Unsafe for Scrutiny:

How the misuse of the UK’s financial and legal systems to facilitate corruption undermines the freedom and safety of investigative journalists around the world
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How the misuse of the UK’s financial and legal systems to facilitate corruption undermines the freedom and safety of investigative journalists around the world

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Executive Summary

This publication explores the role that the United Kingdom (UK) plays as a hub for the facilitation of global financial crime and corruption, as well as for services that can be utilised against journalists reporting on this topic. It argues that while the UK and its offshore jurisdictions are not the only locations used for the facilitation of financial crime and corruption, the extent to which the UK acts as a facilitator, both as a destination for illicit money and as the source of a wide range of enablers to support corrupt individuals and suppress public interest reporting is alarming. Moreover, this situation is damaging for the UK’s international standing at a critical time, post-Brexit, in which it is trying to establish future financial and trade relationships.

The UK’s poor reputation as a centre for financial crime and corruption has been repeatedly evidenced by significant transnational journalistic investigations and research by anti-corruption groups over the past decade. Yet rather than expediting measures to remedy this situation the UK Government appears to have been dragging its heels recently. Despite some positive steps made in the wake of the 2016 Anti-Corruption Summit in London seemingly straightforward solutions to create greater transparency and accountability, such as the Registration of Overseas Entities Bill first proposed in 2018, are still to be realised. The existence of a ‘London Laundromat’ and a growth industry of connected enablers garnered fresh attention and some official recognition in July 2020, with the release of ‘The Russia Report’ by the UK Parliament’s Intelligence and Security Committee (ISC). However, the UK Government’s response has been lacklustre and without follow up to date.

Meanwhile, journalists who have worked to shine a spotlight on corruption continue to face significant threats to their safety and security. Some of these threats have been instigated with the help of UK based law firms and reputation management companies. The personal testimonies of the five investigative journalists together with the contributions from anti-corruption and media freedom experts forming this publication serve to highlight two interlinked concerns:

- Firstly, the impact the UK’s facilitation of international financial crime and corruption has on media freedom, particularly when connected to political elites in countries with poor democratic records.
- Secondly, the enduring role London continues to hold as an international libel capital, despite reforms to English and Welsh law in 2013 intended to crack down on libel tourism, and the impact such legal action, or even the threat of it, in the UK can have on journalists here and abroad.

These point to weaknesses in the UK’s claim to be a global leader in the fight against illicit finance as well as a promoter of media freedom and safety of journalists around the world, despite having spearheaded, together with Canada, a Global Pledge on Media Freedom in 2019. As highlighted by the findings from a recent FPC global survey of journalists working to uncover financial crime and corruption, the UK not only features highly in journalists’ investigations (61% of respondents reported finding a link with UK jurisdictions), but is also a significant source of legal challenges against them. Of the 63 survey respondents in 41 countries, 73% reported receiving communication(s) threatening legal action (often referred to as SLAPPS – strategic litigation against public participation) as a result of information they had published. The respondents pointed to the UK as the highest international source of these legal challenges - almost as high as EU countries and the US combined. While calls are growing louder for anti-SLAPP regulation in the European Union, there remains an urgent need for policy and legislative intervention in the UK. This publication sets forth recommendations for the UK Government, and other key stakeholders, to take steps to address these issues and support public interest journalism.
Recommendations

Based on the research and contributions in this publication there are a number of suggestions for possible action.

For the UK Government:

- Recognise the vital role that journalists play in creating transparency and accountability and connect this to Government strategies to counter financial crime and corruption facilitated within its borders. In particular, by reviewing and updating the UK’s 2019-2022 Economic Crime Plan and the 2017-22 Anti-Corruption Strategy.

- Instigate an independent investigation or public inquiry into the ‘London Laundromat’ and connected growth industry of ‘enablers’, including the full extent of their impact, following the findings published in the UK Parliament’s Intelligence and Security Committee’s Russia Report in July 2020. This should take into account the environment for media freedom in countries where the political elites are using UK jurisdictions to launder money, as a destination for their illicit funds, or to buy legal, reputational, surveillance or other services aimed at suppressing reporting on crime and corruption.

- Expedite and effectively resource the introduction and implementation of the Registration of Overseas Entities Bill, requiring all overseas companies that own UK property to reveal the ultimate beneficial owner.

- Provide free and open access for journalists to all registries related to companies, land and property in the UK, as well as to databases providing information regarding judicial decisions. Ensure the authorities providing these services are adequately resourced to check the veracity of the information contained within these registries and respond to requests for information.

- Expedite and effectively resource all other anti-corruption initiatives that improve access to information and other mechanisms to strengthen public scrutiny and oversight. To this end the recommendations outlined in the 2019 ‘Fighting Corruption: A Manifesto,’ produced by Global Witness, Transparency International UK and The Sentry, and supported by a wider collation of the UK’s leading anti-corruption organisations provide a helpful guide for action.

- Ensure the full implementation of the commitments the UK Government made as part of the 2016 Anti-Corruption Summit, including reviewing the effectiveness of whistleblowers protections, on which, to date, there has been no action.

- Adopt at a legislative level, and implement, measures to combat strategic litigation against public participation (SLAPP). As part of this process, review and seek to reform legislation that can be misused to vexatiously threaten journalists; including but, not limited to, laws covering civil defamation, privacy, trade secrets, copyright and national security.

- Ensure all violations against journalists in the UK are promptly, thoroughly, independently and effectively investigated, with the perpetrators and instigators brought to justice. Speak
out against violations taking place in other countries, acknowledging the role that an investigative journalist’s work - including on financial crime and corruption - may play in the motivation for the violation.

- Establish an independent fund to support public interest investigative journalism in the UK and abroad, including a focus on uncovering financial crime and corruption.
- Refrain from taking steps to break end-to-end encryption, which would endanger the safety and security of journalists and their sources.

For the devolved governments of Scotland and Northern Ireland:

- Adopt at a legislative level, and implement, measures to combat strategic litigation against public participation (SLAPP). As part of this process, review and seek to reform legislation that can be misused to vexatiously threaten journalists; including but, not limited to, laws covering civil defamation, privacy, trade secrets, copyright and national security.
- In particular, ensure reform of libel legislation reduces the possibility of its vexatious misuse, particularly as part of libel tourism.
- Provide free and open access to journalists to any local registries related to companies, land and property, as well as, databases providing information regarding judicial decisions.

For governments in UK overseas jurisdictions:

- Work with the UK Government to towards the speedy and effective implementation of a publicly accessible register of beneficial ownership for companies, based in your territories.
- Expedite and effectively resource all other anti-corruption initiatives that improve access to information and other mechanisms to strengthen public scrutiny and oversight, including timely responses to requests for information from journalists, wherever they are based in the world.

For national regulatory bodies covering the legal sector in the UK:

- Prioritise the issue of vexatious legal communication as one of serious concern undermining the reputation of the UK legal community.
- Provide guidance to lawyers and law firms on how to identify potential SLAPP cases and avoid the misuse of laws for the purpose of threatening journalists.
- Encourage the provision of pro-bono legal support to journalists and media outlets subject to vexatious legal communication and/or SLAPP lawsuits.

For organisations supporting journalists and media freedom in the UK and abroad (including NGOs, donor organisations, trade unions and associations):

- Provide more funding for legal defence and guidance on how to respond to vexatious legal communication and litigation (SLAPP).
- Seek to support funding opportunities for public interest journalism, including on topics related to financial crime and corruption.
For journalists and media:

- Report all incidences of threats made towards you to the appropriate authorities (where safe to do so) as well as to relevant regional monitoring mechanisms and media freedom NGOs. While not all incidences may receive immediate remedy or redress, such reports will create a better understanding of the threats faced, the instigators and methods used. This can support the development of stronger measures for protection and defence, as well as prioritisation of funding.

- Ensure that you have risk protections in place to guard against potential legal challenges, for example media liability insurance or pre-arranged pro-bono legal support you can turn to when incidents arise.

Notice: This publication has undergone a pre-publication review by senior English defamation and human rights law experts.
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Acknowledgements
1. The UK as a key nexus for protecting media freedom and preventing corruption globally

By Susan Coughtrie

In January 2020, a libel case against Paul Radu, an investigative reporter and co-founder of the Organised Crime and Corruption Reporting Project (OCCRP), was dropped on the eve of the trial opening at the Royal Courts of Justice in London. An agreed settlement meant the articles that had sparked the defamation claim against him stayed on OCCRP’s website albeit with a qualifying statement that the claimant “categorically denies involvement in money laundering or any unlawful activity.”

The resolution of Radu’s case was not picked up by the media and a casual observer might wonder what might be particularly newsworthy. Libel cases happen all the time. It is surely a sign of a healthy democracy to have the right to defend yourself against claims you consider spurious. But as Radu put himself, when writing about the experience a month later, “So, how does a Romanian

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4 Susan Coughtrie joined the FPC as a member of staff in July 2020 as Project Director for a new project called “Unsafe for scrutiny: How journalists around the world investigating financial crimes in UK jurisdictions face risks to their freedom and security from vexatious lawsuits (SLAPP) to violence”. Previously a Research Fellow at the FPC, she undertakes a variety of consultancy work and is an advisor to the European Centre for Press and Media Freedom (ECPMF). Until December 2018, Susan spent seven years at ARTICLE 19 where she developed projects across the Eurasia region on topics including safety of journalists, access to information, restrictions to freedom of expression online and countering hate speech. She also serves on the committee for the Campaign for Freedom of Information in Scotland ( CfIoS). Image under (CC).


reporter — or, for that matter, any foreign journalist — get sued in the United Kingdom by an Azerbaijani politician for an article about corruption taking place hundreds of miles away?”7

The case is important in highlighting two worrying, and interlinked, trends. Firstly, the enduring role London continues to hold as an international libel capital, despite reforms to English and Welsh law in 2013 intended to crack down on libel tourism, and the impact such legal action, or even the threat of it, in the UK can have on journalists here and abroad.8 Secondly, the level to which UK financial and legal systems are involved in the facilitation of international financial crime and corruption, particularly involving political elites in countries with less than stellar democratic records. These trends sit at direct odds with the UK’s claim to be a global leader in the fight against illicit finance as well as a promoter of media freedom and safety of journalists around the world, having spearheaded, together with Canada, a Global Pledge on Media Freedom in 2019.9

The Azerbaijani Laundromat

The articles that had prompted the defamation action against Radu were part of OCCRP’s investigation into a corrupt scheme they named the ‘Azerbaijani Laundromat,’ published in September 2017. Their work revealed a “complex money-laundering operation and slush fund that handled $2.9 billion over a two-year period through four shell companies registered in the UK.”10 OCCRP reported that between 2012-14, members of Azerbaijan’s political elite were using these funds to “pay off European politicians, buy luxury goods, launder money, and otherwise benefit themselves.”11 This was taking place against the backdrop of a severe crackdown inside the country on civil society and independent media, including the adoption of regressive legislation limiting the activities of independent organisations as well as the arrests and convictions of many activists, human rights defenders, and journalists on politically motivated charges.12

Amongst those arrested was Khadija Ismayilova, a prominent independent investigative journalist who has been instrumental in uncovering corruption at the highest levels of Azerbaijani society, often linked with UK registered companies. As a consequence of her reporting Ismayilova has been subject to a wide variety of harassment over the last decade, from blackmail to public shaming, accusations of espionage, judicial persecution and arbitrary imprisonment.13 In February 2020, the European Court of Human Rights (ECHR) found that Ismayilova’s rights had been violated when she was arrested in December 2014 and subsequently sentenced to seven and half years as there was no ‘reasonable suspicion’ she committed the crime she was accused of, rather it was an attempt to silence her journalism.14 While Ismayilova was released from prison in May 2016, her sentence has

8 While defamation laws were reformed in England and Wales in 2013, the same is not true of the laws in Scotland and Northern Ireland. Scotland is currently going through a reform process, with the introduction of The Defamation and Malicious Publication (Scotland) Bill to the Scottish Parliament on 2 December 2019, which is still under review (see https://www.lawscoot.org.uk/members/journal/issues/vol-65-issue-02/defamation-social-media-and-the-right-to-insult/). Northern Ireland has not updated its libel laws since 1955, but there has been an increased effort by civil society to call for reform in recent months (see https://www.irishnews.com/news/2020/12/02/news/media-conference-calls-for-reform-of-libel-laws-and-raises-concerns-about-threats-to-journalists-2148009/)
not been overturned and – despite several ECHR rulings in her favour - she is still subject to probationary measures, including a travel ban, which has effectively locked her inside the country.15

Ismayilova was part of the team that worked on OCCRP’s Azerbaijani Laundromat and despite her own persecution continued to support Radu through his libel case in London. During the two years it took the case to come to the trial stage, OCCRP journalists continued their investigation, collecting new information and strengthening their story, which, due to disclosure rules, they were required to share with their opponent who ultimately decided to settle.16 While the outcome can be seen as positive, the cost, financially as well as in time and effort, of a two-year legal battle – before even reaching trial, arbitrarily brought in London – should not be underestimated.

