme and I have been asked to respond to your complaint.

You also attached an earlier letter that was sent to BBC Programme Legal Advice on 10 August 2015. As the BBC has already provided a response to that letter, I won't be commenting on it further. This response will only address the points raised in your letter of 15<sup>th</sup> September.

Before dealing with your detailed points, I want to address your concerns about the role Nick Wallis played on the programme. Nick is a freelancer who has followed this story for several years and we therefore invited him to join the programme team. He was a secondary producer who was supervised by the lead producer Matt Bardo and me. This ensured the BBC's impartiality.

I have set out my response under four headings, which I think summarise the main issues you have raised:

### **The Right of Reply process**

1. You raised concerns about the conduct of the Right of Reply process, alleging that the BBC breached guideline 6.4.25 by depriving Post Office of an adequate opportunity or ability to respond to the allegations that were broadcast. Under the Editorial Guidelines, those against whom allegations are being made should have sufficient time and information in order to respond to any allegations that the BBC intends to broadcast.

Your letter also suggests that the overall conduct of the Right of Reply process breached paragraph 6.4.1 of the BBC Editorial Guidelines. This section of the guidelines refers to the informed consent of contributors who take part in the programme. Since Post Office declined an interview this does not apply and the relevant guidelines are 6.4.25 and 6.4.26.

As we expressed in our correspondence with Post Office at the time, we are satisfied we provided sufficient information to ensure Post Office had a full opportunity to respond. John Sweeney's email to Post Office of 19th May set out the broad question areas for an interview and he provided more detail about the allegations in his email of 27th May.

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After analysing the on the record briefing that Post Office provided, Conor Spackman gave more details about the question areas in his email of 12th June. From 19th May until broadcast – a period of 12 weeks - we were repeatedly in contact about substantially the same issues. Our aim throughout was to ensure that Post Office was given a full and fair opportunity to respond. Indeed, we provided quotations from documentary evidence in support where we thought it was appropriate to do so. The editorial guidelines do not oblige the BBC to share such material, as Matt Bardo explained in his email of 17th June. On this occasion, we made an exception because of the complex nature of the story and our determination to be fair.

2. You were also concerned that the BBC did not provide the name and employment dates of Richard Roll as part of the Right to Reply process. 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 his testimony was not unduly affected by external pressure. The guideline that deals with this, 6.4.1, is about the preparation for an interview, which at that stage we were hoping to get. It states that we should normally tell contributors the names of other likely contributors. It does, however, give programme makers the right to withhold names where appropriate. We gave Post Office the names of all the contributors except Mr Roll, which we believe was appropriate in the circumstances I have described. Not providing his name did not affect Post Office's ability to respond to what Mr Roll had told us. We described the whistleblower's job and the title of the team he worked for at Fujitsu. Moreover, as I have explained above, the guideline did not end up applying in this case anyway, as Post Office was not a contributor in the programme.

We also took extra steps to ensure that Post Office was in a position to respond to Mr Roll's allegations. We described the whistleblower's job and the title of the team he worked for at Fujitsu. We mentioned that the whistleblower had worked at Fujitsu prior to 2010 because we had reason to believe the system had changed when the updated version of Horizon (Horizon Online) was rolled out that year. You suggest that had Post Office known the identity of Mr Roll in the right of reply process, it would have pointed out that he ceased working in IT in 2004. However, the dates of his employment at Fujitsu were written on screen during his interview so this information was made available to viewers anyway.

3. Your letter also states that during the right of reply process, an offer was made to meet and share confidential documents and that during such a meeting Post Office could have disproved the allegation that Jo Hamilton was prosecuted without sufficient evidence and potentially with financial considerations in mind. You suggest that because the BBC did not take you up on this offer, the programme has breached paragraph 3.4.2 of Editorial Guidelines, which states: *"In all our content we must check and verify information, facts and documents, where*

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*required to achieve due accuracy. If we have been unable to verify material sufficiently, we should say so and attribute the information”.*

We were satisfied that our source material for raising our questions about Jo Hamilton’s prosecution was very strong and that it wasn’t being taken out of context. We did consider the offer to have sight of confidential material very carefully indeed before deciding that we would have to decline. There were two fundamental editorial reasons for declining the offer. Firstly, Post Office was only willing to share the material on a basis that would prevent us from verifying its accuracy. In an email of 13 August, Post Office wrote to the BBC:

*“we can only allow you to inspect these documents on the basis that the BBC only use them for this specific purpose and that you confirm to us that you accept disclosure on that basis. For the avoidance of doubt, this means that you could not share the information with any third party, and that you be in breach of confidence if you did so.”*

The proposal to share information on this basis falls foul of the paragraph in the Editorial Guidelines that you are concerned about: 3.4.2. We would have needed the opportunity to check and verify the information provided in order to ensure “due accuracy” and that would have involved discussion of the material with other sources, which we would not have been able to do.

