

Get Carter-Ruck



SUMMER 2008



KATE AND GERRY MCCANN SECURE “UNPRECEDENTED” LIBEL SUCCESS

In what is acknowledged to have been one of the most high-profile libel complaints in living memory, Kate and Gerry McCann, whose daughter Madeleine was abducted from their holiday apartment in Portugal in May 2007, have received unprecedented front-page apologies from four national newspapers, together with £550,000 in libel damages.

The Daily Express and Daily Star, together with their Sunday sister papers, had between them published over a hundred articles which suggested – entirely falsely – that Mr and Mrs McCann were responsible, or at least strongly to be suspected of being responsible, for the death of Madeleine and had then disposed of her body; and that they had then conspired to cover up their actions, including by creating “diversions” to distract the police away from evidence which would expose their guilt.

Following the publication of a number of libellous articles by the newspapers in question in the early autumn of 2007, representatives of the McCanns had contacted the editors to send a ‘shot across the bows’, in the hope that they would adopt a more responsible attitude to their reporting. Indeed, the newspaper coverage of Madeleine’s disappearance became the subject of such concern that Leicestershire police themselves contacted a number of media outlets requesting that they show greater restraint. Notwithstanding this, the Daily Express, Daily Star, Sunday Express and Daily Star Sunday continued to publish numerous grossly libellous articles, many on the front pages of the newspapers and accompanied by lurid headlines.

Mr and Mrs McCann approached Carter-Ruck to bring complaints to the editors of the newspapers,

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who were forced to acknowledge that the allegations they had published were utterly baseless. In recognition of that, each title agreed to publish a prominent front-page apology, to repeat those apologies before Mr Justice Eady in the High Court in London, and to pay £550,000 in damages, which at the request of the McCanns was paid in full to the trust established to try to find their daughter. The newspapers also agreed to pay the McCanns' legal fees.

In response to the result, Kate and Gerry McCann said: *"We are pleased that Express Newspapers have today admitted the utter falsity of the numerous grotesque and grossly defamatory allegations that their titles published about us on a sustained basis over many months..."*

Express Newspapers, rightly, acknowledge that we are innocent of all allegations that we may have been involved in Madeleine's abduction and we would like to reiterate that there is absolutely no evidence that Madeleine is dead or has been seriously harmed.

The distress all this has caused members of our wider family, at a time of great emotional turmoil for them, was also a major factor in our action. Their pain over the loss of Madeleine has been compounded by having to witness the irresponsible and libellous reporting that we have successfully challenged today.

As a part of our settlement, Express Newspapers have also agreed to donate £550,000 to the Fund that was established to help find Madeleine. We feel it is entirely appropriate that the search for Madeleine will now benefit directly out of the wrongs committed against us as her parents.

We hope that the Portuguese authorities lift our arguido status in the very near future so that everyone can focus on finding our beautiful little girl, Madeleine."

Mr and Mrs McCann are represented by Adam Tudor and Isabel Hudson of Carter-Ruck.

£165,000 LIBEL AWARD FOLLOWS FALSE AL QAEDA ALLEGATIONS

The exiled leader of Tunisia's democratic opposition has received one of the largest libel awards made by the Court over the past decade following accusations broadcast by a global television news channel which falsely linked him to Al Qaeda.

Mr Justice Eady ordered the Dubai-based Al Arabiya News Channel to pay £165,000 in damages to Sheikh Rashid Ghannouchi (leader of the An Nahda party) following its broadcast of a rolling news item which also wrongly alleged that he was one of a number of extremist Islamic figures specifically targeted by British anti-terrorism measures in the wake of the London bombings of July 2005.

The Judge noted that *"The words were broadcast shortly after the terrorist incidents in London in July 2005 when feelings were still very raw"*, but that *"no attempt has been made at any stage on the defendant's behalf to suggest that there is a grain of truth in what they said about this claimant."*

The size of the award reflected the extremely serious nature of the allegation and the fact that the international satellite broadcast could have threatened Mr Ghannouchi's right to stay in the UK where he and his family have been granted political asylum. Mr Justice Eady also referred to the fact that the evidence before him demonstrated that Mr Ghannouchi was *"opposed to violence and terrorism"*.

