

Message

From: Angela Van-Den-Bogerd
on behalf of Angela Van-Den-Bogerd **GRO**

Sent: 14/12/2014 12:34:00

To: Rodric Williams **GRO**; Melanie Corfield **GRO**; Jarnail Singh **GRO**

CC: Belinda Crowe **GRO**; Mark R Davies **GRO**; Chris Aujard **GRO**; Ruth X Barker **GRO**; Tom Wechsler **GRO**; Patrick Bourke **GRO**; Parsons, Andrew **GRO**; Susan BARTY **GRO**

Subject: RE: Urgent - Nick Wallis and One Show. SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Rod,

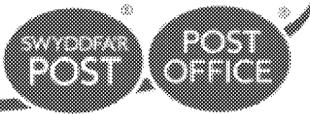
My answers to your questions are in blue and embedded within the original e-mail.

Angela

Angela Van Den Bogerd | Head of Partnerships

✉ Ty Brwydran House, Atlantic Close, SWANSEA SA7 9FJ

✉ **GRO**



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From: Rodric Williams
Sent: 13 December 2014 23:58
To: Melanie Corfield; Jarnail Singh; Angela Van-Den-Bogerd
Cc: Belinda Crowe; Mark R Davies; Chris Aujard; Ruth X Barker; Tom Wechsler; Patrick Bourke; Parsons, Andrew; Susan BARTY **GRO**
Subject: FW: Urgent - Nick Wallis and One Show. SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Mel – my comments are embedded in red. Apologies that you may have to wade through them.

Jarnail – as per my text message, can you please respond on my criminal law comments as a matter of urgency.

Angela – I have a couple of comments called out for you too.

Let me know if you need anything more,
Rod

Rodric Williams | Litigation Lawyer





GRO

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From: Melanie Corfield
Sent: 12 December 2014 12:02
To: Belinda Crowe; Mark R Davies; Patrick Bourke; Rodric Williams; Ruth X Barker; Tom Wechsler
Cc: Angela Van-Den-Bogerd
Subject: Urgent - Nick Wallis and One Show.

Hello all

To see below. Can I suggest we have a meeting/ call to discuss please.

Copying Angela to see if we can get any knowledge about Steven Phillips – looks as though he is serving subpostmaster. The other allegations and accusations are all themes we have robust lines about and also of course that we are preparing for Jo S.

But I think we need to be extremely robust about opinion from specialists who have not been involved in this and are commenting from the sidelines.

Let me know what suits today.

Thanks

Mel

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

Dear Melanie,

1) Thank you for your help with The One Show item transmitted on Tuesday 9th December. 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.

No comment.

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 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.

I understand we're still not discussing individual cases, but if that changes we can pull together the legal files which often have a record of what happened at the time.

Either way, no one is "under pressure" to falsify their accounts. That is their choice, but even if true, falsifying accounts at our direction would be a defence, which should be raised in defence to a charge of false accounting – **JARNAIL, PLEASE CONFIRM.**

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.

Horizon is the POS accounting system which Post Office provides and requires our agents to use. If agents don't like it, they can choose not to provide services for us. The vast majority of our agents work with it just fine, and we're not required to bespoke our POS accounting system to the whims of each individual agent.

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

Same comment as above re: it's the system we require our agents to use, and the vast majority of our agents work with it just fine.

Settling Centrally does not "imply payment later". It means the shortfall is being disputed, and POL is asked to investigate how the loss arose and who should be held responsible. I think we have data on how much is settled centrally, but not all of it is recovered from branches. **ANGELA – IS THAT RIGHT?** If a Spmr settles centrally without raising a dispute with NBSC at the time they are indeed accepting liability for the discrepancy but indicating that they are unable to make good at the time so the settle centrally function enables them to settle the loss with us by other means ie card payment or deductions from remuneration. In settling centrally and raising a dispute at the time with NBSC this will trigger an investigation by the relationship manager at FSC, Andy Winn. If his investigation concludes that the Spmr is not responsible for the loss a TC will be initiated. If on the other hand the Spmr is deemed responsible the Spmr will be required to agree a method of payment to settle the loss.

It is often the case that only the branch can determine what happened in a transaction, as they physically serve the customer. It is right that they are accountable – they are our agent on the ground, and are responsible to us for what they do (it's not possible for us to monitor every transaction at every branch – that defeats the purpose of an agency network).

A postmaster can choose to open their branch, and they also always have the choice of accurately reporting the branch's financial position, in particular how much cash they are holding. **ANGELA – IS THAT RIGHT?** This is correct. Post Office manages the flow of cash to the branch from the cash declarations that the branch makes. If it appears that the branch is holding too much money for their in and out payments then Cash Management will contact the branch to discuss the situation. But until this time the branch is in control of the cash within the branch.

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.

An accused will be legally advised on his/her defence – **JARNAIL, PLEASE CONFIRM.**

The defence should seek all information relevant to a defence (especially if they know it exists), and the prosecution has a duty to disclose all material which helps the defence or hurts the prosecution. If she wanted records that hadn't been supplied by the prosecution, she should have asked for them – **JARNAIL, PLEASE CONFIRM.**

It is up to an individual defendant, informed by the professional advice s/he receives, to choose whether to accept or contest a criminal charge - **JARNAIL, PLEASE CONFIRM.**

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

The statement "Subpostmasters are not allowed a legal representative when they are interviewed under caution by Post Office investigators" is NOT correct.

It's a contradiction in terms – by definition, persons being interviewed under caution have a right to consult privately with a solicitor. **JARNAIL, PLEASE CONFIRM**

A distinction needs to be drawn between interviews concerning the *contract*, and those which concern *criminal conduct*. The standard Postmaster contract (section 18) provides that POL will meet with a Postmaster to discuss non-compliance with the contract, unless contemplated court proceedings (civil or criminal) mean this would be pointless.