The UK as a leading source of legal threats against journalists
In November 2020, the Foreign Policy Centre published a report outlining the findings of a global survey, conducted in September – October 2020, with the participation of 63 investigative journalists in 41 countries who work on uncovering financial crime and corruption. Legal threats were identified, by the 71 per cent of the respondents who reported experiencing threats, to have the most impact on their ability to continue working, more so than physical, psychosocial or digital threats.17 This is reflective of the high volume of potential legal challenges being received, and the cumulative effect that they can have. 73 per cent of all respondents to the survey stated they had received communication(s) threatening legal action as a result of information they had published. More than half of those stated that it made them more cautious as a result.

While it is impossible to evaluate the proportion of, and extent to which, the legal challenges respondents reported could be justified, there is evidence that vexatious legal action against journalists has been on the rise. When the Maltese investigative journalist Daphne Caruana Galizia was murdered in 2017, she had 47 civil libel suits open against her “most of them brought by Maltese politicians and their business associates,” which she described “as an intimidation strategy as they retreat[ed] under siege” from her reporting into their corrupt practices.18 After her murder, Caruana Galizia’s family accused the UK based law firm Mishcon de Reya of ‘hounding’ their mother.19

Intimidation is a key hallmark of vexatious legal action referred to as strategic litigation against public participation (SLAPP), where there are no reasonable grounds for a legal case, but rather the intention is to stop or suppress reporting.20 The aim is not necessarily to reach court where the truth might come to light but rather to scare journalists into complying. SLAPPS are examined in more detail in this publication in the contributions from the European Centre for Press and Media Freedom (ECPMF) and Index on Censorship, organisations actively documenting the rise of SLAPPS
across Europe in recent years. Both point to England as a legal jurisdiction commonly utilised for SLAPP cases.

This was also reflected in the finding from FPC’s survey that the UK is by far the most frequent international country of origin for legal threats after the journalists’ home countries. The UK was almost as frequent a source of these legal threats (31 per cent), as the EU countries (24 per cent) and the United States (11 per cent) combined. There have been a growing number of foreign freelance journalists, and news outlets without staff and offices in the UK, that have reported receiving letters from London law firms acting on behalf of the people they are investigating.

Journalists based abroad therefore remain concerned about libel laws in the UK in a way that they simply do not in other countries. For example, the Balkans Investigative Reporting Network (BIRN), which covers countries in Southern and Eastern Europe, created a guide specifically on English libel law that is mandatory reading for all its journalists. One of the last sections is particularly telling: “For now, our advice regarding third-country libel suits (i.e. not in your country and not in England) is straightforward: I. Know the law in your own country; II. Know the law in England; III. Assume that any third country would be just as strict on libel as England.”

Now seems the right time to return to Radu’s question. Why are foreign journalists being threatened with legal action in the UK? And how?

Part of the reason the UK remains an attractive jurisdiction is that it is seen as easier to win libel cases in than other parts of the world. This is largely because the ‘burden of proof’ in a UK libel case is on the defendant – i.e. it is not up to the plaintiff to prove that the statement in question is false, rather the defendant must prove that the statement is true – which is often a far harder task than it might at first appear. Investigative journalists are usually in the business of presenting facts, rather than drawing conclusions as to what they might mean. However, as Radu notes “[In British courts, a judge determines what your carefully crafted wording means to them as a legal matter. They may decide the ‘legal meaning’ was that someone was the new godfather and had taken over the local crime group. Now you have to prove that judge’s legal meaning in court with real proof, even though you never said it, and maybe never meant it.”

Moreover, fighting a defamation case in the UK is a lengthy and expensive process, with potential legal costs spiralling into the thousands if not millions – some of which will not be recoverable even if you win. Therefore, it is understandable why many, often cash-strapped, media outlets would rather comply with the demand to change or remove content than face legal action, even if they know what they have written is true. Due to the common practice in British journalism of offering a ‘right to reply’ to individuals mentioned in an article, these legal challenges can happen prior to

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24 In England and Wales, the winning party in civil litigation is entitled to recover costs from the losing party. However, there is sometimes a discrepancy between the actual costs of litigation, which are the costs that each party pays to its own lawyers for running the case, and the recoverable costs, which the winning party recovers from the losing party by order of the court or by agreement. https://www.judiciary.uk/wp-content/uploads/2017/07/fixed-recoverable-costs-supplemental-report-online-3.pdf
25 Offering a ‘right to reply’ ahead of publication is a common practice exercised in British journalism (compared to for example the United States, where it is not usually exercised). It is for example a ‘fairness obligation’ to those who are the subject of significant criticism or allegations of wrongdoing under the UK media regulator Ofcom’s Broadcasting Code, see - https://www.bbc.com/editorialguidelines/guidance/right-of-reply. Offering a ‘right to reply’ is widely seen as part of a principled approach to journalism, and considered useful as part of a ‘public interest’ defence against a defamation claim. However, since reform in 2013 of the defamation act it is not necessarily as strong a factor in building a defence as before, see https://www.pinsentmasons.com/outlaw/news/public-interest-defence-defamation
publication. If successful the public will be denied the right to know, not only about the information at question but even the fact that a legal challenge against the journalist or media outlet took place.

Despite legal reform in 2013 aimed at reducing the impact of libel tourism, it nevertheless holds that you do not have to be British or resident in the UK full time to bring a case. It is only necessary to demonstrate a connection that could establish your ‘standing’ – e.g. a home or business – and that the article in question was read in the UK. As Radu points out when examining his own case, “London is a major real-estate hub that attracts the wealthy and powerful from all over the world — including many people of interest to those reporting on corruption... and its not hard to demonstrate a few British IP addresses accessed the investigative materials.”

When looked at in this way, the bar for meeting the criteria can be considered quite low, taking into account that it is easy for those with ample funds not only to purchase property in the UK but also effectively buy residency and eventually citizenship via investment visas. And there is no shortage of companies based in the UK ready to facilitate this for those rich enough to afford it.

Further tightening of UK laws to reduce the possibility of libel tourism would be a welcome next step, however it would not improve the situation for journalists and media outlets based in the UK. One potentially positive development, however, is that in 2019 the Supreme Court, the highest court in the UK, ruled that claimants must demonstrate that they have suffered ‘serious harm’ in order to bring a defamation case. This places an onus on claimants to produce evidence that their reputation has been ‘seriously harmed’, with profit-making entities required to show that they suffered serious financial loss, but it will nevertheless be for judges to decide the merits of individual cases.

The London Laundromat

The term ‘laundromat’ was coined by Radu to define large scale, all-purpose financial fraud vehicles that are used to launder billions of dollars. It is now in common parlance amongst those working in the anti-corruption field but garnered some official recognition in July 2020, with the release of ‘The Russia Report’ by the UK Parliament’s Intelligence and Security Committee (ISC). This report examines potential aspects of the ‘Russian threat to the UK’ and is fairly damning in its findings that “Successive Governments have welcomed the oligarchs and their money with open arms, providing them with a means of recycling illicit finance through the London ‘laundromat’, and connections at the highest levels with access to UK companies and political figures.”

The ISC’s report goes on to note that “This has led to a growth industry of ‘enablers’ including lawyers, accountants, and estate agents who are – wittingly or unwittingly – de facto agents of the Russian state.”

So far the UK Government response to The Russia Report has been lacklustre, and it has point blank refused to order an independent investigation or public inquiry into another interlinked aspect of the report - Russian interference into UK elections. The remit of the ISC was limited to examining the situation regarding Russia, but in reality the ‘London Laundromat’ and the connected industry of

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27 British citizenship by investment, Imperial & Legal, https://imperiallegal.com/british-citizenship-by-investment/
28 Jane Croft, UK libel must prove ‘serious harm’ to reputation, says court, Financial Times, June 2019, https://www.ft.com/content/337408bc-bd02-11e9-a24d-b42f641ec3a7; Judgement - Lachaux (Respondent) v Independent Print Ltd and another (Appellants), United Kingdom Supreme Court, June 2019, https://www.bailii.org/uk/cases/UKSC/2019/27.html
30 Intelligence and Security Committee of Parliament, Press Notice, https://docs.google.com/a/independent.gov.uk/viewer?a=v&pid=sites&srcid=aW5kZXBibmRbnQuZ292LnvRfGlzY3nEOoxMmRkZmU2MjQ4ZWZENmDi
31 Intelligence and Security Committee of Parliament, Press Notice, https://docs.google.com/a/independent.gov.uk/viewer?a=v&pid=sites&srcid=aW5kZXBibmRbnQuZ292LnvRfGlzY3nEOoxMmRkZmU2MjQ4ZWZENmDi
enablers is being utilised by corrupt figures and shady businesses from all over the world. Investigations into transnational financial crime and corruption are rarely published without the mention of some intermediary shell company based in a UK jurisdiction or the funds ultimately being used to pay for property, education or indeed legal and reputation services in the UK. Ben Cowdock and Rachel Davis of Transparency International UK (TI-UK), provide insight into the UK’s complicity in global corruption in their essay for this publication, describing the scale of dirty money as almost beyond imagination. In TI-UK’s 2019 analysis of over 400 corruption cases spanning 116 countries, amounting to economic damage in excess of £324 billion, they identified 582 firms and individuals offering services in the UK, often unwittingly, to corrupt individuals. It would be naïve to think that only Russians might be benefiting from these systems or utilising them as a means of influence on the UK political system. The UK Government would be wise to launch a wide reaching review not only on the systems that facilitate the flow of dirty money through our borders, but also on the impact it has on UK politics and wider society.

**Shutting down reporting of financial crime and corruption**

More importantly for the protection and promotion of freedom of expression globally, it would be beneficial for the Government and the UK Foreign, Commonwealth and Development Office (FCDO) to examine how the UK’s facilitation of the illegal enrichment of political elites might affect media freedom in their home countries. It is not unsurprising that countries with higher rates of corruption, as measured by Transparency International’s Corruption Perceptions Index (CPI), also tend to have the fewest protections for journalists and the media. Journalists working in authoritarian countries, like Khadija Ismayilova in Azerbaijan (which in 2019 rated 126/198 in the CPI Index and 160/180 in Reporters without Borders World Press Freedom Index), face a wide range of threats aimed at harassing and suppressing them.

