

Victory for former NUM Chief over Miners' Strike "Spy" libel

Former National Union of Mineworkers Chief Executive Roger Windsor has won a libel action against the Sunday Express and its former editor, Rosie Boycott, over allegations that he spied for the security services during the miners' strike of 1984 and 1985.

On 21 May 2000 the Sunday Express ran an article by Nigel West (a pseudonym of Rupert Allason, the spy writer and former Conservative MP) headed "Spy expert predicts the revelations in former MI5 chief's memoirs". The article referred to the anticipated publication of Dame Stella Rimington's autobiography and alleged that Mr Windsor had acted as an MI5 "mole" during the miners' strike, tipping off the Government about strategic decisions taken by the NUM leadership. By doing this, the article alleged, Mr Windsor had betrayed the miners and had ensured the collapse of the strike.

These allegations had been published more than once some years previously, by left-wing Labour MPs speaking in Parliament. However, the cloak of Parliamentary privilege which applied on such occasions had always prevented Mr Windsor from taking steps to clear his name. Publication of the allegations by the Sunday Express in a non-privileged context, combined with Carter-Ruck's "no win, no fee" scheme, meant that he could, at last, take action.

Proceedings were issued by Carter-Ruck partner Cameron Doley and, after a hard-fought battle lasting some 18 months, the Defendants accepted that their allegations were wholly untrue. They agreed to enter into a settlement whereby they accepted (by way of statement in open court) that Mr Windsor had never provided any information to MI5, MI6 or any other government organisation about the NUM or its members, or about any aspect of the miners' strike. Dame Stella Rimington had herself already stated publicly that there was no truth in the Defendants' allegations. As well as joining in the reading of a statement in open court, the Sunday Express and Ms Boycott withdrew their allegations and apologised to Mr Windsor on the pages of the newspaper. They also agreed to pay Mr Windsor a substantial sum in damages, together with his legal costs, and undertook not to



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republish the offending allegations at any time in the future.

Mr Windsor's victory was referred to in the course of the recent BBC television series "True Spies".

The vindication obtained at long last by Mr Windsor represents a particularly welcome success for Carter-Ruck's Conditional Fee Agreement scheme.

CFAs - Four Years On

In November 1998 Carter-Ruck launched its Conditional Fee Agreement ("no win, no fee") scheme for media related cases. At the time other lawyers in the media field cast doubt on the scheme, raising the spectre of conflicts between the client and the lawyer, but in practice such

problems have not materialised.

The scheme quickly gathered momentum and as early as December 1998 we conducted the first libel trial under a CFA. This was *Morrelli and Coyle v News International*. The trial ended with success for Ms Morrelli and Mr Coyle who were awarded damages of £45,000.

Since then it has not been all plain sailing but there is no

doubt that the scheme has broadened access to legal advice in the media field to a considerable extent. We have successfully acted for about 200 people, most of whom would not have been able to afford to take on the press before the introduction of CFAs. Under the scheme we have acted for teachers, charity workers, policemen, doctors, a judge, solicitors, a human rights campaigner, a cab driver, a car valet, members of the armed forces, academics, journalists and so on. However, it still requires considerable courage for private individuals to take newspapers and broadcasters, with their enormous resources, through the courts.

Our biggest success under the scheme, in financial terms, has been for Dr Joe Rahamim, a Plymouth surgeon, who won £175,000 from ITN and Channel 4 in 2001. Other clients have won six figure damages but the majority have cleared their names by receipt of more modest sums. Normally a client's priority is a prompt and fulsome apology rather than to maximise the award of damages.

The scheme is also available to defendant publishers but while we have offered to act on a "no win, no fee" basis for defendants on several occasions, in all such cases the matter has been quickly resolved.

Although the scheme is primarily aimed at media related cases, we have also extended it to other areas of the law, in particular employment cases.

No fee is initially charged for reviewing potential cases and then, if we take the case on, both our fees and, usually, those of Counsel are subject to "no win, no fee"

agreements. A significant number of barristers from both the main defamation chambers, 1 Brick Court and 5 Raymond Buildings, have acted under the scheme. The client, unless unable to do so, pays the other disbursements of the case although, if the litigation is successful, these are usually recoverable from the other side. The client does have to take into account his or her potential liability for the defendant's costs if the litigation is lost. Insurance is available to cover this potential liability. However, the risks associated with defamation proceedings concern insurers and, in consequence, the premiums sought are often huge. As a result, many clients have chosen to take on the risk themselves.

Defendants appear to respond in the same way to claims being brought under CFAs as they do to those funded on an ordinary basis. If a complaint has merit then, however it is funded, most publishers are sensible about the terms they will offer to settle it. However, if they are not, a later settlement can become very expensive when a claimant is funded by way of CFA, due to the success fee that is recoverable. Therefore there is a premium on defence lawyers giving realistic advice at an early stage.

Overall the Carter-Ruck CFA scheme has been a considerable success for the firm and we hope to be able to assist many more people in the future under it.