We have these "contract" meetings to explore whether the POL contract advisor's decision (e.g. to terminate a contract) should be different.

If not, the decision stands, and any issue a Postmaster has with it can then be pursued by (civil) lawyers, e.g. sue for breach of contract.

The contract, which the Postmaster signs up to, sets out who can attend these meetings (over 18, not involved in the enquiry, is a Subpostmaster, Sub-Post Office Assistant, Royal Mail Group employee, or NFSP Rep).

As far as I am aware, there is no reason why this "friend" cannot speak – **ANGELA, DO YOU KNOW?** The contract extract from Section 19 is below. This refers to the investigation interview however the principle of the friend remaining silent is also applied to the interviews with Contract Advisors (RTU meetings). However the working practice is that at the discretion of the Contract Advisor the friend is able to speak on behalf of the Spmr with the Spmr's permission. This is especially so when the friend is also the NFSP rep.

19. A friend may only attend and listen to questions and answers. He must not interrupt in any way, either by word or signal; if he does interrupt he will be required to leave at once and the interview will proceed without him. Whatever is said at the interview is to be treated as in strictest confidence. The friend may take notes of the interview but he must keep the notes in the strictest confidence. The only communication the friend is entitled to make on behalf of the person who has been questioned will be in the form of a written "in strictest confidence" statement which may be submitted by the latter, in support of any official appeal which the person questioned may desire to make in connection with the methods followed at the enquiry. No other communication about the interview is allowed (unless made by permission of the Post Office) as it might constitute a breach of the Official Secrets Acts. The questioned officer may, however, if he so desires, communicate the friend's statement to the National Federation of Sub-Postmasters in strictest confidence.

In contrast, interviews in connection with criminal conduct are conducted under caution in accordance with PACE. This requires the interviewed person to be advised of the right to consult a solicitor. S/he will then sign a statement confirming that and (where relevant) that they agreed to proceed without a lawyer – **JARNAIL, PLEASE CONFIRM**. Evidence obtained which is not compliant with PACE can be excluded as having been unfairly obtained, i.e. we can't circumvent PACE by trying to obtain information through a "contract" interview not held under caution - **JARNAIL, PLEASE CONFIRM**.

In short – if it's criminal, interviews will be conducted in accordance with PACE, with a right to consult a solicitor.

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 likely to occur.

We should ask for this opinion – the privilege over it could have been waived.

The "expert" cannot comment on what our "culture" is, at least not without speaking to us first.

Nevertheless, if this "expert" believes miscarriage of justice are likely to occur, he should set out for us the how and why so that we can be sure they don't. Justice demands that.

We have consulted former First Senior Treasury Counsel Brian Altman QC in connection with our prosecution practices. Brian's advice is privileged, and we CANNOT do anything which might waive that privilege. Please therefore do NOT do anything referencing Brian without clearing it with Legal first.

We have let Brian know we may want to name check him, and this was contemplated when he was instructed. For internal use only at this time, he included this in his review summary (caveated to the instructions he received): *I have seen no evidence to suggest that Post Office Ltd exercises its investigations and prosecution function in anything other than a well-organised, structured and efficient manner, through an expert and dedicated team of in-house investigators and lawyers, supported by Cartwright King solicitors and their in-house counsel, as well as external counsel and agents where required.*

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.

We will not comment on individual cases (the BBC can of course contact the legal representatives for the named individuals).

Prosecutions do not have to be brought by the CPS, nor do they require a police investigation. POL uses the statutory right to bring a private prosecution which is open to everyone (section 6 of the Prosecution of Offences Act 1985) – **JARNAIL, PLEASE CONFIRM.**

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 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.

Again, we should ask for whatever Mr Sturgess has provided.

Generally though, there is no positive proactive obligation of disclosure when negotiating the entry into a commercial contract.

We do have to respond appropriately to any direct question asked of us during contract negotiations, and we could be liable for misrepresentation if we don't.

Given the media coverage of Horizon, you'd expect any new agent to raise the issue with us as part of their due diligence if they thought it important.

It's not right to say POL "allows" Postmasters to sign the contract - POL offers to appoint the Postmaster as our agent under the terms of the contract, and the Postmaster chooses to accept those terms.

Any "business contract expert" would know this.

Let me know if you need background on the "Calender [sic] Square issue" (also known as the "Falkirk Anomaly"). We looked into this in July 2013 when the SS Interim Report was published. In short, it was raised in Court in Misra (criminal jury trial conviction) and Castleton (High Court judgment which found with respect to Mr Castleton's account that "*no flaw can be found on this account in the Horizon system*" and "*the conclusion is inescapable that the Horizon system was working properly in all material respects, and that the shortfall of £22,963.34 is real, not illusory*").

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 Postmasters in the mediation scheme might be unsafe.

Again, we should ask for this opinion – the privilege over it could have been waived.

Again, if this barrister believes miscarriages of justice have occurred, he should set out for us the how and why so that we can be sure they haven't. Again, justice demands that, which Mr Patel should know as an officer of the court.

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.

BBC should name the MPs (and not by default).

We set up the Scheme so that Postmasters could articulate and ideally resolve their (legitimate) concerns. It's an ADR scheme i.e. alternative dispute resolution to that provided by the courts.

If it doesn't work for Postmasters, they can pursue remedies through the courts (as JFSA and Edwin Coe have has intimated they will do).

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

Any further comment here will just be repetition!

The content of the proposed programme is not set in stone. This is an opportunity 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

Nick Wallis