
From: Mark R Davies[/O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MARK R DAVIESA80D7269-659B-41D0-9C80-68D9DE4FA7C5D38]
Sent: Wed 17/06/2015 7:12:43 PM (UTC)
To: Patrick Bourke [GRO], Rodric Williams [GRO], Susan Barty [GRO]
Cc: Melanie Corfield [GRO]
Subject: Fwd: BBC Panorama interview

To see. Can we get an update on legal letter please?

Sent from my iPad

Begin forwarded message:

From: Matthew Bardo [GRO]
Date: 17 June 2015 19:41:45 BST
To: 'Mark R Davies' [GRO], Conor Spackman [GRO]
Cc: Melanie Corfield [GRO]
Subject: RE: BBC Panorama interview

Hi Mark

Thank you for getting back to me.

I am afraid I do not agree that there is nothing new in the story that we are covering. In the past few months there have been a number of significant developments. Among them are the release of Second Sight's final report that includes criticism of the Post Office by its own investigators, the acceptance of twenty cases for consideration by the Criminal Cases Review Commission and the information obtained as a result of our investigation. I think we are scrutinising new evidence that raises important questions about the way the Post Office has behaved.

The purpose of the briefing that you kindly arranged was for you to brief us on the background to our key lines of enquiry. It was made clear beforehand that we would not be briefing you about our research. The briefing has informed the allegations that we emailed to you on Friday and it will help us to report your position fairly and accurately on the areas that will be covered by the programme. It is now the purpose of the interview for us to put our questions and allegations to the Post Office in order to obtain a filmed response for broadcast.

As a former BBC journalist, you may remember that we do not tell people in advance what questions will be asked in an interview. This helps maintain our editorial independence. We normally provide interviewees with question areas and sufficient information to enable them to understand any allegations that might be put to them. In this case, I believe we have done that.

We do not normally share the evidence that supports our allegations. However, I accept that in this case there are a lot of detailed and complex points. We want the interviewee to have a full and fair opportunity to answer questions that relate to decision-making at the highest level of the organisation.

Therefore, we are willing to share the following key pieces of evidence so that you are in a better

position to respond:

We have read extracts of minutes of a joint Fujitsu/Post Office meeting at which a bug was discussed. We obtained these extracts from the Second Sight final report and we understand that this meeting took place in autumn 2010. The minutes of the meeting state that this bug could impact “ongoing legal cases where branches are disputing the integrity of Horizon Data.”

We have interviewed a former employee at Fujitsu, who worked in “third line support” for the Horizon system. He says it was possible to remotely access data held on branch terminals and to amend that data. He also alleges that system errors were more widespread than has previously been reported.

We have also obtained extracts from Jo Hamilton’s prosecution files. One extract includes comments made on 16th November 2007 by the Principal Lawyer of the Criminal Law Division of Royal Mail working on Jo Hamilton’s case. The lawyer wrote that when it comes to asset recovery, “the theft charge makes life so much easier”. Another extract is from the Post Office investigator’s report into Ms Hamilton’s case. On 17 May 2006 the Post Office Investigator reported “I was unable to find any evidence of theft or that the cash figures had been deliberately inflated”.

We can also tell you that in the programme we currently expect to include interviews with Jo Hamilton, Seema Misra, Noel Thomas, James Arbuthnot, a computer expert, a forensic accountant and a former Fujitsu employee.

I am keen to confirm a date on which we can film the interview. You have mentioned that diary pressures mean that next week is now the earliest that this could be done. If we could make it early in the week, that will help us to consider the points raised and ensure that they are reflected fairly throughout the programme. We have to finish the edit by next Friday in order to have the programme ready for broadcast.

Please do also send over the information that you said you would provide to Tim and me when we attended the briefing.

Thanks for your help.

Matt

From: Mark R Davies [GRO]
Sent: 16 June 2015 10:34
To: Matthew Bardo; Conor Spackman
Cc: Melanie Corfield
Subject: RE: BBC Panorama interview

Dear Conor and Matt

Many thanks for your email of late Friday afternoon and for the further detail it provides in terms of the ground you appear to wish to cover in your programme, and for Matt’s follow up. My apologies for getting back to you slightly later than I had planned.

As you know, I remain puzzled and concerned that the BBC did not see fit to raise the majority of these issues and the very serious allegations within them with us when we met your colleagues at our offices last Tuesday.

In your email, you say that you have evidence for the propositions you advance but, to date, no-one engaged in the making of the programme (nor, indeed, of other BBC programmes featuring this issue)

has actually provided that evidence to us. Accordingly, and once again, I would ask that you provide us with any evidence you have to support the allegations you make, the list of contributors, what they are saying and what they have been asked to comment on, so that we might be in a position to respond to it appropriately as we are entitled to do.

The general thrust of what you say is not new. Claims of a similar nature have been levelled at us before but no one has ever been able to provide us with any actual evidence to support them. For the avoidance of doubt, the Post Office has been guided in all that it has done in relation to the cases you cite, and indeed all complaints made of a similar nature, by the individual circumstances which each presents and the actual evidence of what, in fact, took place. You will understand that it would be entirely inappropriate for the Post Office, or indeed any other organisation, to be guided in its actions by anything which does not carry this essential quality of substantiation, particularly when the allegations being raised with us are so serious.