A recent example is the crackdown on journalists in Kyrgyzstan (which also rated 126/198 in TI’s CPI and 83/180 in RSF’s Press Freedom Index last year). In November 2019, a joint investigation by RFE/RL’s Radio Azattyk, OCCRP, and Kloop exposed significant corruption in Kyrgyzstan’s customs service, including the transfer of more than $700 million out of the country. The money was being sent “to Germany, the United Kingdom, the United States, and Dubai — countries where ... large real estate investments [were being made].” Almost immediately legal action was launched domestically by those named in the report, which led to the Kyrgyz courts to seemingly fast-track the freezing of the media organisations’ assets, a decision which was later reversed in response to international outcry. Staring even prior to the release of the investigation many of the journalists involved have experiencing harassment, including threats, police investigations, arrest, physical attacks and online trolling. In April 2020, a former Kyrgyz customs official stated that he was told to

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31 Transparency International UK, At Your Service: Investigating how UK businesses and institutions help corrupt individuals and regimes launder their money and reputations, October 2019 https://www.transparency.org.uk/publications/at-your-service


bring Ali Toktakunov, the journalist who led the joint investigative team, and now based in Prague, back to Kyrgyzstan “dead or alive.”

In an essay for this publication, Dmitry Velikovsky, a Russian investigative journalist who worked on the Panama Papers and now part of a new Russian outlet iStories, writes powerfully about the state of media freedom in Russia (which ranked 137/190 in TI’s CPI and 149/180 in RSF’s Press Freedom Index). Similarly, Alina Radu, Editor in Chief of Ziarul de Garda, an investigative newspaper in Moldova (120/198 in TI’s CPI and 91/180 in RSF’s Press Freedom Index), touches upon the challenges she and her colleagues experience while investigating corruption, including the 2014 banking scandal, which saw one billion USD stolen from the country with the involvement of at least 48 UK companies.

Threats and harassment against journalists, regardless of type, generally need to be funded. Perhaps with the exception of uncoordinated social media trolling or individual retribution, the instigator typically needs to hire or bribe an intermediary(ies) to carry out the threats, legal or otherwise. Corrupt figures able to get away with financial crime are presumably well-resourced to fund these attempts to stop journalists from publishing information about their wrongdoing and to contribute to a broader suppression of information of public importance.

Western journalists are not immune to underhand and nefarious tactics to pressure them to stop reporting. In the course of his five-year investigation into Wirecard, a German financial technology firm, the Financial Times journalist Dan McCrum was subject to “furious online abuse, hacking, electronic eavesdropping, physical surveillance and some of London’s most expensive lawyers.” Writing about his experience, in September 2020, McCrum noted that “Observers of the Wirecard affair have tended to criticise the German establishment for the fact that this fraud ran for 20 years unchecked — poor auditing, zero regulatory oversight. And yet almost all the external professionals hired by the company to protect its reputation were based in London.” The result of McCrum’s tenacity in continuing to report despite such harassment, was that he brought to light what has since been described as the “biggest accounting fraud case since the Enron scandal in 2011” and Wirecard’s ultimate demise.

McCrum’s experience is not singular. Clare Rewcastle Brown in her contribution to this publication describes the surveillance, smear campaigns and digital hacking, on top of the significant legal challenges, she experienced while investigating Malaysia’s 1MDB corruption scandal. Rewcastle Brown notes how law firms operate in combination with a network of public relations consultants, corporate investigators and private protection agencies. Her reporting led to the downfall of the former Malaysian Prime Minister, Najib Razak, who is now in prison, with the believed masterminded behind the scandal, businessman Jho Low, currently on the run from justice in Malaysia, Singapore and the US.
Nor are these tactics used strictly on journalists, Global Witness - an international NGO headquartered in London, which aims to end the exploitation of natural resources and corruption in the global political and economic system, has also been subject to a variety of threats and harassment.\(^{\text{49}}\) In the summer of 2020, they published an investigation into how a controversial mining magnate seemingly used an alleged international money laundering network stretching from the Democratic Republic of Congo (DRC) to Europe and Israel to avoid the US sanctions he has been subject to since 2017.\(^{\text{50}}\) In a separate article, Global Witness documented the attempts to intimidate them and their partners, the Platform for the Protection of Whistleblowers in Africa (PPLAAF), into dropping their investigation, before and after publication, including a sustained smear campaign on social media and a letter from a London based law firm, Carter Ruck, threatening legal action.\(^{\text{51}}\) Despite their involvement, three defamation complaints have since been filed against Global Witness and PPLAAF in France.\(^{\text{52}}\)

**Reputation Laundering**

Reputation laundering can be seen to come in two forms; smearing or undermining the standing of those who seek to publish information about wrongdoing, as described above, or as part of a positive PR campaign to cover up or whitewash over negative events. In the wake of the murder of Washington Post journalist Jamal Khashoggi, inside the Saudi consulate in Istanbul in October 2018, a Guardian investigation found that “London has become a hub for global Saudi public relations and media influence campaigns, with British firms earning millions of pounds from efforts to improve the image of the kingdom and its regional allies in recent years.”\(^{\text{53}}\) Two years on, the Saudi government is still ‘aggressively’ bankrolling high-profile events featuring major international artists, celebrities, and sports figures while those behind the journalist’s murder have still not been brought to justice.\(^{\text{54}}\) The accused are currently being tried in Istanbul in absentia.\(^{\text{55}}\) Ahead of the G20 summit, hosted by Saudi Arabia in November 2020, the UN special rapporteur who investigated Khashoggi’s murder, Agnès Callamard, called on G20 countries to take a moral stand - “The truth is that no country should be able to buy its way out of accountability.”\(^{\text{56}}\)

In a notable step towards creating some level of accountability, the UK launched ‘Magnitsky style’ sanctions in July 2020.\(^{\text{57}}\) This could be an important tool both in sanctioning corrupt individuals but also those involved in crimes against journalists. Among those to be targeted by these new sanctions were 20 Saudi nationals involved in the murder of Khashoggi. However, as Jessica Ni Mhainin of Index on Censorship points out in her essay reviewing the UK’s record on media freedom in this publication, such progress was later undermined by reports that the UK’s Defence Secretary had later apologised for the sanctions to his Saudi counterpart. If true, this action places a question mark over the integrity of potential future sanctions, albeit the UK’s relationship with Saudi Arabia, a

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\(^{\text{51}}\) Intimidation and scare tactics won’t work on us – we will continue to demand real action to bring greater transparency to DRC’s mining sector, Global Witness, July 2020, https://www.globalwitness.org/en/blog/intimidation-and-scare-tactics-wont-work-on-us-we-will-continue-to-demand-real-action-to-bring-greater-transparency-to-drcs-mining-sector/


country plagued with human rights abuses, has long cast a damaging shadow over the UK’s reputation.  

Reputational Risks to the UK
The UK and its offshore jurisdictions are not the only locations used for the facilitation of financial crime and corruption. However, the extent to which the UK is a facilitator of financial crime, a destination for illicit money and the source of a wide range of enablers to support corrupt individuals is alarming. The most recent FinCEN Files investigation, released in September 2020, while ostensibly a review of suspicious activity reports (SARs) leaked from the records of the Financial Crimes Enforcement Network (FinCEN), an arm of the US Treasury, actually served once again to highlight the UK’s role as an international hub for money laundering. British companies were named more than 3,000 times in the leak, more than any other country – and it brought to light that the US Treasury refers to the UK as a ‘higher risk jurisdiction’.  

In August 2020, the BBC podcast series ‘The Missing Cryptoqueen’, which investigates the disappearance of Ruja Ignatova the Bulgarian founder of Onecoin, a cryptocurrency scam, pointed to the use of legal threats against the UK’s own regulatory institutions. In 2016, the UK Financial Conduct Authority (FCA) put a warning notice about Onecoin on its website, but this was taken down the following year after the FCA was challenged on the legal basis for the warning. The investigative journalists behind the podcast, Jamie Bartlett and Georgia Catt, alleged that the notice was removed because of pressure from solicitors acting on Ignatova’s behalf. According to retired libel lawyer David Hooper, interviewed as part of the podcast, it should have been obvious to the regulator that OneCoin's promoters were going to use this "as a marketing opportunity". Sales of OneCoin in the UK rose after the warning was removed, according to victim support groups. About two billion pounds from across the world was spent on OneCoin tokens, including tens of millions of pounds from British families, in what turned out to be a pyramid scheme. This situation should be a matter of embarrassment for the UK and call into question the efficacy of institutions such as the FCA.  

Another contributor to this publication Peter Sabo, a Slovak journalist who received a bullet in his letterbox this summer, took on his role at investigative news outlet Aktuality.sk after the murder of journalist Jan Kuciak and his finance Martina Kusnirova in 2017. Sabo together with Czech investigative journalist Pavla Holcová, who previously worked with Kuciak, write about the ease with which money flows out of countries like theirs via shell companies in UK jurisdictions, particularly offshore. In contrast, they highlight not only the difficulties they face as journalists getting information back from the UK, but also those experienced by authorities in their countries seeking to follow up on investigations of corrupt figures domestically. The UK should be seen to be supporting such initiatives not hindering them.  

As the UK sets out to reposition itself post-Brexit as a ‘Global Britain’, its reputation is more important than ever. Many of the money laundering schemes have relied on utilising the UK’s hitherto positive reputation and standing. However, it is clear that this reputation is being

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undermined and eroded at a critical time for establishing future financial and trade relationships. In October 2020, the UK signed its first post-Brexit agreement with Ukraine. This ‘Political, Free Trade and Strategic Partnership Agreement’ is geared towards strengthening UK cooperation “in political, security and foreign matters with Ukraine, while also securing continued preferential trade for businesses and consumers.” Everyone wonders how this sits with the fact that more than 700 UK companies have been blacklisted in Ukraine for suspicious activity, with the term ‘Scottish Companies’ reported to have become synonymous for ‘shady’ amongst Ukrainians.

If the UK is serious about realising its stated aims, both in terms of combatting corruption and promoting media freedom globally, it needs to re-assess how they match up with reality. Investigative journalists from around the world have repeatedly demonstrated their critical role in uncovering financial crime and corruption, the first step in ensuring accountability and redress. Yet if that role is threatened, if journalists themselves are prevented from continuing to bring matters of important public interest to light it only increases the scope for financial crime and corruption to continue unchecked.

Another element of concern in this regard is the UK’s continued effort, as part of the Five Eyes intelligence alliance, to break end-to-end encryption, a resource that is particularly valuable for journalists not only in their investigations, but to keep them and their sources safe. It would be preferable to see the UK focus its energy and resources into breaking the cycle of illicit money flows and those services that support them in the UK and its overseas territories. This would go a long way to not only countering financial crime, but also other crimes related to it. Additionally, it would improve the situation for those journalists who report on corruption and those experiencing repressive media environments in highly corrupt countries. After all, prevention is better than cure.

As OCCRP’s investigation into the Azerbaijani Laundromat, which sparked the legal case against Radu, noted, the money laundered through the UK was used, amongst other things, to buy the ‘silence’ of several European politicians. Silence about the human rights abuses that were, and are continuing to happen, in Azerbaijan. The UK should not, and must not, allow itself to be complicit in creating opportunities for such silence. Instead, it should seek to utilise the opportunity of a new ‘Global Britain’ platform not only speak out, but underpin it’s stated aims with concrete action that can set a positive example for the world to follow.