Mr Ghannouchi was represented by Carter-Ruck Managing Partner Cameron Doley and Athalie Matthews.

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SIENNA MILLER WINS PRIVACY ACTIONS

The actress Sienna Miller has won privacy actions against News Group Newspapers Limited (the publisher of the Sun and News of the World) and two other Defendants. Ms Miller commenced the actions in October 2007, following the publication of highly intrusive photographs of her in the Sun and the News of the World. As well as News Group, she sued Xposure Photo Agency Limited (which had supplied the photographs to the newspapers) and a Third Defendant, being a "person then unknown", who was responsible for taking the photos concerned.

A "without notice" Injunction was obtained from Mr Justice Eady by Mark Thomson, Carter-Ruck partner and Solicitor Advocate for Ms Miller, against Xposure and the Third Defendant. Subsequently, the latter was identified as Warren Richardson, a paparazzo photographer. In December 2007, Ms Miller settled her claim against News Group and Xposure Photo Agency Ltd after receiving £37,500 in compensation, as well as payment of her legal costs.

In addition to the compensation, News Group and Xposure Photo Agency undertook to the Court not to republish any of the intrusive photographs in question. In January 2008, Mr Justice Eady then awarded Ms Miller Final Judgment against Warren Richardson, which included a Final Injunction as well as damages and costs, to be assessed at a later date. Ms Miller has been the target of constant harassment over the last few years from the paparazzi and has as a result been forced to take legal action to protect her privacy.

Since this case Ms Miller has also succeeded in further, similar complaints against The Sun and Splash Newspapers.

DO FUNDAMENTAL HUMAN RIGHTS TAKE PRECEDENCE OVER UN SECURITY COUNCIL RESOLUTIONS?



A leading European Judge has delivered a landmark Opinion on this question following an appeal brought by Saudi Arabian businessman and philanthropist, Sheikh Yassin Abdullah Kadi, against European asset freezing regulations applied in the aftermath of the 9/11 terrorist atrocity.

On 16 January 2008 Advocate General Poiares Maduro of the Grand Chamber of the European Court of Justice (ECJ) in Luxembourg delivered his opinion that the European freezing measures imposed in 2001 breached Mr Kadi's fundamental right to property, his right to be heard and his right to effective judicial review.

The Advocate General stated that he believed Mr Kadi's challenge to be "*well-founded*" and urged the ECJ to rule that the measures against Mr Kadi should be annulled.

In the immediate aftermath of 9/11, Mr Kadi was one of a number of individuals and organisations against whom the United Nations imposed worldwide asset-freezing measures, by way of a number of Security Council Resolutions. These Resolutions were made at the request of the United States, and given effect in the European Union by way of EU Regulation. While Mr Kadi has consistently and vigorously refuted each and every allegation against him, neither before the UN nor the EU was he permitted access to any independent court; nor was he even allowed any opportunity to be heard to make representations.

Carter-Ruck is representing Mr Kadi in his appeal to the ECJ. It is a test case of defining importance not only for considering the balance between fundamental human rights and the fight against

terrorism, but for the interrelationship between the institutions of the European Union and public international law.

In his Opinion, the Advocate General rejected the proposition, advanced by the European institutions responsible for the freezing measures, that judicial review by the courts in cases of this nature would be inappropriate because of the "*political*" nature of the issues. He considered that the mere claim by those institutions that a freezing measure is "*necessary for the maintenance of international peace and security*" cannot operate so as "*to silence the general principles of Community law and deprive individuals of their fundamental rights*". On the contrary, he decided that in such cases it is the duty of the courts to uphold the rule of law with increased vigilance.

The Advocate General considered that rather than refer the matter back to the lower Court of First Instance (which would result in delay to a final determination of the issues), the ECJ should itself give judgment on the question of whether the Regulation infringes Mr Kadi's fundamental rights.

The Advocate General's Opinion comes in the wake of a December 2007 decision by Switzerland to discontinue its six-year criminal investigation against Mr Kadi. This decision itself followed a thorough investigation by the Swiss authorities (working with law enforcement authorities from many other countries around the world) lasting more than six years. The Swiss authorities have lifted the criminal freezing of Mr Kadi's accounts in Switzerland although the funds will remain frozen under UN administrative procedures.

