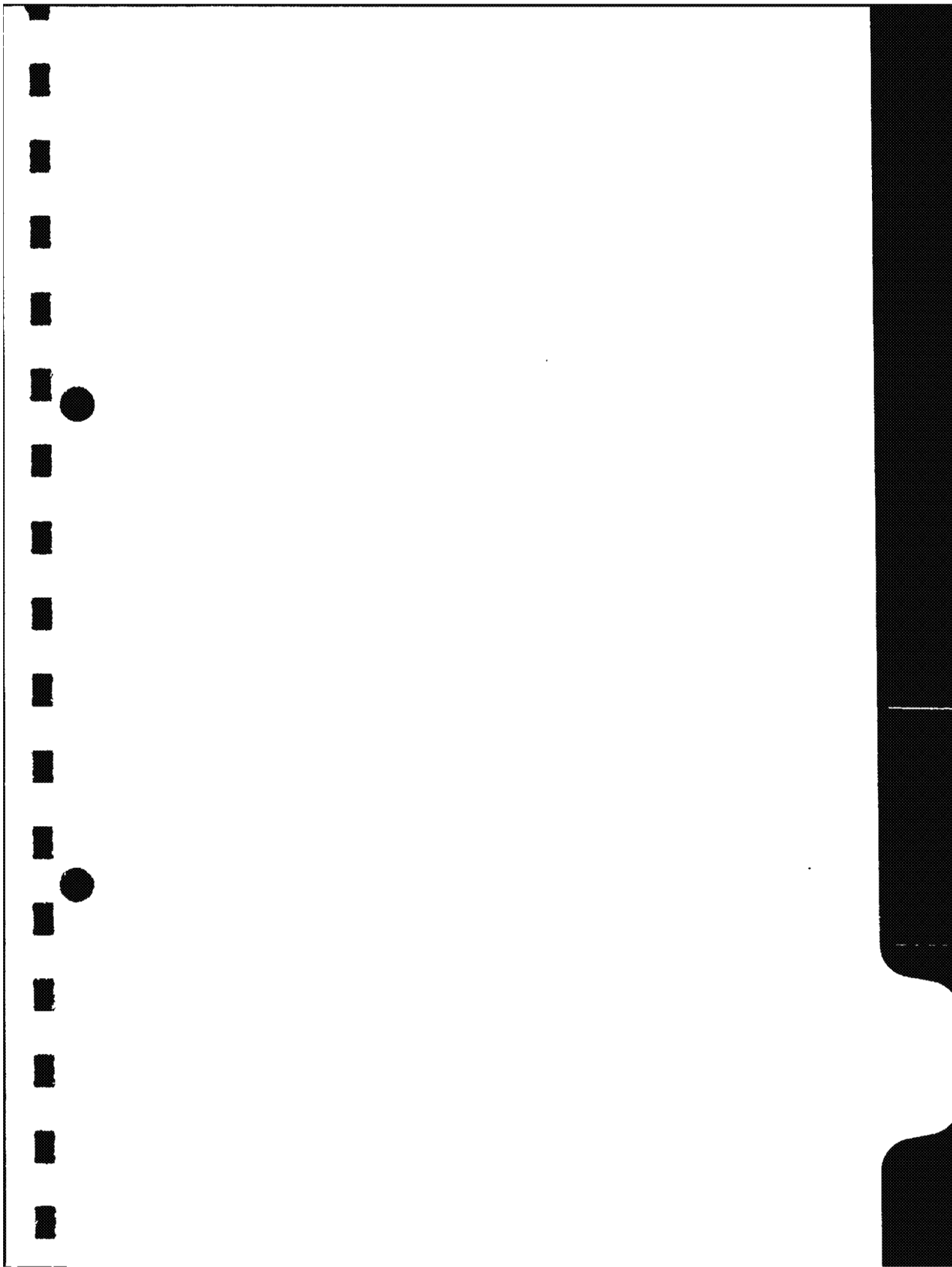


287-1



From: Rodric Williams [GRO]  
To: Mark R Davies [GRO], Mark Underwood [GRO], Patrick Bourke [GRO], Melanie Corfield [GRO]  
Cc: Jane MacLeod [GRO], "Tom Reid" [GRO], cmck.com)" [GRO], "Susan BARTY" [GRO], cmck.com)" [GRO]  
Subject: FW: Response from the ECU [CMCK-UK.FID8673510]  
Date: Thu, 3 Mar 2016 13:23:54 +0000  
Importance: Normal  
Attachments: Letter\_from\_ECU\_-\_29\_February\_2016(211732315\_1).PDF  
Inline-Images: image001.jpg

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All – please see the attached letter from the BBC's Editorial Complaints Unit, providing its provisional decision on our complaint. We have until 14 March 2016 to comment before the decision is finalised.