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What our authors say

Clare Rewcastle Brown shares her concerns regarding the extent to which truthful reporting in the public interest is being effectively undermined by the lack of constraints on the legal industry in the UK. Given the huge hurdles investigative journalists face when they challenge influential figures, Rewcastle Brown argues that only malicious and recklessly negligent reporting should be open to prosecution, because the public interest is at stake. Rewcastle Brown’s reporting has been at the forefront of exposing corruption related to Malaysia’s 1Malaysia Development Board (1MDB). As a result she has experienced considerable legal challenges as well as surveillance, smear campaigns, hacking and attempts at entrapment.

Dmitry Velikovsky explains the repressive situation for journalists investigating corruption in Russia and the limited space for media freedom more broadly. He points out that Russian state servants, who promote ‘sovereignty’ and ‘patriotism’ at home, tend to keep their numerous assets abroad, most notably in the UK and its dependent offshore jurisdictions. He argues that is why internal UK policies on the transparency of ownership and money flows become important for journalists like him 2,500 km away from Downing Street. Velikovsky also sounds the alarm regarding the UK’s attempt, as part of the Five Eyes, to break end-to-end encryption, which is essential for journalists to work safely. He argues that a trade-off between an existing liberty and a promised safety in this regard might actually mean for many, including Russian journalists, losing both.

Alina Radu describes the ‘informational cage’ she and her colleagues found themselves in when trying to investigate what happened during the theft of 1 Billion USD from Moldovan banks. While the money flowed out of Moldova facilitated by UK shell companies, information about those companies was not so easy to procure. She demonstrates how the lack of transparent, readily available and accessible data records, particularly to those not based in the UK, frustrates investigative journalism and prevents those affected, like the citizens of Moldova, from discovering what happened to their money. Radu shares how these challenges happen on top of an already hostile environment for journalists in Moldova, who face a wide range of physical and digital attacks on top of financial and economic constraints.

Peter Sabo and Pavla Holcová write about the painful experience not only journalists in Slovakia and the Czech Republic have, but also their countries authorities, when dealing with British overseas territories, that are often found to be implicated in the facilitation of financial crime and corruption. The lack of transparency hinders investigations and the judicial process of bringing individuals found to be involved these crimes to justice. Deficiencies in registries, but also poor communication by UK authorities is hindering investigative journalists and police investigators from joining up the crucial dots, which would also likely benefit the UK. Sabo points out for example how VAT frauds have resulted in millions being fleeced from the UK Revenue and Customs (HMRC). In the summer of 2020, Sabo was subject to a death threat as a result of his work, which came two and a half years after the murder of journalist Jan Kuciak who worked in the same newsroom. Holcova worked closely with Kuciak on transnational investigations including the Panama Papers.

Ben Cowdock and Rachel Davies Teka from Transparency International UK outline how their research adds to a growing body of evidence pointing to the UK’s complicity in global corruption, with the scale of dirty money in the UK is ‘almost beyond imagination’. They argue that an ‘enforcement gap’ – due in part to limited resources invested in the relevant authorities - risks the UK lacking a credible deterrent against the corrupt continuing to hide their money here. This makes the role of journalists, who have specialist expertise both in how the UK’s financial systems facilitate this corruption as well as the situation in origin countries, so vital and creates momentum for change. Cowdock and Davies Teka note that it is unlikely a coincidence that just two days prior to
the publication of the recent FinCEN Files investigation, the UK Government announced the next stage in an overhaul of the company formation system. They conclude that while such reforms are yet to be delivered, doing so would improve the ability of both journalists as well as groups like TI UK to uncover corruption and support the return of stolen funds to where they belong.

Nik Williams, Laurens Hueting and Paulina Milewska from the European Centre for Press and Media Freedom (ECPMF) explain that strategic lawsuits against public participation (SLAPPs), on the rise across Europe, are legal actions taken not necessarily with the goal of winning in court but to exhaust the target into submission. The authors argue that there is an urgent need for policy and legislative intervention. They describe efforts made in this regard in the form of an EU Directive, which of course post-Brexit Britain would not be subject to. Furthermore, they note that while Section 9 of the Defamation Act (2013) is intended as a check on international claimants using England and Wales as a legal jurisdiction, the section explicitly excludes claimants domiciled in EU member states or contracting parties to the Lugano Convention. Therefore, depending on the outcome of Brexit negotiations, there is a potential scenario in which UK courts would need to rule on the appropriateness of EU-based claimants. As England remains a legal jurisdiction commonly deployed for SLAPPs, steps must be taken to prevent powerful elites, wherever they are based, from abusing UK judicial processes to silence their critics.

Jessica Ní Mhainín from Index on Censorship argues that the UK is failing to live up to its pledge to counter threats to media freedom both globally and locally. As well as highlighting the role of the UK legal industry in SLAPPs, Ní Mhainín also raises how economic factors are undermining public interest journalism and that the situation for media freedom in Northern Ireland is of pressing concern. Index on Censorship has welcomed the establishment of a National Committee for the Safety of Journalists in 2020, which will provide press freedom organisations an opportunity to regularly raise concerns directly with the UK Government. However, as Ní Mhainn outlines, the UK Government has taken several regressive actions towards media over the course of the last year, which strongly undermines their messaging. Ultimately, if the UK wants to be an example to other countries, it must lead from the front.
2. A scandal of corruption and censorship: Uncovering the 1MDB case in Malaysia

By Clare Rewcastle Brown

Those wishing to pursue legal action against me in 2017 were advised, according to someone involved in the conversations, that for an outlay of no more than £200,000 I could be forced to issue the sort of retraction that could be spun into a total discrediting of myself and my wider reporting on corruption in Malaysia.

The logic was clear. I am a freelance journalist living in London who had uncovered one of the world’s largest financial scandals known as 1MDB, which was at the time threatening to bring down the Malaysian government, due to face elections in May 2018, then a few months away. The Prime Minister of the day, Najib Razak, has now been convicted of the first seven of some 42 charges related to 1MDB and so already faces 12 years imprisonment with further cases underway. At the time, he was strongly motivated to discredit me in the run up to the election to protect himself from just such an outcome by gaining victory.

Clare Rewcastle Brown is a UK investigative journalist, born in Sarawak, Malaysia. In 2010, Rewcastle Brown founded The Sarawak Report (sarawakreport.org) and its sister organisation Radio Free Sarawak. The Sarawak Report has been heralded for its “impact on the political debate” in Malaysia, with the New York Times calling Rewcastle-Brown “one of the most effective voices calling attention to deforestation in Malaysia”. In 2015, Sarawak Report was recognized by the Index on Censorship for being a “champion against censorship”. Radio Free Sarawak has won the IPI International Press Institute’s Free Media Pioneers Award 2013 and the Communication for Social Change Award 2014. Rewcastle Brown’s reporting has been at the forefront of exposing the corruption related to Malaysia’s 1Malaysia Development Berhad (1MDB). Image by Firdaus Latif under [CC].
Of course, it was not Najib who sued me. The Prime Minister could not afford to be cross-examined over 1MDB and the other corruption matters I had reported on in a London court, because the evidence was overwhelming and had by then also been laid out in detail by the FBI. However, he had secret political allies in the form of the opposition PAS Islamic Party whose new leaders had agreed to work with him with a view to forming a coalition once the election was over. The dynamics of that alliance had become overwhelmingly obvious to observers such as myself and I had referred in an article to the large sums of money that senior sources in Malaysia suspected were being channelled at that time into the ‘upper echelons’ of this party order to smooth the secret relationship. Voters were being kept unaware of the controversial collusion, given it followed decades of rivalry between the two parties.

One of the prime movers in that covert relationship, a former Deputy President of PAS, has now also been charged in Malaysia for his alleged criminal breach of trust fronting a supposed Islamic charity, which was being funded by Najib to the tune of millions. My article had mentioned no names but focused on the public interest concern that a blatantly corrupt Prime Minister was plainly ‘wooing’ a political party with cash although it was still purporting to its supporters to be part of the opposition movement.

To facilitate the litigation, Carter Ruck of London constructed an argument that I had implied without saying it that the money had gone directly to the personal use of the actual President of the PAS, who was not named in the article and had only been referred to once before on my platform by a separate writer some months previously. After all, a libel case requires an individual whose reputation is alleged to have been besmirched. The point of this case, as my inside informants had confirmed, was to put me under financial pressure and to force me to settle with an apology, which could then be broadcast as an admission in the Malaysian media before the election that I was a politically motivated liar who had produced a farrago of falsehoods relating to the Prime Minister and 1MDB. Indeed, from the moment it was launched the case was used as a relentless propaganda tool against me in just this manner, leaking privileged information and alleging that judgements had already been arrived at against me.

As anticipated, the attack was financially devastating. I was to lose my savings and my pension defending the case, despite the generous tens of thousands of pounds raised by huge numbers of well-wishers across Malaysia who contributed what they could to my defence. The miscalculation was that I would as a consequence buckle at a time when the truth of my reporting was being strengthened by further evidence each day that passed. Given the importance of the issue to the entire future of a nation about to see its first ever peaceful transfer of power through the ballot box, I refused to be bullied into the expected settlement and the Carter Ruck bill clocked upwards well past the million mark (to the annoyance of the litigants who had understood that I would be dealt with more cheaply).

Najib lost the election in May 2018 and proceedings began against him. Meanwhile, his remaining UMNO party promptly entered into the coalition with PAS that I had reported was secretly underway and which had in turn prompted this very libel suit. I moreover obtained hard evidence

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70 As Najib Denies All Over 1MDB, Let’s Not Forget His Many Other Criminal Connections – COMMENT, Sarawak Report, August 2016, https://www.sarawakreport.org/2016/08/as-najib-denies-all-over-1mdb-lets-not-forget-his-many-other-criminal-connections-comment/
of financial transfers from UMNO to PAS as well as recordings and documents, which confirmed my reference to the collusion between the parties.\(^{72}\)

It was therefore entirely unsurprising that as the trial loomed near in early 2019 emissaries from PAS reached out to me and a settlement was arrived at, which involved no retractions on my part and a hefty contribution to my legal costs.\(^{73}\) Carter Ruck was side-lined from these negotiations until the final stages, when their Malaysian clients instructed them to pull the case in London. By then PAS’s London legal bills had reached well in excess of one and a half million pounds in return for a well-deserved public humiliation. Back in Kuala Lumpur the PAS President justified his climb-down to the local media acknowledging his lawsuit had been politically motivated from the start and that since it had now served his party’s purpose in the elections he had decided to withdraw. What more damning indictment could there be of a self-admitted SLAPP suit?\(^{74}\)

Nevertheless, the odds had been on a different outcome. A less committed journalist and indeed most news organisations, which face dozens of these sorts of SLAPP suits every year, would most likely have buckled at the start as the plaintiffs’ lawyers had clearly anticipated I would do – Malaysia is a long way away from what most London readers care about and the costs of defending public interest journalism have become prohibitive thanks to these sorts of cases which flourish in the London courts.

The aforementioned is just one example of the raft of legal threats I continue to face, like other freelance and investigative journalists who are seeking to alert the global community to criminality and corruption that threaten law and order and the democratic process not only in vulnerable emerging nations but also in our own, despite supposedly more robust institutions. The growth industry known as ‘reputation management’ involves a web of largely UK-based facilitators acting together to protect some of the world’s most powerful, wealthy and dangerous individuals from rightful scrutiny and discovery by our free media.

At the pinnacle are a clutch of specialist law firms whose relationships with such clients are legally privileged who operate in combination with a network of public relations consultants, corporate investigators and private protection agencies hired to wage war on journalists in particular. I have been targeted by all these groups of ‘professionals’ in my capacity as a London-based journalist who has annoyed foreign crooks. I have found myself under surveillance, been computer hacked, stalked, intimidated, sued and made the subject of numerous attempts at entrapment designed to compromise my reputation for integrity.