Alasdair Pepper

The Communications Bill - privacy diluted?

The Communications Bill is due to come into force next year. OFCOM, a single statutory regulator, will take responsibility for all broadcast regulatory functions. The paving act, The Office of Communications Act 2002, is already in force. Power will be removed from existing regulators - ITC, BSC, Radio Authority, Radio Communications Agency and OFTEL – and handed over to OFCOM. The chief Executive of OFCOM has just been appointed.

The recommendations by the Lords and Commons Joint Committee, chaired by Lord Putnam, were wide ranging. Key points included:

- a power to fine the BBC in respect of breaches of its obligations - thus bringing it in line with the position of the other broadcasters;
- placing OFCOM under the sole responsibility of the Department of Culture, Media and Sport;
- increasing the size of the OFCOM board; and
- clarifying the statutory duties of OFCOM.

The BBC is currently regulated by internal complaints to the Board of Governors, and externally by the BSC. The ITC regulates commercial broadcasters and has the power to fine broadcasters for breaches of the ITC code.

The recommendation regarding the BBC is to be welcomed. This is a significant move towards the level

playing field much touted by the Government, and will make the BBC more accountable to the independent regulator. However, critics including David Liddiment of ITV say the Government has not gone far enough and the separate status for the BBC and position of the Board of Governors is anomalous in the 21st Century.

The Government announced that it was accepting most of the recommendations of the Putnam Committee, whose report was issued at the end of July. The Report made 148 criticisms and recommendations in respect of the draft Communications Bill. More than 120 of these have been adopted and the new version of the Communications Bill was published on 19 November 2002.

After the Putnam recommendations, the OFCOM board is to be expanded so that the maximum number of members is nine. OFCOM is also going to be given a freer hand to review its activities and functions to ensure that it is not over-regulated. The Government has also agreed to redraft the statutory duties of OFCOM.

One important point still requires further work. This concerns the way in which fairness and privacy complaints are handled. Broadcast media has for decades been subject to statutory regulation regarding privacy and fairness complaints. On occasion this has led to decisions of the regulators being challenged in the courts by aggrieved parties such as in the Dixons case (concerning use of undercover filming of customers at Dixons stores) and the Barclay brothers' complaint concerning film taken on their private island.

Broadcasters have had to deal with different regulators and different codes of practice. Over the years very detailed broadcast codes have been drawn up and enforced in various ways. The legal basis for these activities is statutory, namely the Broadcasting Acts and the powers and duties set out in those statutes. Broadcasters frequently employ “compliance lawyers” who seek to ensure that proposed broadcasters comply with the myriad codes of practice. Their tasks will soon be easier.

Under the new regime the fairness and privacy regulation regime will be based on clause 3 which provides under clauses (1) and (2) that it shall be the duty of OFCOM, in carrying out their functions to secure, in the case of all television and radio services, adequate protection to members of the public and all other persons, from both unfair treatment in programmes included in such services and unwarranted infringements of privacy. However, clause 3(3)(g) says that OFCOM must have regard to the need to secure fairness and privacy standards “in the manner that best guarantees an appropriate level of freedom of expression ...”

The problem with these clauses is that collectively they seem to create a presumptive priority for freedom of expression. If so they may conflict with the Human Rights Act 1998. This gives effect to Convention rights of respect for privacy (Article 8) and freedom of expression (Article 10). These are both qualified rights, so that any interference must be justified and only so far as is necessary. Libel claims have been held to be a justified interference with freedom of expression. Public interest defence may justify interference with an individual’s right to privacy.

However, freedom of expression is not a right which is the subject of any “guarantee”. It all depends on whatever other rights and interests are in play. In the *Douglas* case Lord Justice Sedley pointed out that Convention case law does not give Article 10(1) the presumptive priority that is given to the First Amendment in the US. Hugh Tomlinson QC in his forthcoming supplement to *The Law Of Human Rights* (OUP 2000), says that it is doubtful whether such a “hedged” provision strikes a proper balance between Articles 8 and 10. No doubt the Government will also rethink this provision otherwise the new section may conflict with the Human Rights Act.

Mark Thomson

Diplomat wins “slave girl” libel action

In the High Court in July 2002 the settlement was announced of a libel action brought by Mr Abdel Mahmoud Al-Koronky against the Sunday Telegraph. Mr Al-Koronky was, between September 1998 and April 2000, Charge d’Affaires at the Sudanese Embassy in London and thereafter, until July 2002, the Republic of Sudan’s Press Councillor in London.

On 17 September 2000 the Sunday Telegraph published an article based upon claims made by one Zainab Nazer, who had briefly been employed by Mr

Al-Koronky as an au pair in London. The headline of this article - “Sudan diplomat ‘kept slave girl in London home’” – effectively summarised its contents. When the Sunday Telegraph refused to withdraw the story and to apologise, libel proceedings were commenced. After the initial stages of the case, Carter-Ruck represented Mr Al-Koronky under its Conditional Fee Agreement scheme.