Secondly there was a concern that the arrangement could compromise the BBC’s editorial integrity (see Editorial Guidelines 1.2.4 and 14.1) because we were being asked to give up our ability and duty to verify it, nor would we be able to refer to or attribute it in the broadcast.

The documents we relied upon in the programme were reviewed by senior editorial staff and we are confident that they were not taken out of context.

### **Reflection of the Right of Reply**

1. You were particularly concerned that in key areas the BBC had failed to fairly reflect the statement that Post Office provided and that this breached paragraph 6.4.26 of the BBC Editorial Guidelines. The paragraph states: *“Any parts of the response relevant to the allegations broadcast should be reflected fairly and accurately”.*

We were provided with a lot of material by Post Office and were repeatedly led to believe that an interview would be arranged. When we were finally informed that neither Paula Vennells nor anyone else from Post Office would be interviewed, we took care to select appropriate excerpts from the statement Post Office provided and used research about Post Office’s views to ensure our reporting was fair. We are not required to include full quotations from a

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statement or include a response to something which is not, in the end, included in the programme.

You highlighted that the broadcast included reference to the involvement of the Criminal Cases Review Commission (CCRC) and its investigation of postmasters' cases. We reported that: *"The CCRC is now investigating the convictions of 20 postmasters to see whether miscarriages of justice have occurred. Among them Noel, Seema and Jo."* You suggest that we needed to include a statement to the effect that Post Office was co-operating with the CCRC investigation. However, as we did not suggest that Post Office was failing to co-operate there was no need to include this part of Post Office's statement. We did not include Post Office's statement that the CCRC will be able to access all of the relevant materials for the same reason.

Similarly, we did not include the fact that every person charged with a criminal offence is entitled to their own legal advice because we did not suggest that they were not. It is also widely known that people accused of crimes are allowed to have a lawyer. You also say that the statement by Post Office that it follows the Code for Crown Prosecutors should have been included in the programme. However, the programme did not question that.

The key question raised by the programme was the possibility that Post Office's prosecution policy and practice could be contributing to miscarriages of justice. Therefore we included the following words covering the principle that Post Office abides by the Code: *"The Post Office says it 'complies with all legal requirements'. And has a duty to protect public money. It says it only prosecutes where there's a 'realistic prospect of conviction' and never for making innocent mistakes."*

The point we were making when we said that Post Office *"doesn't have to go through the police or the Crown Prosecution Service"* is that there are fewer checks and balances in the system. The police have to present their evidence to a separate body, the CPS, which decides whether to prosecute or not. Post Office investigates and prosecutes, so there is no review of the evidence by an independent organisation.

2. You also suggest that Post Office's position, as laid out in their statement, was misrepresented when we reported that: *"[Richard Roll] says financial records were sometimes changed remotely without the postmaster knowing. That is something the Post Office has always said simply can't happen"*. You say that Post Office's position is actually the following: *"Post Office can correct errors in and/or update a branch's accounts by inputting a new transaction (not editing or removing any previous transactions). It is also possible to update the software remotely. However, such changes would be shown transparently in the transaction records."*

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Your description of Post Office's position seems to demonstrate that we reported it accurately. From the briefing we attended and the long Post Office reports that we read, it was clear that – after initially denying it - Post Office had come to accept that remote access to branch data was possible but that any changes would be shown transparently in the data. If all remotely executed changes to branch accounts are “transparent”, then they must be transparent to the postmaster whose records are being changed. So the Post Office position is that any postmaster would know if his records were being changed. Mr Roll says that's not correct. He says that records were sometimes changed without the postmaster knowing. It follows that we correctly reported that he was saying something the Post Office has always denied. Indeed, he says he and his colleagues could make changes under the postmaster's log in. This process left no record that anybody else had been on the system. For example, Mr Roll explained to us that he could make it look as if a postmaster had sold a book of stamps when he had not.