Websites have been constructed by PR agents in London purporting to be based in Malaysia, again dedicated to attacking my honesty and reputation.\(^{75}\) Networks of writers in the US have been engaged to characterise my fact based, anti-corruption exposes as some form of aggressive


\(^{74}\) Emmanuel Santa Maria Chin, Hadi claims told to bin suit against Sarawak Report over RM90m claim, Malay Mail, March 2019, https://www.malaymail.com/news/malaysia/2019/03/07/hadi-claims-told-to-bin-suit-against-sarawak-report-over-rm90m-claim/1730013; Hadi Admits Case Was “Political” — No Longers Cares To Fight For His ‘Reputation’ In UK, Sarawak Report, March 2019, https://www.sarawakreport.org/2019/03/hadi-admits-case-was-political-no-longers-cares-to-fight-for-his-reputation-in-uk/

'socialism' based on lies. The contracts funding these exercises in deception have been worth tens of millions to companies such as Bell Pottinger and FBC Media (both now folded following exposure), whilst numerous law firms have engaged in various gradations of legal threats against me – a single ‘Letter Before Action’ is worth thousands of pounds to the law firm and if a writ is served the meter really starts ticking for their client and their target.

When in 2018, I sought to publish a book about my investigations into 1MDB - long after Najib’s key financial fixer, Jho Low, had become an international fugitive facing multiple warrants for his arrest - yet another prominent UK libel law firm, Schillings, contacted my publisher on the fraudster’s behalf to threaten proceedings not only against them but also every bookshop in the UK that carried the book. This was in anticipation of an account that would be unflattering to their client and therefore, they said, prejudicial to his chances in any of the courts of law that he was seeking to avoid.

A similar threat was issued against a separate book about Jho Low written by two Wall Street Journal journalists and even their major publisher, the US publishing giant Hachette, duly withdrew from releasing the book in the UK until my allegations had remained uncontested for a year. I was thus forced to self-publish and defy this further example of the blatant abuse of British libel law to protect a world class crook hiding in China and more wealthy and powerful institutions than myself, who were reluctant to risk the financial consequences of standing up to him.

It deeply concerns me that truthful reporting in the public interest is being so effectively undermined by the lack of restraints on this industry. Journalists already face huge hurdles when they challenge influential figures, and inevitably imperfections can arise in the coverage of matters which powerful forces want hidden. This should be taken into account and only malicious and recklessly negligent reporting should be open to prosecution, because the public interest is at stake. Presently, the bar is set far too low.

The case constructed on behalf of PAS was a classic of the genre, in that it was an artificial contrivance designed to suggest that a foreign politician whose name had not been mentioned in the article concerned had been besmirched in the UK where his identity was barely known. My legal advisors were certain such a case would not withstand the full judicial process and that my defences were clear. However, that was not the object.

At an early point in the trial, the judge questioned if the plaintiffs would appeal if he struck out half their case. The counsel hired by Carter Ruck leapt to assure the judge that his clients would indeed contest any early dismissal of their case, at which the judge turned towards the court and explained it would be cheaper to therefore pursue the entire case from High Court to Appeal Court to Supreme Court – several millions of pounds worth of litigation which wealthy crooks seeking to avoid exposure can and do regularly treat as a necessary business expense to game our systems, but which journalists and news organisations cannot afford to counter.

One of my own lawyers put it this way: “you have truth on your side, but they have the money. That puts you in by far the weaker position the way our laws are presently constructed.” If we want to maintain our democracies and indeed support those striving for democracy elsewhere, we need to curtail this overwhelming advantage to the deep pocketed litigant in our libel courts and strengthen

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the position of journalists trying to do the job we need them to do to protect our systems and shed light on infamy.

SLAPP cases need to be identified and thrown out early on. Failure to do so has given rise to a corrosive abuse of our systems by often foreign litigants who all too frequently barely even possess a reputation to protect in this country. It has become a dangerous weapon against free speech, accountability, transparency and the rule of law not just in this country, but across the world.
3. Investigative journalism in today’s Russia, and why the UK’s stance could actually make a difference

By Dmitry Velikovsky

If you were to read only one paragraph to get a feeling of what’s wrong with the setting we have to work in here in Russia, consider this one. Just by articulating these words, I potentially expose myself to the charge of treason. According to the Russian Penal Code deeds that fall under it, consist of “providing financial, technical, consultative or other ways of assistance to a foreign state, an international or foreign organization or its representative.” Other ways it is. The only point our investigators would actually need to prove is that FPC publications – or this particular one - are “directed against Russia’s security”. That would be perfectly enough. Considering the non-defined term “security” has a multitude of meanings and the fact that Russian prosecutors are known for their exceptional resourcefulness the option cannot really be excluded. And that means a closed trial with a sentence ranging from 12 to 20 years in prison.

Dmitry Velikovsky, is an investigative reporter with iStories and OCCRP. Over the past two decades, Velikovsky has worked in several roles as an observer, field reporter, producer, and fixer. He was previously a staffer for the “Russian Reporter” magazine and “Novaya Gazeta” newspaper, but his stories have also been published in many other Russian-language media as well as in The Washington Post and Aftonbladet. As a local producer, he has occasionally worked with major broadcasting corporations such as BBC, Vice, France24, RTS, CCTV, NPR and TV3. Velikovsky has won several awards as a result of his work including the Sigma Award for best data-driven reporting (2020) – as a part of OCCRP team that worked with the Troika Laundromat project; the George Polk Award (2018) - as a part of the International Consortium of Investigative Journalists team that worked with the Paradise Papers project; a Pulitzer prize (2017) – as a part of the International Consortium of Investigative Journalists team that worked with the Panama Papers project; the Best Documentary Peace Award (2014) of Gothenburg Independent Film Festival for “Mediastan” Jimage by Roger H. Goun under (CC).

I can also be legally stamped as an individual “exercising the duties of a foreign agent”. This would equate me to a “foreign agent NGO” which subjects a person or organisation to a number of bureaucratic and legal hardships. To be fair one doesn’t need to come up with his own article to achieve this statute. A mere Facebook-repost or retweet from a page of a “foreign agent media” (let’s say RFE/RL) would be sufficient providing you have ever got a penny (can be a gift too) from foreigners or a Russian entity that in turn has received a penny from a foreign one. No relation between the action and the payment is required. The wording of this law is so broad that it actually contains a peculiar legislative expression “might be recognized” that makes its application officially voluntarist.

Those two theoretical repercussions clearly show both the direction Russian policymakers have taken in recent years and the approach they have adopted. Any influence from abroad, and now even contact with foreigners, are perceived by the State as a menace. The countermeasures consist of a constantly growing pile of vaguely formulated impracticable pieces of legislature. In a way, those laws are not intentioned to be abided by. Their main purpose is to have a legal pretext to prosecute any citizen or organisation at will and at any given moment. And while the examples above relate to cross-border cooperation the same convenient “no man without a guilt” logic can be traced to many other contemporary Russian laws: on mass gatherings, on electoral procedures, on extremism, on Internet regulations and media licensing. The only thing left to do is to hand pick the ones to be enforced. In some unforeseen cases where current legislation is not applicable, there is no shortage of tamed judges to cover up for it.

This strategy of “universal guilt – selective repressions” is, of course, primarily aimed at all forms of dissent. Therefore, the main victims are institutions and individuals that have enough power and recognition to raise their voices against all sorts of injustice or corruption. This makes media and journalists one of the prime targets.

Silencing faultfinders was Putin’s trademark style from the very beginning. It has just got uglier over time. Back in 2001, one of the first things Putin arranged as a President was a crackdown on an independent TV station NTV – and its effective nationalisation. It took several years to consolidate the rest of the TV-stations with political broadcasting. However, the Kremlin’s fight for media dominance was far from over and with Putin’s third term the bell rang for the rest – not only most of the small regional newspapers but also the prominent and well-established federal news holdings. Once independent and powerful media, like Kommersant, Vedomosti, RBC, Forbes or Lenta.ru, were all reduced to the shadow of their own former glory. The owners are now either directly connected to Putin’s inner circle or unwilling to take risks of crossing the lines drawn by Kremlin media-strategists, with the best journalists fired or gone. Very few traditional media outlets managed to keep independence but even those have to make regular compromises to survive.

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There are several ways of forcing the Russian-based media into self-censorship even if the Kremlin or its proxies do not directly control it.

Obviously, the owner can be pressured. Recent history knows some brutal examples such as police raid on owner’s headquarters.\(^6\) But that’s rare. In most cases a more subtle behind-the-scenes chat is more than enough — experienced media managers have learned their lessons.

There is a formal way too. According to Russian law, the registration of a media can be revoked if it gets two official ”warnings” in one year.\(^7\) Pretexts galore, it doesn’t pose much of a problem for a regulator to find one.\(^8\)

To minimise the risks many new media, including our iStories, have opted to be registered abroad. This actually suits the Kremlin – as its eternal argument of the foreign interference becomes easier to sell. The Russian Government obviously noted the trend and responded accordingly. The above-mentioned legislation on “media acting as foreign agents” have been adopted. It was supplemented by a much harsher law on “undesirable organizations” that gives the Russian Government the power to ban the activities of foreign or international NGOs, under vaguely defined security pretexts and without any judicial review. No Russian citizen is allowed to cooperate with one. This law has already been deployed to ban the Open Russia movement, founded by exiled critic and former prisoner of conscience Mikhail Khodorkovsky. One of its former employees is currently under trial facing six years in prison for taking part in an educational seminar.\(^9\) Police routinely raid the premises belonging to Open Russia and the MBKh media outlet, also financed by Khodorkovsky, as well as the homes of the journalists collaborating with them.\(^90\)

The Internet became a battleground too. A decade ago, its users were considered a puny minority and therefore the Internet was left to thrive according to its own self-administered rules. The crackdown on conventional media coincided with the development of technology bringing the number of Russian Internet users in 2020 to 118 million\(^91\) – roughly three quarters of the population. A lot of media outlets have minimised their offline presence and gone predominantly online. Therefore, something had to be done to make the virtual world as manageable as the real one.

With the arrival of Putin’s third term legislative pressure started to mount in this aspect too. The concept of a “sovereign Internet” was hammered out and partially implemented.\(^92\) It gives government full control over the infrastructure of the Russian segment of the Web. On top of it, we now have a whole pile of “offline” laws amended to make virtual acts and words as punishable as real-world offences. That made most active internet users – including media and journalists - subject to blocks or even prosecution. I.e. these days one can easily get a prison sentence for a tweet containing a call to come to an “unsanctioned” demonstration – according to Russian judges that can make you an organiser of such a rally.\(^93\)

\(^6\) Maria Tsvetkova and Polina Devitt, Russian editors ‘fired over stories that irked officials’, Reuters, July 2016, https://www.reuters.com/article/us-russia-newspaper-russian-editors-fired-over-stories-that-irked-officials-idUSKCN0ZT0EU


\(^9\) Maria Tsvetkova and Polina Devitt, Russian editors ‘fired over stories that irked officials’, Reuters, July 2016, https://www.reuters.com/article/us-russia-newspaper-russian-editors-fired-over-stories-that-irked-officials-idUSKCN0ZT0EU


\(^91\) Reuters Staff, Police raid Russian opposition groups before local elections, Reuters, September 2020, https://uk.reuters.com/article/russia-politics-opposition-raid-idUKKBN26011M


\(^93\) Maria Tsvetkova and Polina Devitt, Russian editors ‘fired over stories that irked officials’, Reuters, July 2016, https://www.reuters.com/article/us-russia-newspaper-russian-editors-fired-over-stories-that-irked-officials-idUSKCN0ZT0EU
Unsafe for Scrutiny

Extrajudicial Internet blocking of the entire website of a stubborn media became an option. The first time that Internet users with a Russian IP-address were denied access to an officially registered media outlet was Grani.ru in 2014. This online daily was blocked over content, which allegedly promoted acts of mass disorder together with two other opposition media sites. The offending material was not specified thus leaving the editorial board with no option to remove it in order to restore access. This block has been in place ever since despite the recent ruling of the European Court of Human Rights that had found it to be in violation of Article 10 (right to freedom of expression) of the European Convention on Human Rights.