The Opinion of the Advocate General is not binding on the ECJ: it is the role of the Advocate General to propose to the Court a legal solution to a case. The ruling of the Grand Chamber is now awaited on the appeal.

Mr Kadi's legal team included Partner Guy Martin, Managing Partner Cameron Doley and solicitor Athalie Matthews, working with London-based Consultant Maitre Saad Djebbar. They instructed a team of advocates comprising the pre-eminent public international lawyer Ian Brownlie, CBE, QC (Chairman of the International Law Commission of the United Nations) and Pushpinder Saini QC, both of Blackstone Chambers, London, together with leading European law experts David Anderson QC of Brick Court Chambers, London and Piet Eeckhout, Professor of European Law at King's College, London.

Tesco has commenced proceedings for libel and malicious falsehood against The Guardian and its Editor, Alan Rusbridger, over allegations concerning Tesco's tax affairs. Tesco is being advised by Nigel Tait and Magnus Boyd.

The Sun has published a full apology to actor **Rhys Ifans** over false allegations concerning Sienna Miller and fellow actor Matthew Rhys. Mr Ifans is represented by Mark Thomson.

The Times newspaper has published an apology to businessman and philanthropist **Nadhmi Auchi**. Mr Auchi also brought successful libel complaints against the Guardian and Observer relating to six articles published on their website since 2003. He is advised by Alasdair Pepper and Michelle French.

Actor **Hugh Laurie** is being advised by Mark Thomson.

Model and reality TV Star **Danielle Lloyd** (pictured) won her libel action against The Daily Mirror, receiving an apology, statement in open Court and a substantial sum in damages together with payment of her legal costs. Ms Lloyd was represented by Nigel Tait, Magnus Boyd and Rebecca Toman.



The Sunday Times has apologised and paid damages to **Nigel Farage**, leader of the UK Independence Party, for the publication of the false allegation that he had used taxpayers' money to employ his son while he was in full-time education. Mr Farage is advised by Andrew Stephenson.

Model **Sophie Anderton** received a full apology, damages and her legal costs from the News of the World over false allegations that she had a secret affair with Ziggy, the Big Brother contestant. Ms Anderton was represented by Mark Thomson.

The Times has published apologies (in two editions of the newspaper) to the Secretary General of the Muslim Council of Britain, **Dr Muhammad Abdul Bari**, over false allegations concerning the East London Mosque, of which he is the Chairman. The newspaper also paid Dr Bari's legal costs. Dr Bari was represented by Adam Tudor.

Tommy Hilfiger and the **Tommy Hilfiger Companies** are being advised by Cameron Doley.

Carter-Ruck partner Guy Martin and solicitor Athalie Matthews are acting for **His Beatitude Patriarch Theophilos III**, the head of the Greek Orthodox Church in Jerusalem, in libel proceedings against the London-based Arabic language newspaper Asharq Al Awsat.

Carter-Ruck is acting for **Mohamed Taranissi**, the well-known consultant obstetrician and gynaecologist and IVF specialist, and his clinic the ARGC, in libel proceedings against the BBC following the broadcast of their Panorama programme "IVF Undercover". Carter-Ruck previously represented Mr Taranissi and the ARGC in their successful claim for libel against the Human Fertilisation and Embryology Authority (HFEA). Mr Taranissi is advised by Alasdair Pepper and Antonia Foster.

Leigh Petters, a solicitor from Bristol, received broadcast apologies, damages totalling £60,000, plus his legal costs, from the BBC and Channel 4 following news broadcasts which wrongly implicated him in a phone-in "scam" involving the Channel 5 quiz, *Brainteaser*. Mr Petters was represented by Adam Tudor and Athalie Matthews.

Actress **Tilda Swinton** is being represented by Mark Thomson.

The Sunday Times has apologised for its publication of an allegation that **Alan Duncan MP**, the shadow secretary of state for business, had failed to declare a donation said to have been made to his private office. The Sunday Times accepted that it had been misinformed, and that the donation in question had been made to the Conservative Party, had been properly registered with the Electoral Commission and disclosed to the Parliamentary Commissioner for Standards. Andrew Stephenson represents Mr Duncan.

If you have any comments on this Newsletter or if you require any other information, please contact Adam Tudor on:

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