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By Fax and Post

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Dear Sirs

NOT FOR BROADCAST

Panorama - Post Office Limited

We write in connection with the Panorama programme, "Trouble at the Post Office", broadcast at 7:30pm on 17 August 2015 (the "Programme"). As stated in previous correspondence, we act for Post Office Limited ("our client" or "Post Office").

Background

Prior to the broadcast of the Programme, there were extensive communications between our client and the BBC (both at editorial and legal level). As stated in our letter to BBC Programme Legal Advice on 10 August 2015, our client had significant concerns regarding the manner in which the Programme had been prepared, the content of the proposed programme and its purpose. Indeed, our client was extremely concerned that you were likely to be broadcasting highly damaging allegations about Post Office that would not be adequately supported by any evidence and without our client's right of reply being fairly reflected in the Programme. Having now seen the Programme, it would appear that our client's concerns were well founded.

The Programme presented a very one-sided view of this issue and crucially featured a number of untrue allegations that are likely to cause our client significant financial damage.

We do not repeat all of the points raised in our letter of 10 August but incorporate them in this complaint by reference. As clearly set out in that letter, in producing the Programme, the BBC has not only

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broadcast untrue and damaging allegations regarding Post Office but has failed on several occasions to comply with the BBC Editorial Guidelines. In particular, and despite repeated requests, 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 such allegations. This meant that our client was not provided with an adequate opportunity (or ability) to respond to the allegations raised in the Programme, resulting in a broadcast containing some very serious and highly damaging allegations that did not fairly reflect our client's position or provide a duly balanced view of the issues raised. Moreover, in a number of respects, Post Office's response to allegations which were provided was not fairly and accurately included in the Programme.

Allegations made

The Programme states on more than one occasion that Post Office pursued theft charges against postmasters where there was "*no direct evidence of theft*" or "*no evidence of theft*". The allegation is further made that our client included theft charges, despite a lack of evidence, to put pressure on postmasters to plead guilty to false accounting and to assist with financial recovery. These allegations are untrue, highly damaging and are likely to cause our client serious financial harm. Our client has repeatedly stated that no charge was or would be brought unless Post Office had been advised, following independent legal advice, that there was sufficient evidence to give rise to a realistic prospect of conviction in respect of any charge. Furthermore, no charges were brought for the purposes of Post Office's own financial recovery.

The Programme further states by reference to statements made by Richard Rolls who had worked at Fujitsu, that financial records were sometimes changed remotely without the postmaster knowing. Mr Sweeney goes on to state that "*Post Office has always said that simply can't happen*" and invites the conclusion that what Post Office has said in relation to remote access is "untrue", a particularly damaging allegation. This is not an accurate or fair reporting of Post Office's formal statement to Panorama. As made clear in the statement, Post Office can correct errors in and/or update a branches accounts by inputting a new transaction (not editing or removing any previous transactions). It is also possible to update the software remotely. Although Mr Sweeney included Post Office's statement that it is not possible to edit the transactions as recorded by branches, in the context of the other statements made, Post Office's response was not fairly represented in the Programme. Had Post Office's response been fairly represented, this would have provided appropriate context for the comments made by Mr Sweeney and Mr Rolls.

Contributions

The Programme includes contributions from various purported experts, whose opinions and contributions were misleading and unfairly portrayed as providing informed criticism with regard to the approach adopted by Post Office.

By way of example, Charles McLachan was asked the following questions by Mr Sweeney: "*So when you've got a computer system this complicated and this big, is it possible that things can go wrong?*". The response, "*Any computer system can go wrong. What's important is the way that you deal with things when they do go wrong*", suggests that Post Office has failed to investigate the Horizon system or to deal with problems as they arise in the system. This is incorrect. Not only, as stated in our letter of 10 August 2015, has Post Office conducted detailed investigations and an independent review to assess whether computer errors have caused cash to go missing in this small number of branches, but 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.

Post Office has never claimed that Horizon is perfect. However, there is a considerable difference between minor bugs which have been rectified and alleged major faults which would result in a miscarriage of justice. Implying theft a major fault of that nature is probable simply because of the existence of other minor faults is neither logical nor fair to our client. Your Programme presents no

evidence to support the allegation that a fault in the Horizon system was responsible for a loss for which any postmaster has been prosecuted.

Similarly, the allegation is made by Mr Ian Henderson that there has been a “*failure to investigate proper and in detail cases where [IT] problems occurred*”. This is wholly untrue and Mr Henderson does not have sufficient knowledge of the individual cases to make such broad and serious accusation. Despite this, this allegation is presented, in essence, as fact, suggesting that Mr Henderson has the requisite knowledge to be capable of making such an assessment.