Construction of ‘The Great Russian Firewall’ is almost certain to continue. Russian power players dream big. For example, the head of the Investigative Committee of the Russian Federation (country’s main federal level investigative body) Alexander Bastrykin advocates for this to be “the experience of the countries that are resisting USA and its allies”. Meaning China. Bastrykin lauds Chinese law banning all electronic media that have foreign residents among its shareholders. According to Bastrykin such media are not allowed into the Chinese segment of the Internet and Chinese media need an explicit permission from the Ministry of information to cooperate with them. National media is to be administered by Chinese citizens only. The servers of the electronic media are to be maintained on the territory of China. “These practices could be adopted in Russia”, - concluded Bastrykin.

Obviously, the good old ways are still employed as well. Oligarchs with ties to the Kremlin, be it Deripaska, Kerimov or Sechin, routinely and without much of a problem sue media organisations (including the foreign ones) in Russian courts forcing them to retract the mention of facts that are sometimes well-known for decades. Some legal attacks are aimed not at the truth but at the journalists themselves. Among the most recent examples, is the trial of a journalist from Pskov Svetlana Prokopieva who was found guilty of justifying terrorism because she suggested that the suicide bombing of the FSB headquarters in the city could be related to the social and political situation in Russia and the restrictions on political and civil liberties. Ivan Safronov, a former reporter for Russian business daily Kommersant, was fired over an article about a possible reshuffle of President Vladimir Putin’s close allies last year. Several months later, he was arrested and charged with treason. He is now awaiting a closed trial, facing up to 20 years in prison. Quite like his son, Safronov’s father, also named Ivan, was a well-known military correspondent who was presumably killed in 2007.
24 journalists have been murdered since Putin’s first inauguration in 2000. Only one case was fully investigated. 102 Dozens more colleagues have been attacked, beaten and intimidated. Now poisoned too. 103 And even if we cannot say the Kremlin is the one to arrange all of these it is directly responsible for the atmosphere of impunity that makes the physical assault of a journalist a valid problem-solving option for powerful people.

The combination of those ‘good old’ methods with the new ones described above produce the intended chilling effect. Many journalists and media organisations that used to deal with political reporting have changed occupation, others switched to more innocent subjects or resorted to self-censorship. It’s hard to blame them. Imagine living in a room with a hydraulic ceiling that goes down several inches a year. And it is getting faster with time. You have witnessed it crushing the tallest ones. You saw it forcing the strongest ones to crawl. You are scared to grow for it will come at you earlier. However even if you keep a low profile your turn will definitely come. It’s not a question of ‘if’ but ‘when’.

The necessity of sustaining a high level of pressure leads to dreadful outcomes. A month ago, a colleague burned herself to death in front of a regional police headquarters. 104 She was one of the last independent journalists in the Nizhny Novgorod region and she was struggling for years with her self-authored and self-published outlet Koza-Press. That also meant constant police and judicial pressure - court hearings, accusations, smear campaigns, etc. She was selling hand-made wooden scarfs weaved at night to pay the state-imposed fines. One day she got her front door knocked down by police, her flat searched, her computer confiscated. The next day she took a canister of gasoline and killed herself. Her last Facebook post says: "Russian Federation is to be held accountable for my death." 105

So it goes.

Despite all this, new investigative media continue to appear in Russia. Well, technically these are mostly registered abroad but their journalists are Russian-based. One of these young but ambitious outlets is iStories where I work. We only launched this year but our staffers are experienced investigative reporters that were part of international teams that published many cross-border projects such as the Panama Papers, the Paradise Papers, Russian Laundromat, FinCen Files, and the like. 106 We were privileged to collaborate with many colleagues and that is exactly the ‘cooperation instead of rivalry’ model that we are trying to develop on Russian soil. A lot of our texts are published as a joint effort with other Russian language media. “If we don’t band together then we will gradually disappear”, as our editor in chief Roman Anin says. 107

We are also a member of the Organized Crime and Corruption Reporting Project (OCCRP), a consortium of investigative centers, media and journalists operating in Eastern Europe, the

102 24 Journalists KILLED in Russia between 2000 and 2020, CPJ data, CPJ, https://cpj.org/data/killed/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&typeOfDeath%5B%5D=Murder&coverages%5B%5D=Business&coverages%5B%5D=Corruption&coverages%5B%5D=Crime&coverages%5B%5D=Culture&coverages%5B%5D=Human%20Rights&coverages%5B%5D=Politics&coverages%5B%5D=Sports&coverages%5B%5D=Unknown&cc_fips%5B%5D=RU&start_year=2000&end_year=2020&group_by=year
Caucasus, Central Asia and Central America. Being a part of this network gives us tremendous opportunities in terms of cross-border research.

Yes, we mostly investigate corruption in Russia. The fact that it is raging on all levels of the Russian state hierarchy is widely recognised. And while some foreign colleagues tend to traditionally perceive it as a ‘tumor’ that metastasised across various state organs I would rather think of it as a skeleton, the very carcass that holds those organs together. This metaphor could better explain why almost no revelation of journalists in this sphere, no matter how profound and well documented it is, produce any effect inside Russia. No criminal proceedings to be started, no firing of culprits to be expected.

The most candid quote that reflects the overall approach to problems by many Russian bureaucrats belongs to the former head of State Duma commission on security and corruption prevention (and now the vice-speaker of the Duma) Irina Yarovaya who claimed that a struggle against corruption can potentially endanger the sovereignty of the Russian state.108

More often than not, and it was proven by numerous investigations, the very same Russian state servants that talk so much about ‘sovereignty’ and ‘patriotism’ tend to keep their numerous assets abroad – most notably in the UK and its dependent offshore jurisdictions. Their flats are in London, their mansions are in the British countryside, their jets are registered at the Isle of Man, their money flowing through Jersey and BVI companies. And that is why internal UK policies on the transparency of ownership and money flows become important for us here, sitting 2,500 km away from Downing Street. In recent years, the UK did make a few steps in this direction including the obligatory statement of a person with ‘significant control’ for a company or an announced publicly accessible register of ultimate owners of companies that own or buy property in the UK. Still there are many grey zones that no investigative journalist can access – some in the UK, many more in the affiliated territories. The faster the UK would proceed on the declared path to transparency dragging its offshore allies behind it, the better job we could do. This in its turn would certainly benefit British people – the pumping of criminal money to and through the UK is certainly not in its best interests.

As Arthur Schlesinger wrote: “The obligation of history is to provide as full and exact a reconstruction of the past as possible—as the obligation of rational society is to offer its citizenry the most accurate possible information about the purpose and performance of its leaders.”109 We try our best but we could definitely use some help from the UK in this area.

Alas, there are some worrying trends involving the UK too.

The notorious persecution of Wikileaks’s editor Julian Assange is directed from across the ocean but UK has been playing a pivotal role in it. The very existence of this unprecedented trial as well as its handling by UK authorities has been criticised by many world renowned figures and organisations – from leaders of states to lawyers, from journalists to Nobel prize laureates.110 This persecution is “raising serious concern over the criminalization of investigative journalism in violation of both the US Constitution and international human rights law”, - believes Professor Nils Melzer, the UN Special

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Rapporteur on torture, “In 20 years of work with victims of war, violence and political persecution I have never seen a group of democratic States ganging up to deliberately isolate, demonize and abuse a single individual for such a long time and with so little regard for human dignity and the rule of law.”\textsuperscript{111}

Another saddening development to be mentioned is the mounting pressure of the Five Eyes on the tech companies and repeated calls to effectively break the existing encryption algorithms or compliment the currently secure software with backdoors.\textsuperscript{112} The trade-off between an existing liberty and a promised safety is a dubious one in itself. For us here it might actually mean losing both. Whatever little means of resisting the extremely invasive state - with its constant wiretapping and digital watch, with its regular physical surveillance and occasional confiscation of hardware - we still have, encryption is one of them. Secure messengers, encrypted emails and hard drives not only protect ourselves but our sources too. There is no way the encryption could be dismantled only for the benefit of the ‘good guys’, there is no way any backdoor would not be exploited by authoritarian governments, be it Russia or Saudi Arabia. Compromised encryption is going to inflict exceptional damage upon investigative reporting worldwide and at the end of the day it will backfire against the very same countries that call for it now.

\textsuperscript{112} The intelligence sharing alliance comprising Australia, Canada, New Zealand, the UK and the US; Dale Walker, EU inches closer to ban on end-to-end encryption, ITPro, November 2020, https://www.itpro.co.uk/security/357699/leaked-memo-suggests-eu-ban-on-end-to-end-encryption-imminent
4. Chișinău to London: A story about big money and small information

By Alina Radu

When you are a journalist from the poorest country in Europe, you have to write stories about poverty. When you see the poverty deepening for years, while the state elite becomes rich, you have to start investigative reporting. And you have to follow the money. That is the way you discover that money from the poorest people in Europe flies into rich capitals, including London. Is this for the sake of the ordinary people? No, it isn't.

It is not easy to find the money of the Moldovan poor hidden by the Moldovan rich in London. To do that, a reporter has to go through many challenges: from finding the databases, to paying for the databases, to then finding the money to pay and having enough to pay for the time needed to do the research, and at the end of it to find out that the entity in London was created by another two to three entities in offshore areas where reporters do not have access to the data.

Where is Moldova? And why is this important for London? Well, it is a tiny corrupt state and yes, it might be dangerous for the British. Let me give an example. At a distance of 2,500 km from London, there is a small village named Pitushca. A beautiful, green location, with sunny weather, hosting some 3,000 nice people that are growing juicy vegetables, the sweetest grapes and are baking that puffy crispy bread. It is the village of my childhood and I have only the best words for its people. Why might it be dangerous for the British?

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113 Alina Radu is the Manager of the biggest investigative reporting group in Moldova - Ziarul de Gardă (ZdG). ZdG is affiliated to GIJN (Global Investigative Journalism Network), WAN-IFRA (World Association of Newspapers - through Moldovan Association of Independent Press), SEEMO (SouthEastEuropean Media Network), RLNE (Russian Language Media News Exchange). ZdG covers Moldova, Romania, former Soviet countries, conflict areas, corruption and human rights – worldwide.
Imagine you reside happily on Byng Street at Canary Wharf in London, a luxurious and safe area, in one of the wealthiest and safest countries, Great Britain (GB). One evening you come back from the office thinking about dinner and the calm evening you could have after a busy day. You step down from the taxi, open the door of the building and someone nearby shoots you and gets away. This is what happened in 2012 exactly on that street on 20 March 2012. Later investigative reporters wrote that the man with the gun was from Pitushca, Moldova, and his name was Vitalie Proca. And it was not an accident, but a long-time planned and well-organised operation. Why did a Moldovan man come 2,500 km to kill someone in London? Because of big Moldovan money and Moldovan people in GB.