The action ended in settlement when the Sunday Telegraph unreservedly withdrew its allegations and, through its lawyers, “sincerely and unequivocally” apologised to Mr Al-Koronky. The newspaper also undertook not to repeat the allegations complained of and agreed to pay a “very substantial” sum in damages to Mr Al-Koronky, together with his legal costs. In other words, Mr Al-Koronky obtained as complete a victory as could have been obtained through the court proceedings.

Caprice stuns Sun

High profile supermodel Caprice Bourret has won damages and an apology from The Sun.

The newspaper published an untrue front-page story alleging that Caprice had had a one-night stand with Steve Bing (of Daily Mirror apology fame) at the time of the breakdown of his relationship with Liz Hurley. Following the commencement of libel



proceedings (by Carter-Ruck’s Mark Thomson and Hanna Basha), The Sun agreed to pay a substantial sum to Caprice in damages, together with her costs, and to publish a full apology which accepted that there was no truth in its original story.

FIRM ANNOUNCES NEW APPOINTMENT

Barton Taylor, one of the most experienced practitioners in the defamation field, joined the firm as a partner in August. Barton was head of the defamation department at Russell Jones and Walker for 21 years. In 1998 he joined Gouldens as head of their defamation department. Barton is particularly well-known for his work for the Police Federation, for whom he won an unbroken series of cases in the 1990s.

Carlton Television (advised by Mark Thomson) successfully settled its libel action against The News of the World concerning allegations that its flagship Cook Report shows were faked. Carter-Ruck is now acting for Carlton in relation to a variety of other matters.

Jemima Khan (right) secured an apology from The Mail on Sunday following the publication of an inaccurate story, incorporating wrongly attributed quotes, concerning a break-in at her home. Mrs Khan was represented by Ruth Collard.



Conservative Party Chief Executive, Mark McGregor (advised by Alasdair Pepper) has won a libel action against Punch magazine, over an article concerning his time as chairman of the Federation of Conservative Students. Mr McGregor received an unreserved apology, together with substantial damages and costs.

The actress Michelle Collins is currently instructing the firm in relation to a variety of media-related matters.

Barton Taylor is acting for a senior Metropolitan Police officer in libel proceedings brought against The Daily Mail and The Evening Standard over reports concerning the Hamilton rape allegations.

Pro-democracy campaigner James Mawdsley, who was sentenced to 17 years in prison in Burma before being released in 2000, has won his libel case against The Guardian. Mr Mawdsley (who was represented by Alasdair Pepper) received an apology, damages and costs.

Fellow media lawyer Rhory Robertson (advised by Nigel Tait) is suing the Law Society Gazette following publication of untrue allegations about former firm Swebstone Walsh. A front-page apology has already been published.

The Ministry of Defence has apologised and paid substantial damages and costs to three soldiers following publication of a press release wrongly alleging that they had been charged with the killing of two Albanian civilians and that they were to be court-martialled. The successful claimants were represented by Ruth Collard.

If you have any comments on this Newsletter, or if you require any other information, please contact Adam Tudor on: 020 7353 5005 or e-mail Adam.Tudor@carter-ruck.com

Labour MPs Helen Clark and Martyn Jones have obtained apologies from The News of the World, together with damages and costs, following publication of an inaccurate article concerning the employment of secretaries and research assistants on the public payroll. The MPs were represented by Carter-Ruck partner Ruth Collard who also secured further apologies for Mrs Clark from The Daily Mail and two radio stations.

The firm's Employment Department is acting for Yusuf Islam (formerly Cat Stevens) in relation to a number of matters.

The Court of Appeal has upheld a High Court Judge's decision to strike out libel proceedings brought by Mr Ralph Wallis against the Valentine family (advised by Nigel Tait and Adam Tudor) as being an abuse of process.
(Times Law Reports, 9 August 2000).

On 14 October 2002, the Court of Appeal overturned the judgment of Mr Justice Lightman, who had given Naomi Campbell summary judgment for part of her claim against her former personal assistant Vanessa Frisbee. The Court "reached the reluctant conclusion" that the matter is not fit to be determined without a full trial. The Court stated that "the answers to the issues raised on this appeal are not so clear as to entitle Miss Campbell to the summary judgment that she has obtained."

The Court noted that Lightman J's resolve to attempt to restrict the scope of this dispute was "praiseworthy" and that Miss Frisbee "would be well advised to reflect carefully on his [Mr Justice Lightman's] conclusions in relation to the merits of the issues debated before him." The case continues.

The firm, which successfully represented Sir Ranulph Fiennes has now been instructed by another author and prominent explorer, Benedict Allen, who was recently described by the Radio Times as "television's most fearless man" and who crossed the Amazon Basin, the Gobi and Namib deserts and the Arctic, before arriving at Shoe Lane.

The actor Ewan McGregor is currently instructing the firm in relation to various matters.