In summary, I disagree that the natural process of editorial selection reduced the force of Post Office's position or that we represented it unfairly or inaccurately.

**Presentation of facts in the programme**

1. You expressed concerns about how Richard Roll's testimony was presented because you thought it suggested that his time working at Fujitsu was contemporaneous with the other events being covered in the programme. We do not agree that it was presented in this way. The years of his employment at Fujitsu were clearly presented in on-screen text. Each postmaster also had the years of their tenure clearly presented in on-screen text. The extent of the overlap was therefore clear. While not presented as contemporaneous, the whistleblower was presented in such a way as to suggest that his evidence was important and relevant to the postmasters who have been prosecuted over the past fifteen years. There are many more of them than the three who we featured in the programme and we made clear that the postmasters we interviewed were representative of a wider issue.

We thoroughly checked the testimony of Mr Roll with other sources and we believe his evidence was significant. Much of the detail of his evidence was too technical to be included in the film. For example, he told us about errors caused by Horizon misidentifying transactions because the code identifying the product and the code identifying the payment type could combine in transaction data in a way that resembled the data of other transactions. This meant that payments were sometimes misidentified and misdirected by the accounting system. We put this to Post Office in our letter of 22<sup>nd</sup> July and it was not disputed.

In summary, however, Mr Roll's position was quite simple. His job, along with others in his department involved handling and fixing errors with Horizon transactions. He told us that

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errors were more widespread than has ever been reported and that some of these could create false losses. That is important evidence in itself.

2. You suggest that when the reporter, John Sweeney, asked *“Is it possible that suffering could have been caused because there are problems in the Horizon system?”* he was in breach of paragraph 3.2.3 of the BBC Editorial Guidelines because Mr Roll was not sufficiently qualified to respond. The guideline states: *“The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences’ trust in our content.”*

I think the relevant guideline in this case is 3.4.12, as it deals with the way we identify sources so that the audience can judge their status. The broadcast was consistent with this guideline because Mr Roll’s job was described accurately in commentary, in on-screen text and in his own account of his role. He was not presented as an expert on the recent Post Office controversy; he was presented as a computer technician who is well-placed to comment on errors in the Horizon system. We are entitled to broadcast his view that the losses for which people have been prosecuted may have been caused by a fault in the computer system and it was clear that what he said was simply that – his view. Indeed, this concern was one of the reasons he wanted to speak to us. Nonetheless we were careful how we handled his comments and we did not report them as fact. Accordingly, we ended this section of the film by concluding that it had raised important questions: *“His evidence could call into question the reliability of the computer records. If financial data can be changed without the knowledge of the postmaster, is it safe to rely on the computer’s evidence?”*

3. In relation to the Seema Misra case, you argue that the programme breached paragraph 3.4.2 of the Editorial Guidelines (quoted above) because it failed to consult public domain material relating to Ms Misra’s legal case in order to corroborate our account. You say that had we done so we would have known that the scope of disclosure in her case was sanctioned by the court. In fact, we consulted a lot of publicly available sources, including the full transcript of the trial and were fully aware of the arguments in court over disclosure.

While it is true that the courts always make the final decision on disclosure, they can only order the disclosure of documents that they know about. Nobody outside of Post Office and Fujitsu knew about the memo discussing a bug which could *“impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data.”* We were right to question whether Post Office should have disclosed this memo to the trial. Post Office has acknowledged that it has a duty to volunteer relevant material.

As journalists we are fully entitled to scrutinise the legal process, especially where the fairness of trials has been called into question or the possibility of a miscarriage of justice has

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arisen. In order to make the context of our enquiries clear, we reminded the viewer several times that the jury had found Ms Misra guilty and the judge had sentenced her to jail.

4. In relation to the call for Ms Vennells' resignation, you complain that some viewers may draw the inference that she is personally implicated in wrongful prosecutions. There is no suggestion in the film that Ms Vennells is implicated in having wrongfully prosecuted postmasters. She was appointed to a senior role at Post Office in 2007 and has been Chief Executive since 2012. It was the alleged failure of Post Office to satisfactorily investigate alleged wrongful convictions during this period that led James Arbuthnot to call for Ms Vennells' resignation. The Post Office review was commissioned after Mr Arbuthnot made representations to Paula Vennells and other members of senior management. He is therefore extremely well-informed about the issues and it was entirely proper to represent his views in the appropriate context in the film.

