

# SLAPPs

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# YEVGENY PRIGHOZIN v ELLIOT HIGGINS

- Libel claim brought in December 2021
- Prigozhin sanctioned by US and EU even before war in Ukraine
- Significant prior publicity concerning his role as head of Wagner mercenary group, a group accused of war crimes in a number of conflict zones
- Sued on the allegation *inter alia* that he was head of Wagner Group and that its mercenaries had been engaged in war crimes
- One of Higgins' tweets - re-tweeting a CNN article
- Another of Higgins' tweet - re-tweeting an article from Der Spiegel
- Others were re-tweeting Bellingcat articles

# SLAPP FEATURES

- Allegations about role of Wagner Group in war crimes and harassing journalists of high public interest
- Mr Prigozhin already a notorious figure internationally
- Suing Mr Higgins personally, not Bellingcat
- Suing Mr Higgins for his Tweets, not original publishers of the articles (CNN, Der Spiegel)
- Billionaire v editor of small independent publisher

# PROBLEM FROM EH PERSPECTIVE

- Purpose of claim – tie up EH’s time, energy and resources in defending the claim, instead of investigative journalism
- Problems funding the defence
- Crippling legal costs if he lost
- Chilling effect on other publishers
- Suppressing public interest reporting through the mechanism of the UK courts
- “Squeezing an enemy of Russia”
- Claim struck out for procedural non-compliance





# NOT A NEW PROBLEM

- Helen Steel and David Morris
- Sued for libel by McDonalds for handing out leaflets
- No legal aid for libel, so defended themselves in person
- McDonalds won after the longest trial in English legal history
- European Court of Human Rights found breaches of Article 6 and Article 10
- No claim today b/c s.1(2) DA 2013

# PROBLEM NOT CONFINED TO LIBEL, OR LAWYERS

- Libel is often the chosen cause of action
- But the same problems can arise in data protection claims, privacy claims and non-media law causes of action
- Not infrequently the threatened or actual legal claim is part of a broader attack involving UK law firms, PR agencies and corporate espionage
- Coordinated strategies targeting individuals with a view to deterring them from public interest reporting
- Dan McCrum, “Money Men” - targeting by UK law firms and corporate spies for exposing Wirecard fraud

# GOVERNMENT CALL FOR EVIDENCE

- Call for Evidence and round table meetings with interested parties
- Significant number of respondents contributed
- [Government Response](#) – 28 July 2022
- “SLAPPs are a recognisable and pernicious form of litigation which seeks to silence, intimidate, and harass opponents. SLAPPs are not conventional litigation designed to resolve disputes or vindicate rights (although they are presented as such). SLAPPS are designed to silence criticism and investigation conducted in the public interest.”

# GOVERNMENT PROPOSALS

- Primary legislation
- New early dismissal process for SLAPPs
- Won't be limited to libel cases
- Three-part test
  - 1. Public interest speech?
  - 2. Evidence of abuse of process?
  - 3. Sufficient merit – “realistic prospect of success”?
- Costs protection scheme
- Exploring financial penalties

# COSTS PROTECTION

- Formal costs protection regime based on Aarhus Convention model
- Environmental judicial reviews where the costs C and D can recover are both capped
- SLAPP costs likely to be capped
- Government considering variable caps proportionate to wealth of parties
- "The Government is seeking to engineer a change in the climate of these cases, to enable a party to defend themselves without having to capitulate"
- Costs control will apply at two stages
- To the SLAPP strike out hearing
- To any claim that is found to have SLAPP features but is allowed to proceed on the third limb (merits)

# SRA WARNING NOTICE

- 28 November 2022
- [SRA Warning Notice](#)
- Solicitors urged to identify SLAPPs and decline to act
  
- **Red flags**
- Target is a proposed publication on a subject of public importance e.g. academic research, whistle-blowing or investigative journalism
- Your instructions are to act solely in a PR capacity e.g. pre-publication correspondence about a true story
- Claim is targeted against individuals (where other corporate Ds are more appropriate)
- Claim is brought under multiple causes of action or jurisdictions
- Claim brought in a jurisdiction unconnected with the parties or events

# SRA WARNING NOTICE

- **Behaviours associated with SLAPPs**
- Seeking to threaten or advance meritless claims (including where it should be clear that a defence to that type of claim will be successful based on what you know)
- Claiming remedies your client is not entitled to
- Sending an excessive number of letters
- Sending correspondence with inaccurate restrictive labels
- Pursuing onerous procedural applications intended to waste time/costs

# IS THE CLAIM PROPERLY ARGUABLE?

- Claim should be properly arguable before put forward in correspondence or in a claim
- Defamation – relevant factors
- Insufficient connection to the jurisdiction?
- Corporate C – evidence of serious financial loss?
- Proposed C is a governmental body? (*Derbyshire v Times Newspapers*)
- Inability to acquire a pre-publication injunction
- Prospects of an early strike out (*Jameel v Dow Jones*)

# UK ANTI-SLAPP COALITION MODEL LAW

- [UK Anti-Slapp Coalition Model Law](#)
- Wide definition of public participation includes protests
- Focus – an abusive lawsuit against public participation
- Model law identifies 10 features of abusive lawsuits against PP
- Early dismissal mechanism
- Claim will be struck out if abusive lawsuit
- Unless C shows
  - C likely to prevail at trial and
  - Harm suffered by C as a result of D's expression sufficiently serious that PI in permitting the proceedings to continue outweighs PI in dismissing the case before trial

# MODEL EU DIRECTIVE

- [EU Anti-Slapp Directive](#)
- Focus on public participation
- “An abusive lawsuit against public participation”
- Early dismissal if any of the following
  - Claim does not have, in full or in part, legal merits
  - Claim or part thereof is manifestly ill founded
  - Elements indicative of an abuse of rights or of process laws.
- 11 relevant factors identified
- Includes “intimidation, harassment or threats by C before or during proceedings”
- Includes “the actual or potential chilling effect on PP”
- Indemnity costs/damages claim

# REFORM IS ON THE WAY

- Strong public interest in tackling a particular type of abusive claim
- Such claims are not common, but they are a serious problem due to their disproportionate impact on free expression
- Government is keen to legislate
- Early dismissal mechanism
- Significant costs protection for Ds
- If it works well – elements may be adopted more widely?
- Holistic test that looks at all the circumstances

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