What you have so far presented us with is, in essence, a repetition of various assertions and allegations made to us in the course of this process, each of which has been thoroughly re-investigated by both ourselves and Second Sight and repeatedly addressed over a period now stretching back some 3 years. As you are aware, the Criminal Cases Review Commission (CCRC) is also examining a number of cases (they having been referred to them) and the Post Office is co-operating fully with the Commission in that process. In the circumstances, the Post Office believes that where there has been any critical finding such an investigation by the CCRC is the appropriate route to determine many of the issues raised.

As we made clear in the lengthy session we had with your colleagues last Tuesday, we are not prepared to engage in a public debate about individual cases. We gave each applicant to the scheme an assurance that we would afford them absolute confidentiality in the handling of their complaint. This was also the agreement reached with the Justice for Subpostmasters Alliance, Second Sight and others involved in the establishment of the scheme, and was appropriate given that the cases often raise matters of a highly sensitive personal nature for Applicants; and we have responded to each of the points raised in full: we have done so directly with each individual with a case in the scheme and with Second Sight.

It follows that I will not be addressing each and every point raised in your email. However, I am happy to respond more thematically as follows:

Prosecutions

- The Post Office does not prosecute subpostmasters for making mistakes – on the contrary, it has on occasion done so when there is sufficient evidence for a realistic prospect of conviction and where it is in the public interest to take that prosecution forward
- Post Office complies with the Prosecutors' Code of Practice which sets out this requirement
- Decisions as to how to plead to a charge are taken by those individuals and their independent legal advisers only, informed by their own independent legal advisers
- It is a matter of public record that none of the individuals whose cases you have chosen to highlight with us has appealed their conviction – an option which remains open to them
- The Post Office as prosecutor has a continuing duty to disclose any information which may assist the defence even if it undermines the prosecution case; the Post Office has complied and continues to comply with that duty

Horizon

- Over the last 3 years, and across all the complaints we have received and comprehensively re-investigated, there is no evidence to show that Horizon was responsible for the losses incurred in the relevant branches
- Post Office cannot edit, amend or otherwise alter branch data remotely; it can add a transaction to a branch account – this is, naturally, subject to rigorous authorisation protocols and carries a unique identifier code rendering it immediately distinguishable from any other transaction
- Post Office volunteered this information to Second Sight in 2013 and again made it clear in its response to Second Sight's final report in April of this year
- This process has only been used in this way on one single occasion since the introduction of Horizon OnLine, during pilot testing work and this was done with the full knowledge and indeed co-operation with the relevant subpostmaster

Second Sight

- We have provided Second Sight (which has acknowledged it is not expert in matters of criminal law or procedure) with a very significant amount of information over the course of the last 3 years including all non-legally privileged materials relating to prosecutions. It is a basic tenet of our justice system that discussions between a client and his or her lawyer are privileged from disclosure, even to a Court, and this applies equally to the advice a defendant receives, e.g. as to how to plead guilty to a charge and with what consequence
- A number of applications to the CCRC have been made by individuals with cases in the scheme (note these should not be confused with appeals) and the CCRC will review all the relevant material including all legally privileged material
- This provides an absolute assurance to those individuals that all aspects of their prosecution and conviction will be looked at by an independent body

As I hope to have made clear, whatever theories have been advanced in relation to the Horizon system, no one has shown it to be responsible for any of the losses incurred in the relevant branches. Even Second Sight acknowledged that human actions are the most common explanation. I would again stress the importance we attach to seeing the evidence which supports any allegations that you are proposing to make and I look forward to receiving your reply in this regard. I also look forward to receiving the list of contributors, what they are saying and what they have been asked to comment on.

We will of course continue to engage with you on any subject or question. I am concerned, however, at the direction the programme appears to be taking [outlined very clearly in Conor's email]. Given the BBC's previous coverage of this issue and the apparent direction of the Panorama programme [which does not appear to be taking the issue forward] I wanted to inform you that I will be making representations more widely within the BBC.

In relation to the timing of an interview, any interview would need to take place next week because of diary pressures and the rescheduling of your broadcast to 29 June. In the meantime, I am sending Matt Bardo and Tim Robinson the information which we did not have immediately to hand when they came to see us last week.

Best wishes
Mark

From: Matthew Bardo [REDACTED] **GRO**
Sent: 12 June 2015 20:06
To: Mark R Davies; Conor Spackman
Cc: Melanie Corfield
Subject: RE: BBC Panorama interview

Hi Mark

Thanks for coming back to us so swiftly.

On the issue of theft charges being used to pressure sub-postmasters to plead guilty, you will be aware that this allegation is repeatedly raised in Second Sight's reports and our evidence is drawn from their written investigative findings.