5. You also dispute that Post Office pursued theft charges when there was "*no evidence of theft*". This phrase was based on a note written by a Post Office criminal investigator about Jo Hamilton. Nevertheless, she was subsequently prosecuted for theft anyway. What the programme reported was, therefore, an accurate account of the facts. We also accurately reflected Post Office's denial in the programme.

**How experts were presented in the film**

1. Your letter is critical of the BBC's handling of contributions from experts which you say were misleading. You give the example of Charles Mclachlan who said: "*Any computer system can go wrong. What's important is the way that you deal with things when they do go wrong*".

This interview clip appears early in the programme when the context of our line of enquiry is being set up. We do not believe that this is, as you suggest, an allegation (that Post Office has failed to investigate the Horizon system or deal properly with problems). Mr Mclachlan is outlining a point of policy about how to run a large computer system. Errors will sometimes occur - it is how they are dealt with that is important. The programme goes on to examine how Post Office dealt with problems after explaining this context to the viewer.

Indeed, Mr Mclachlan's view matches Post Office's own view as it was presented at the on the record briefing provided to Tim Robinson and Matt Bardo on 9 June. Patrick Bourke told us: "*So we're not saying the system is perfect, we are saying it's subject to security updates, it's audited by any number of organisations on an annual basis, it needs to exceed all industry standards in terms of its performance. Now you know when discrepancies arise, there are a couple of systems whereby those discrepancies are addressed.*" Angela Van Den

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Bogerd said to us: *“So I think the crux here is that the system is designed to cope with things that go wrong”*.

2. Post Office’s statement mentions the limited role of Second Sight, saying their *“review was not and has never been a criminal case review... Second Sight are accountants, not experts in criminal law or procedure”*. You say that this limited role should have been made clear in the programme because it would have allowed the viewer to properly assess the contribution provided by Second Sight. In particular you argue that the comments in Ian Henderson’s interview about Post Office’s failure to investigate and its *“institutional blindness”* could be interpreted as a comment on legal process.

Second Sight were not presented as experts in criminal law at any point in the programme. The clip which you question is the first time that Mr Henderson appears after he has been accurately introduced to the viewer as a representative of the investigators that Post Office itself has appointed. He talks about the failure of Post Office to investigate Horizon problems properly. It is our reporting that moves the story into an area of legal process, not Mr Henderson’s contribution. Mr Henderson was well placed, perhaps uniquely so, to comment on the way Horizon has been investigated. Mr Henderson’s company was picked by Post Office to review, independently, complaints about the Horizon system and he has been working with Post Office over the past three years to investigate these matters.-

3. You suggest that Professor Mark Button was wrongly presented as if he had knowledge of the cases of specific postmasters. In fact, he was quite clearly presented as an expert in the general principles surrounding Post Office prosecutions. Our interview with him was full and detailed and involved discussion about non-disclosure in the light of the same extract of the minutes that we quoted in the programme. The two clips that we selected for broadcast from our interview were important general principles, and views that he is qualified to express as one who has studied miscarriages of justice and fraud.

In the first clip he made the point that he believes the way private prosecutions are conducted at Post Office increases the risk of potential miscarriages of justice when compared with prosecution emanating from the Police. It is important context that an expert in this field believes that to be the case. We cannot agree that it is *“meaningless”*, as you suggest.

In his second clip he sets the importance of non-disclosure in a case such as Seema Misra’s in a broader context by saying *“there have been lots of cases where inadequate disclosure by the prosecution have led to the collapse of prosecutions and have led in some cases to convictions being overturned when that’s subsequently been found out”*. As you yourself say in your letter, the Professor was making a ‘general comment’ in the case of Seema Misra. We do not agree that it is irrelevant to include his explanation of the

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importance of disclosure in cases such as Seema Misra's. On the contrary, we believe it is important to make this significance clear to viewers.

For the reasons set out above, we do not believe Post Office has grounds to complain about this programme. We think we raised valid questions and included Post Office's response on each and every one, leaving viewers to form their own judgement while making it clear that the further legal process may provide more definitive answers.

Yours sincerely

Andrew Head  
Executive Producer  
BBC Panorama