The man who was shot in March 2012 survived and later told his side of the story. He is a Russian national, with a controversial CV full of financial scandals, but this was the way he got to control the Universal bank in Chisinau, capital of Moldova. Maybe you have heard about this bank if you heard about the stolen billion from Moldova. Universal bank is one of those three Moldovan banks that washed the money from Moldova through some Latvian banks and yes, through British business entities to some unknown private accounts.

I remember working with my colleagues on this story and the feeling of being in an informational cage. The billion dollar theft was completed in 2014, but already in 2013 we were publishing articles about strange financial operations between Chisinau, Moscow and London. Already at that moment, we were writing that the main Moldovan bank got under control of a Russian business that is controlled by a dormant company in London. Could we learn more about that dormant company? No, it was a British offshore company. And the bank was Moldovan.

We continued to write stories and to find a lack of information in British registers. Finding out that a Latvian citizen was managing about 50 offshore companies in Great Britain involved in the washing of money from Moldovan banks was the only information we could have access to. Normally, as reporters, we talk to people that are accused of anything, just to give them a voice and to have all parts of a story exposed. The frustration is that people from British offshore companies never accepted the request to answer to a Moldovan reporter, while accepting to operate with a huge amounts of Moldovan money. You cannot have their contacts, opinions, voices, you cannot have correct information. And by this, you never know the whole truth and you cannot inform society on topics of the highest interest.

That stolen billion in 2014 was not the only billion brought from the poorest in Moldova to London. And now, we have to go back to Pitushca, to that sunny village with the sweetest grapes and peaceful residents. Vladimir Plahotniuc, the most known Moldovan oligarch was born in Pitushca. And he got to visit London and to have important discussions with British experts in the name of the Moldovan society, about democracy and development.

But he also got properties and businesses in London. Why is this a problem? Because now he is wanted by Moldovan prosecutors but he fled the country in June 2019 and never came back to give answers about the accusations of stolen money and many other illegal activities. However, before

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leaving Moldova, back in June 2019, he first opened a business in London in his name.\textsuperscript{120} It seems legal for everyone to create a business and it is good to have access to this data. But when you look at the data as a reporter, sometimes you have more questions than answers. Documents relating to this British business states that he is a Czech national and was born in February 1966. According to his Moldovan passports he was born in January 1966.

Could a person have different birthdays? Could it be a different person? A reporter should have the possibility and capacity to check information and to inform societies correctly. And when a person is accused of financial crimes and opens businesses in other countries it should be made easy for societies to be informed and for justice departments to make investigations. In this case, it was not possible.

We understand that any entity has the right to be protected by law, and this is a sacred right for anybody who opens a business or buys a property in Great Britain, including a Moldovan. But there are examples where the British authorities decided to reveal information about the luxury and exuberance of some Moldovans who spend huge amounts of money in London. A prime example is that of the colorful story about the young son of a former Moldovan Prime Minister spending more than £1,000 a day, which would not have been possible without this press release from the National Crime Agency (NCA).\textsuperscript{121} “Freezing orders for three HSBC accounts held by 22-year-old Vlad Luca Filat were granted in May 2018 – under new forfeiture provisions introduced by the Criminal Finances Act 2017 – after NCA financial investigators suspected the funds derived from illegal activity by his father, Vladimir Filat, the ex-Prime Minister of Moldova”, says the press release. Did that money come back to Moldova? Not yet. Is this the only kid of rich corrupt officials from Moldova that is offered expensive goods in Great Britain? No. Journalists have published various stories of children of oligarchs, judges, etc., but so far we have had only one press release of this kind from the NCA.\textsuperscript{122}

One of the funniest (and very sad) stories of money circulation between Great Britain and Moldova happened recently in 2020. Moldovan border officials discovered 1.6 million euros hidden in a truck. It is a huge amount of money, and according to the law it should be declared, not hidden. I would say that in the modern world it is not necessary to carry money in big bags, when there are bank accounts and tiny cards. The driver said to authorities he does not know where the money came from; and after that the authorities should confiscated it. But then, surprise, a London based young man said that the money was his. He is 32 years old and he says it is a small part of what he earned.\textsuperscript{123} After investigative reporters had a look through his story - it is full of manipulations, previous penal problems and obscure angles. The Moldovan justice system has not reached an end with this case yet, which speaks also about the capacity of its judicial system.

All the aforementioned stories are just a few insights into the efforts reporters make to reveal the phenomena of washing money, and crimes that reach from Moldova to GB. However, they did not reveal the stressed life, all the troubles and difficulties doing this job creates. Firstly, reporters in a poor country face financial and economic constraints: no healthy market, no advertisement, poor circulation of newspapers, political control on TV licenses, very limited access to information. But, that is the easy part. Investigative journalists face so many forms of threats, from physical attacks,
smear campaigns by trolls on social media, hateful attacks stemming from media controlled by politicians, DDoS\textsuperscript{124} attacks, and lots of court cases where corrupt judges are suing journalists because of complaints of corrupt officials. Then there is the lack of response from police and prosecutors to complaints from reporters. There is a permanent feeling of insecurity and lack of protection.

Such an endless list of problems may discourage people, but not investigative reporters. In 2020, we cover more and more stories about Moldovan money kept by corrupt local officials in British businesses, including in offshore jurisdictions. The access to offshore information is not possible other than through offshore leaks. But it is time to make deep changes in communication and access to information, for the sake of both societies. While corrupt people in Moldova, Russia, Ukraine and Great Britain cooperate so easily, being creative in doing bad things to democracy everywhere, why should civil society, investigative reporters and governmental officials not cooperate and work to reveal all those crimes? The money is stolen from Moldovans but Brits are paying the price as well: impoverished Moldovans leave the country and migrate, some of them to Great Britain as well. Many of them are working honestly to save themselves and their families left at home in Moldova, but for many the British state has to contribute with social payments, education, and other forms of support and inclusiveness. We should work for transparency for every step of that long journey from Pitushca to London.

\textsuperscript{124} Denial of Service Attacks – attacks on websites, effectively shutting down access.
5. Tracking corruption from the heart of Europe to UK Overseas Territories: murder, death threats and a wall of silence

By Peter Sabo and Pavla Holcová

In February 2018, Europe was shocked by the murder of investigative journalist Ján Kuciak and his fiancée Martina Kušnírová. Kuciak, who worked for the Slovak news outlet Aktuality.sk, had collaborated with Czech investigative journalist Pavla Holcová on large scale corruption cases like the Panama Papers or the Organised Crime and Corruption Reporting Project (OCCRP) led investigation into Italian organised crime in Slovakia. A few months after Kuciak’s assassination, journalist Peter Sabo joined Aktuality.sk. In the course of their investigative work, both Holcová and Sabo have come across cases that highlight the dubious role UK companies and persons play in the facilitation of financial crime and corruption.

Slovakia - Peter Sabo - Aktuality.sk

On 25 June 2020, I found a bullet in my mailbox. It was a terrifying experience as just over two years ago an investigative journalist from the same newsroom - Aktuality.sk - Ján Kuciak and his fiancée

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125 Peter Sabo is an investigative reporter based in Bratislava. Prior to joining the Slovak news outlet Aktuality.sk in May 2018, Sabo worked in the business sector and has a bachelor degree in Applied Informatics and Automation in Industry from Slovak University of Technology. Based in Prague, Pavla Holcová is an investigative journalist and founder of independent outlet Investigace.cz. In 2013, she joined OCCRP and is a regional editor for Central Europe. Holcová has contributed to major cross-border projects such as the Panama Papers, the Paradise Papers, the Russian Laundermat, and the Azerbaijani Laundermat. Together with her colleague Ján Kuciak, she exposed ties between the Slovak government and Italian mafia. She has also investigated massive illegal arms sales to Syria during the war, explored links between the global cocaine trade and Balkan organized crime groups, and identified illegal real-estate investments by politicians. In November 2016, Pavla was selected among a hundred New Europe changemakers and a hundred people changing Central and Eastern Europe for the better. In 2018, she was selected for the European Young Leaders initiative. Image by Axelspace Corporation under (CC).
Martina Kušnírová were assassinated. I joined Aktuality.sk after Jan and Martina were killed not as a replacement, but because I wanted to continue in Jan’s great work together with his colleagues.

It is a strange feeling to find a bullet in your own mailbox. Initially there is fear, and I think that is a normal bodily reaction. After a few hours and days, however, you start to realise a different feeling, one that is quite the opposite, a strange sensation of pride and satisfaction. You know that you are doing your job as a journalist well when somebody, who is not exactly your fan, is expressing it in a different, twisted and scary way.

Yet that is something we as journalists do, we stand in the frontline against corruption, mafia and injustice. Our only weapon is the publication of facts, in the form of stories, and delivering them to the public. This weapon can be very effective. However, there are vast ways in which this weapon can become tangled and made effectively inoperable. As we see progression in technologies, as we move from the ‘real’ world to the online one, this evolution does not only affect media and journalists, but also crime and mafia.

As Slovakia is a small country, in the heart of Europe, with (at least some) digitalisation and publication of vital state owned data, such as a companies’ registry, beneficial owners register, and landowners’ register, we have pretty strong open-source investigation tools. Quickly, members of organised crime groups, corrupt politicians and oligarchs learned that these tools create the kind of publicity that can harm their businesses. And at this point, the existence of a united Europe and globalisation kicked in. Even the smallest and most insignificant crook can establish a company somewhere else around the world for just a few euros and let people in Slovakia think that behind some suspicious company is a rich foreign investor, but actually it is just another (shell) company in Cyprus, the UK or Panama. At the end of the day, we do not know who owns certain companies and who is cashing out money from, let’s say for example, a dubious oil business.

For investigative journalists this poses a serious problem. If ‘big’ countries like the UK let people cover their dirty businesses it creates problems also for the rest of Europe. For example, the UK is one of the main operating countries for VAT fraudsters. As uncovered in a cross-border investigation I co-authored in 2019 called Grand Theft Europe in the EU, six billion euros were stolen from VAT.\(^{126}\) In many cases, these frauds are going through the UK, with UK companies used as middlemen or effectively out channels for VAT frauds. For example, UK citizens, companies and banks have been tied to large scale carbon trade VAT frauds. In just eight weeks in 2009, fraudsters claimed back £300 million from the UK Revenue and Customs (HMRC) before it stopped paying up and HMRC is still pursuing that money through the courts.\(^{127}\) Anecdotally, the country following behind the UK as the next worst offender is Slovakia - at least in customs frauds involving China.\(^{128}\)

However, this information is already well-known. Digging deeper to demonstrate how Slovak oligarchs are exploiting the UK rules one could point to the recent case involving Norbert Bodor. A

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Slovak oligarch, Bodor is currently being held in the custody of Slovak police on corruption charges and on suspicion of being the head of an organised group that had co-opted Slovak police into their own organised criminal group.\(^{129}\) Bodor was caught sending four million euros to a fictive and fraudulent bank, which built its advertising on the fact they would not share any information with authorities and would cover the client - which is illegal in the EU. Therefore, if somebody is trying to use this type of a bank it should at least raise some doubts about this type of financial transactions.