We made clear ahead of the briefing that its purpose was for the Post Office to brief us and not for us to brief the Post Office about our research. The contents of the briefing were very helpful and will help us to represent fairly and accurately the Post Office's position on the things we discussed.

On the subject of the date of the interview, we are very keen to record it next week as that will give us sufficient time to consider the points raised and to ensure that they are reflected fairly throughout the programme. Would it help if we were to move the interview to Thursday or Friday of next week instead?

All the best

Matt

From: Mark R Davies [REDACTED] **GRO**
Sent: 12 June 2015 17:25
To: Conor Spackman
Cc: Matthew Bardo; Melanie Corfield
Subject: Re: BBC Panorama interview

Dear Conor

Many thanks for this.

We will of course come back to you in more detail next week but for the time being I make the following points:

- you make below some extremely serious allegations about the Post Office. I am gravely concerned that you make these three days after we sat with your team for two hours. I am at a loss to understand why these very specific and serious allegations could not have been raised at the briefing.

- you informed us earlier in the week that your programme schedule has changed and you plan to broadcast on June 29. Given that, diary pressures and the scale and seriousness of the allegations you are making, we will look to arrange the proposed interview in the week of the 22nd. This remains in line with your proposed schedule had your programme been due to broadcast on June 22.

- you quote evidence to suggest the Post Office may have unfairly used theft charges to put pressure on SubPostmasters. Please as a matter of urgency provide some evidence for that very serious allegation.

Best wishes

Mark

Mark Davies

Communications and Corporate Affairs Director

Mobile: GRO

On 12 Jun 2015, at 16:56, Conor Spackman GRO wrote:

Dear Mark,

Firstly, I would like to thank you for the time you and your colleagues spent with Matthew Bardo and Tim Robinson on Tuesday. It was very helpful to be able to discuss this subject in detail with the relevant people.

Since we last wrote to the Post Office, our research has continued and I am now able to give you more information about the points that are likely to be raised in the programme.

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.

Having read reports written by Second Sight and Post Office responses to them, we wish to address the following question areas in an interview. They are broken down below under the subject matter to which they relate:

Jo Hamilton

- the decision to charge Jo Hamilton with theft
- why Ms Hamilton's office was £2000 down on the Horizon system and why this doubled to £4000 when she followed the instructions from the help desk
- her claim that she sought help and the Post Office failed to provide it
- her explanation that she subsequently felt trapped and did not know what to do other than sign off inaccurate accounts

Noel Thomas

- Mr Thomas's claim that that he told the helpline about his problems with the system and about the missing money
- the suggestion that it is no longer possible to know the results of important tests carried out on Mr Thomas' system because those records have now been lost or destroyed
- the suggestion that Mr Thomas was poorly treated after 42 years of loyal service
- that the Post Office now believes that the cause of the shortfall in Mr Thomas' branch is likely to have been mistakes by him or his staff

Seema Misra

- Ms Misra's claim that she and her staff were not provided with adequate help despite making more than 900 calls to the helpline
- the suggestion that the Post Office failed to disclose crucial information during Ms Misra's trial including technical information about Horizon to the defence's expert witness
- that the Post Office and Fujitsu had identified bugs in Horizon prior to Ms Misra's trial that were not disclosed to the defence
- the suggestion that this information could have helped Seema and other sub-postmasters stay out of prison

Post Office investigations and prosecutions

- the suggestion that the Post Office has a financial interest in prosecuting sub-postmasters because it helps with the recovery of missing money
- particularly in that context, the suggestion that miscarriages of justice are more likely because the Post Office exercises both the power of investigation and prosecution
- the suggestion that the Post Office has unfairly pursued theft charges to pressure people into paying up
- the claim by numerous sub-postmasters that they were told by Post Office investigators they were the only ones having problems with the Horizon system

Horizon system

- the suggestion that the complexity of the Horizon system adds to the likelihood of errors
- the suggestion that the lack of an automatic paper record from the Horizon system adds to the likelihood of errors
- the suggestion that Post Office prosecutions relied on the belief that the computer system was robust, when in fact computer errors may call this into question
- the suggestion that bugs in Horizon were more widespread than Second Sight have found
- the suggestion that there were around 30 people working in "third line support" at Fujitsu and that they fixed dozens of system errors
- the suggestion that errors were fixed by a team who could access transaction data, add transactions or make changes to transactions that would affect the balance in branch, without the sub-postmasters knowledge

Second Sight investigation and select committee in parliament

- Second Sight's claim that their work has been hampered by an increasing lack of co-operation
- Second Sight's understanding that this is the result of legal advice

- Second Sight's claim that the Post Office has failed to provide full access to legal and prosecution files
- The apparent failure of the Post Office to provide Second Sight with emails relating to the eyewitness account of an incident in Bracknell in 2008
- Second Sight's evidence that remote access to branch data is possible in spite of Post Office denials

Please could you let us know the time that you have scheduled on Wednesday 17 June for the interview? I would be grateful if we could arrive about an hour before the interview begins in order to set up. It usually takes about half an hour to pack the kit away again after we have finished filming.

Thanks for your help.

Conor

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