Professor Mark Button is presented in the Programme as a relevant legal expert. However, it is evident that Professor Button does not have, and has not had, any involvement in or knowledge of the three cases presented in the Programme. Indeed, this has been acknowledged by this in an email to Post Office dated 18 August 2015. Nonetheless, his contribution was presented in a manner which suggested that he had some knowledge of the specific cases. This is a concern that was raised in our letter of 10 August but which has clearly been ignored. Prof. Button stated during the Programme that private prosecutions “*create potential risks of miscarriages of justice*”. This statement is entirely meaningless when robbed of the context of the specific cases. The manner in which this contribution is presented suggests that this supports the argument that there have been miscarriages of justice in the three cases featured in the Programme. This is not the case, it is simply a general remark.

In the context of a section of the Programme considering Seema Misra’s case, Prof. Button further opines that “*there have been lots of cases in the past where inadequate disclosure by the prosecution has led to the collapse of prosecutions...*”. Again, in the absence of any knowledge of Ms Misra’s case, this general statement by Prof. Button is wholly irrelevant. However, by inserting this comment at this point of the Programme, the viewer is left with the misleading impression that Prof. Button is speaking expressly in the context of Ms Misra’s case. This is a false impression which is highly damaging to our client.

It is also notable that the Programme contains a contribution from Richard Rolls as an alleged “*whistleblower*”. Despite repeated requests to be told the identity of the various contributors, our client was not notified of Mr Rolls’ identity, simply that there was a former Fujitsu employee who was a “*whistleblower*” who had worked with Fujitsu “*prior to 2010*”. It was therefore surprising that no attempt was made in the Programme to conceal Mr Rolls’ identity or appearance. Evidently his identity was not a secret. There is therefore no justification for the BBC to refuse to disclose his identity, contrary to paragraph 6.4.1 of the BBC Editorial Guidelines.

If Post Office had been provided with details of Mr Rolls’ identity, it would have been position to comment on Mr Rolls’ capability to provide evidence on these matters. Indeed, it is notable that Mr Rolls left Fujitsu’s employment and, indeed, ceased working in IT in 2004, before [any/many] of the reported losses were recorded by the postmasters featured in the Programme. It is difficult to understand how he can therefore opine on the operational status of the Horizon system at a time when he was no longer employed by Fujitsu, nor even working in the IT sector. No reference was made in the Programme to these limitations with regard to Mr Rolls’ experience of the Horizon system. To the contrary, his contribution was presented in such a way as to suggest that it was contemporaneous with the events being addressed in the Programme. Moreover, the Panorama team themselves declined the offer by Post Office of a demonstration of the Horizon system on the basis that the manner in which the system operated today is irrelevant to the issue of how it operated at the time of the purported losses. It is difficult to understand therefore why the BBC considers that evidence of how the system operated prior to the purported losses is relevant either. To present Mr Rolls’ contribution in such a manner that suggested that he had first-hand experience of the Horizon system at the relevant time is therefore highly misleading for viewers and unfair on Post Office.

Mr Sweeney further asks Mr Rolls the highly leading question: “*It is possible that suffering could have been caused because there are problems in the Horizon system?*”. Mr Rolls states that this is possible. However, again, no evidence is presented by Mr Rolls or during the Programme to suggest that any problem with the Horizon system has resulted in a loss for which any postmaster was prosecuted.

Nonetheless, the manner in which Mr Rolls' contribution is presented is intended to mislead viewers into believing that he has a greater degree of knowledge of individual cases than is accurate.

Reflection of right to reply

Our client provided the BBC with a detailed statement to be used on the Programme. In light of the fact that our client was provided with very limited information regarding the allegations being levelled against it and the evidence upon which such allegations were founded, it was extremely difficult for our client to provide a suitably comprehensive statement.

Nonetheless, and despite the provision of a detailed statement, the BBC saw fit, during the Programme, to 'cherry pick' from our client's statement preferring to use short sound bites rather than to reflect our client's statement in full. This inevitably meant that the force of much of what was being said by Post Office was lost and was not fully, fairly or accurately represented in the Programme. Furthermore, significant elements of the statement were omitted altogether. For example:

- The Programme includes reference to the involvement of the Criminal Cases Review Commission ("CCRC"). However, no mention is made of the fact that Post Office is voluntarily providing the CCRC with any assistance it requires. Nor is it made clear, that the CCRC will have details of all of the relevant documents including privileged and confidential materials, meaning that the CCRC will be far better equipped to reach a conclusion regarding any potential miscarriage of justice than the BBC [(or Second Sight)] would be.
- Despite being set out in our client's statement, the limited role for which Second Sight was appointed and, furthermore, its lack of expertise in respect of criminal law and procedure is not made clear in the Programme. This is highly relevant and frames the weight that should be given to any contribution provided by Second Sight.
- As stated above, Post Office's statement regarding remote access to the Horizon system was not accurately reflected in the Programme. In particular, it is notable the Mr Rolls is asked whether "*what the Post Office is saying is untrue*" and yet at no point is it made clear what statement has actually been put before Mr Rolls. If it is the statement that changes to the system made remotely "simply can't happen", then this is an inaccurate reflection of Post Office's position and results in a highly misleading and damaging sound bite, essentially alleging that Post Office is lying. This is completely untrue and such a statement, implied or otherwise, is likely to cause serious financial harm to our client.
- The Programme states that Post Office "*doesn't have to go through the police or the Crown Prosecution Service*". The inference from this section of the Programme is that the Post Office is operating outside of the restrictions of the usual legal process. No mention is made of the fact that Post Office follows the Code for Crown Prosecutors issued by the Director of Public Prosecutions. Nor is any mention made in the Programme of the fact, as stated in our client's statement, that "*every person charged with a criminal offence is entitled to their own independent legal advice and representation, and reaches their own decision on how to plead based on that advice*".
- The Programme states that "*some are now calling for Paula Vennells to resign*". The inference being made in this statement is that Ms Vennells is in some way personally implicated in any alleged miscarriage of justice [(and that there is a general call for her to resign)]. Your Programme has failed to include reference to the fact that Ms Vennells initiated the independent inquiry and is committed to a series of actions, including providing funding to help people obtain professional advice to bring forward complaints against the company.

Taken together, these omissions and misrepresentations mean that, in contravention of paragraph 6.4.26 of the BBC Editorial Guidelines, the BBC has failed to ensure that the response relevant to the allegations broadcast has been reflected fairly and accurately.

Offer to meet

The key allegations in the Programme are founded on documents which purportedly show that Post Office brought a charge of theft against Ms Hamilton, and also against Mr Thomas, in the absence of any supporting evidence and further that Post Office used such a charge to put pressure on Ms Hamilton and Mr Thomas to plead guilty to false accounting. The documents upon which the BBC seeks to rely, and which purportedly evidence the allegation made, have been taken entirely out of context.

On 12 August 2015, following extensive communications between Post Office and the BBC, our client provided the BBC with an opportunity to review documents that would place these documents in context and which would answer the allegations being levelled against Post Office. In particular, Post Office invited the BBC to discuss a suitable arrangement whereby the confidentiality of such documents could be maintained while also enabling the BBC to verify the information it was proposing to broadcast and to check the highly damaging allegations being made about Post Office by a number of individuals who could fairly be described as having an axe to grind with our client. Despite this entirely reasonable offer, and despite the fact that paragraph 3.4.2 of the BBC Editorial Guidelines states that the BBC must “*check and verify information, facts and documents, where required to achieve due accuracy*”, this offer was refused by the BBC.

It is notable that if Post Office had been allowed to demonstrate to the Panorama team that these allegations were false, then the BBC would inevitably have removed such allegations and, as a consequence, would have been left with little material to broadcast. In this respect, it is perhaps unsurprising that the Panorama team preferred to decline Post Office’s offer, preferring instead to ‘bury its head in the sand’ and deny the inconvenient truth that Post Office has evidence to demonstrate that the allegations being broadcast were untrue.

It should also be noted that the fact that such documents could only be shown to the BBC on a confidential basis, is not a valid reason for declining to take the necessary steps to verify or debunk the allegations being put forward by third parties. There was no valid reason for declining our client’s offer.

Furthermore, the decision to decline the offer to have sight of these documents will not provide the BBC with any potential defence to a claim for defamation.

Next Steps

We request that this complaint be dealt under the BBC’s formal complaints procedure.

In the meantime, we are discussing with our client its options in respect of more formal action, including a potential complaint to Ofcom and an action against the BBC for defamation. The manner in which this complaint is handled and responded to is likely to have a bearing on the further actions that Post Office may take in respect of the Programme and on our client’s decision over what steps to take against the BBC.

For the avoidance of doubt, if the BBC chooses to ignore this complaint or to deny that there is any valid basis upon which to found such a complaint, then we will be recommending to our client that it takes more formal steps with regard to this matter.

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

Yours faithfully

CMS Cameron McKenna LLP