The provisional decision is fairly conciliatory in tone, and acknowledges our position on a couple of points, e.g. more detail on Richard Roll would have enabled a better critique of his contribution. Ultimately however (if predictably), they find no breach of the BBC Guidelines.

The ECU says this is because Panorama provided enough to us to enable us to respond to Roll's allegations. That this is a different reason to the one put forward by Panorama (that we would put improper pressure on Roll) is both comforting (in that our challenges to this may have been accepted) and frustrating (it's another inconsistent response) in equal measure. Also frustrating is that the ECU sidesteps the question of whether we were a "contributor" for the purposes of the Guidelines, which is central to whether they were breached by Panorama.

#### Next Steps

I see three options:

Write a further adversarial letter, continuing to detail the breaches of Guidelines and the BBC's inconsistent responses to our complaints. I doubt this will take us much further forward.

Do nothing and let the BBC issue their final response. That would feel weak to me.

Write a short letter acknowledging but not accepting the findings, and noting that because it didn't deal with it, the ECU must have accepted we were a "contributor". This should force the ECU to reconsider this point before issuing the final decision, and will put a stake in the ground for how we should be treated if there is further reporting. I therefore recommend this option.

We can try to appeal to the BBC Trust once we have the final decision. However, unless the final decision is significantly different to the provisional one attached, I would not recommend this, particularly when we are now likely to have achieved the main goals of complaining (make life difficult, make them think twice in the future).

As ever, any and all comments gratefully received.

Rod

From: Reid, Tom [GRO]  
Sent: 01 March 2016 11:54  
To: Rodric Williams  
Cc: BARTY, Susan  
Subject: Response from the ECU [CMCK-UK.FID8673510]

Dear Rodric,

We have received the attached response from the Editorial Complaints Unit with respect to our Panorama complaint.

Richard Hutt appears to have taken significantly more time over this response compared with his first one. There are some minor positives to be taken from the response. He has certainly acknowledged that *"information on the dates of Mr Roll's employment and the nature of his duties would have allowed for a critique of his knowledge and experience"* - and, indeed, also refers to this later on in his letter *"I can see why your clients would have preferred to also be given the opportunity to criticise Mr Rolls' perspective from the basis of the period in which he was employed"*.

However, he goes on to conclude that, notwithstanding this point, there has been no breach of paragraphs 6.4.25 and 6.4.1 of the BBC Editorial Guidelines.

While he touches on the question of what is a "contributor" for the purposes of paragraph 6.4.1, he goes to great lengths to avoid actually answering the question of whether POL was a contributor or not. Without reaching a conclusion on this point, it is difficult to discern if there has been a breach of the Guidelines because one does not know which Guidelines apply to your particular case.

He goes on to state that, even if 6.4.1 were to apply, *"it does not compel programme-makers to always reveal the names of all prospective contributors in all circumstances"*. This is not disputed. However, the BBC is supposed to provide such details *"wherever possible"* and, although Mr Hutt states that one of the circumstances in which it is appropriate to withhold such detail is *"the protection of a confidential source"*, he wholly fails to explain why that is relevant here. The argument is somewhat circular, justifying keeping the details of a source confidential in order to keep the source confidential. He fails to address the fact that the argument put forward by Mr Head in this respect was flawed.

One of the fundamental problems with the responses that we have received from the BBC is their inconsistency. In essence, Mr Head said POL was never a contributor and therefore was not entitled to be

provided with the level of detail we requested. Mr Hutt, in contrast, refuses to answer the question of whether POL was a contributor but says that sufficient detail was provided. It is difficult to understand how the BBC, when making its programme, is making an appropriate assessment of whether it has provided sufficient detail if it cannot determine which Guidelines, and hence which standards, apply.

#### Next Steps

This leaves the question of what to do next.

We have ten days (until 14 March 2016) to make representations to the ECU on its findings before a final decision by the ECU is reached.

We could write a relatively short letter addressing some of the points above and, in particular, requesting that the ECU clarifies:

- 1) Whether POL is a contributor; and
- 2) Why it was considered appropriate to withhold Mr Roll's identity.

Once we receive the ECU's final decision, it will be open to us to seek an appeal to the BBC Trust.

However, we appreciate that we are possibly approaching a point of diminishing returns. While there are some questions of interpretation in play, the BBC is leading the argument towards the point where we are arguing about a difference of opinion and the likelihood of the BBC accepting our position is limited.

That said, the primary aim of making some noise and reducing the likelihood of similar errors being made in the future has arguably been achieved. By progressing the complaint this far, it is likely that the BBC will take greater caution to ensure compliance with the Guidelines in the future with respect to any content featuring POL.

We would be happy to schedule a call to discuss further.

Kind regards,

Tom



Tom Reid  
Associate



C/M/S'  
Law.Tax

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