Bodor has tried to explain this transaction as an investment into a startup in Ireland. In addition, dubious contracts were provided by the co-defendant operating as the ‘bank’ in this scheme. It was not a surprise to see that a UK-based notary and another UK-based company acting as a middleman were also mentioned in these contracts. While a Dutch prosecutor later found that the UK notary writings were forged, the role of UK companies featuring in even most palpable frauds endures.\(^{130}\)

Yet another example is a corruption case in Turks and Caicos (TCI), a British overseas territory. These exotic islands have come through a full-scale corruption case over the last decade in which practically the whole local government apparatus was involved. The local government was such an integral part of the scheme that the UK provided their own investigators and prosecutors to solve this crime. A 2008-2009 commission led by Sir Robert Auld, a former Lord Justice of Appeal, found a ‘high probability of systemic corruption in government and the legislature and among public officers in the Turks & Caicos Islands’, which had consisted largely of bribery by overseas developers.\(^{131}\) His preliminary investigation identified that a Slovak oligarch, Mario Hoffmann, was involved. Hoffmann was bribing government officials to get land in the Caribbean in order to start a 600 million euros project to build a hotel resort with golf course.\(^{132}\)

Subsequently, a special investigation and prosecution team (SPIT) led by Special Prosecutor Helen Garlick was established. As a result of the SPIT’s investigations a number of former officials, including the former TCI Prime Minister, were charged and in December 2015 a trial against them started, which has still not reached a conclusion.\(^{133}\) For Hoffmann’s part, however, the criminal case against him was dropped in 2012 when he agreed to make a deal in which he paid millions in retribution.\(^{134}\) He also agreed to stop his development plans and relinquish his special status on TCI. Basically, he made a deal in which he bought his freedom and innocence - at least in the eyes of the UK jurisdiction.

The problem is that the money came from Slovakia. It means Slovak laws were violated and also the source of the crime took place in Slovakia. But so far Hoffmann has dealt with this crime only in respect to TCI. As Slovak law does not acknowledge the same way of ‘deal-making’ that was accepted by the TCI Government, and in turn UK investigators, one would expect that Hoffmann will be prosecuted and in the end sentenced in Slovakia. However, as the British authorities have either not responded, or provided limited answers, to information and legal assistance requests from the Slovak special prosecution office, the oligarch has still evaded justice and continues to operate in Slovakia without concern.\(^{135}\) Question is - what is the problem? Is it just a lack of communication by

\(^{129}\) Peter Sabo and Laura Kello, Oligarch Bodor invested in Penta’s business, which took many years to merge, Aktuality.sk, August 2020, https://www.aktuality.sk/clanok/813020/oligarcha-boedore-investoval-do-biznisu-penty-ich-spojenie-trvalo-dihe-roky/


\(^{133}\) Turks and Caicos Islands Special Investigations and Prosecution Team: https://tci-sit.org/


\(^{135}\) Requests for information were made by Slovak authorities directly to the TCI government or to the UK through Eurojust (the European Union Agency for Criminal Justice Cooperation). See: Martin Turcek and Peter Sabo, The oligarch got rid of the corruption scandal for
the British authorities? Or laziness? Or ignorance about a small EU country? Or is the case not very appealing to the UK? At this point, we do not know.

Czech Republic - Pavla Holcová - Investigace.cz
For years now, the UK has been known as a European country with probably the highest density of enablers of organised crime. We, as journalists, are still hitting the same schemes: Limited Companies, formation agents and formation houses, same addresses in London or Edinburgh where thousands of companies have a postal address but have never really shown any presence there.

Even though any country in the world can be used as a tool to anonymise ownership of the company, the UK and its offshore territories have a special place on the map of organised crime top destinations. And please, do not come along with an old song of tax benefits and tax optimisation. Real organised crime members or corrupted politicians do not really care about paying taxes. But they do care about anonymity, economic stability and enforcing the law - simply they do not want to lose the funds they manage to steal from state budgets, collected on bribes or siphoned off state companies. This is why many of them invest into London real estate.

I often hear from the Czech authorities that they see the money flows coming from the UK or going through Czech accounts to the UK. Even if the Czech see those payments as suspicious and start to investigate, UK authorities usually do not provide any useful information, rather the opposite. “The transaction is OK, you don’t need to investigate any further.” And this is just the UK - the last piece of mosaic in long and complicated financial schemes used by organised criminal groups - including those created by corrupted officials (as seen in Slovakia).

The really painful experience is to deal with the UK offshore territories, where the essential information about ultimate beneficial owners of the companies involved in terrorism, money laundering, contract killing, stealing from the state budgets of the poorest countries and stashing bribes should be found. Should be, but isn’t. Many of those territories, which are still bound to the UK and have their legal system based on UK law, simply use the fact that the lack of transparency in their business registries is the core of their national income per capita.

The problem is not the technology itself. There are quite transparent, digitised and user friendly business registries and the update and accuracy of the information is required by the law. But those rules of transparency are applied only to local citizens. Any foreign entity, after paying the proper fees, can use the benefit of old school paper and the pen registry, archived in big halls and rooms stuffed with rotting documents. Do you need your information? Go and find it. Impossible. Anonymity granted. Some such offshore companies come with a bank account, others with bank accounts and permanent residency. The best ones also come with a passport - a passport where you can choose your new name, new identity.

After a harsh worldwide criticism, British Virgin Islands will introduce a public register of company owners in 2023 (why rush it, right?). Andrew Fahie, BVI’s Premier and Minister of Finance, told the island’s House of Assembly that the Government would work “towards a publicly accessible register of beneficial ownership for companies,” albeit “subject to reservations.”¹³⁶ Based on my experience as a journalist, making initiatives ‘ subject to reservations’ creates potential loopholes for those rich enough to work around.

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6. How UK anti-corruption groups work with journalists to push for change

By Ben Cowdock and Rachel Davies Teka

The UK has a notorious reputation as a safe haven for the world’s dirty money and for the people who are looking to hide, clean and spend it. A confluence of factors contributes to this: weak supervision of money laundering in key sectors, the abuse of UK companies in corrupt schemes and challenges to the seizure of corrupt assets being just a few. On top of this, UK professionals have been rolling out the red carpet for the world’s corrupt and criminal individuals for decades.

Last year, Transparency International UK analysed over 400 corruption cases spanning 116 countries, amounting to economic damage in excess of £325 billion. With the data available, we identified 582 firms and individuals offering services in the UK – often unwittingly – to corrupt individuals. This included UK professionals from a wide range of sectors, including finance, law and accountancy. 81 law firms and 62 accountancy firms, including all of the big four, showed up in our data.

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137 Ben Cowdock is the Investigations Lead in the UK Anti-Corruption Programme at Transparency International UK (TI-UK). He became a research officer for TI-UK in January 2016. He is responsible for leading research into corrupt money entering the UK. Ben joined TI-UK as an intern in September 2015, helping support the work of the UK advocacy and research team. He holds an MA in Governance and Corruption from the University of Sussex.

138 Rachel Davies Teka is the Head of Advocacy at TI-UK and focusses on the UK-related work on money laundering, political corruption, and open governance. Rachel is Co-Chair of the Bond Anti-Corruption Group, a collection of like-minded British NGOs who work on the issues of corruption, and sits on the steering group for the UK Open Governance Partnership Civil Society Network.

139 Transparency International UK, At Your Service: Investigating how UK businesses and institutions help corrupt individuals and regimes launder their money and reputations, October 2019, https://www.transparency.org.uk/publications/at-your-service
Our analysis also highlighted how unregulated sectors such as universities and charities – which are not subject to anti-money laundering rules – have become targets for those looking to clean dirty money. For example, we identified 177 schools and other education institutions that have offered services to high-risk individuals.

When speaking with compliance professionals, we discourage them from taking the fact that their client was photographed with senior politicians last month, is a noted donor to a prestigious UK university or is involved in philanthropic activities as a reason to dismiss doing enhanced due diligence checks. These are specific tactics used by corrupt and criminal individuals to launder their reputations – in part because they want to have influence in the UK and they want a certain lifestyle – but also for the precise reason that professionals are less likely to ask questions if clients are seen to move in prestigious circles.

Our research adds to a growing body of evidence that points to the UK’s complicity in global corruption.

The scale of dirty money in the UK is almost beyond imagination, with billions of pounds in suspect funds already invested into our property market and estimates of around £100 billion in illicit wealth impacting the UK each year. The law enforcement response to this is vital for denying criminals of their ill-gotten gains and removing impunity for the corrupt who stash their wealth here. However, due to limited resources and the complexity of money laundering schemes used, the police simply cannot be expected to trace and recover every penny of dirty money.

An ‘enforcement gap’ risks the UK lacking a credible deterrent against the corrupt continuing to hide their money here. This is what makes the role of journalists uncovering corrupt funds entering the UK so vital. Investigations of this kind require expertise to trace money across borders, with an understanding of the UK financial system as well as corruption in origin jurisdictions. Journalists have shown themselves to be adept at following these money trails, with exposés like the Organised Crime and Corruption Reporting Project’s (OCCRP) series of laundromat investigations highlighting billions of pounds in suspicious funds flowing through the UK from former Soviet states.139

In addition to informing the public about the UK’s dirty money problem, these investigations are routinely used by law enforcement and regulators to inform their own inquiries. The OCCRP’s Azerbaijani Laundromat investigation was extensively referenced in the National Crime Agency’s (NCA) evidence for their first use of unexplained wealth orders.140

Journalists’ investigations into corruption and money laundering also play a key role in the UK’s defences against illicit wealth. The private sector – widely seen as the first line of defence against money laundering – are often reliant on the presence of ‘adverse media articles’ when carrying out due diligence on clients. If a media investigation raises too many red flags about a prospective or current client, private sector firms may choose not to take on that individual, or identify further suspicious activity, which is then reported to the police.

The financial benefits provided by journalists in the fight against corruption and money laundering are incalculable. What is certain however is that their work is crucial in giving the corrupt no place to hide, no one to help them and no impunity.


Transparency International UK works with journalists from across the UK and around the world, helping to uncover dirty money here as well as working together to push for stronger measures to tackle corruption.

One of the most effective ways Transparency International UK collaborates with journalists is working with those who have identified corruption overseas and are looking to trace the funds to the UK. After more than five years researching the weaknesses in the UK’s anti-money laundering system, we are well placed to help track down how funds have entered the UK and where they may be hidden.

As a result of our investigatory work, we face similar risks to journalists working to uncover corruption and money laundering, including receiving letters from those we have highlighted requesting we remove content naming them. Transparency International’s chapters around the world face altogether more severe threats, working in dangerous environments to expose corruption of often repressive regimes.

Journalists’ investigations have been vital in underlining the systemic problems which make the UK a safe haven for corrupt wealth. Stories like the Panama Papers reaffirmed the need for transparency over who owns offshore companies which hold UK property. Just a month after this investigation, the UK Government’s commitment to this measure was reaffirmed at the 2016 London Anti-Corruption Summit. Further investigations highlighting the use of secretive companies to hide suspicious wealth in UK property help hold Government’s feet to the fire on this commitment.

Similarly, it is unlikely to be a coincidence that two days before the FinCen files raised the ongoing issue of UK shell companies’ use in financial crime, the UK Government announced the next stage in an overhaul of the company formation system.141

The recent government commitments to empower Companies House to verify the data it receives and support investigations into suspicious activity come in the wake of years of work by Transparency International UK and others highlighting the abuse of UK companies for corruption and high-end money laundering. These changes are crucial to further the identification of corrupt assets in the UK.

Improving the quality and availability of information around who owns companies and property in the UK would be of direct benefit to journalists and Transparency International UK’s efforts to uncover corruption and returning stolen funds to where they belong.

Greater accuracy relating to UK company information will help identify where those with suspect funds are using British companies to manage their assets. Journalists from overseas will also be able to better understand who controls UK companies carrying out economic activity in their countries, which has been a major problem for some jurisdictions including Uzbekistan.142

A register showing the true owners of overseas companies owning UK property will also be a major benefit to journalists and NGOs alike searching for stolen wealth hidden in the UK property market. This register, and the subsequent journalistic investigations it will enable, will also help UK law enforcement identify targets for asset recovery efforts.

However, at present these reforms are nothing more than commitments waiting in the wings. There is some way to go to convert the promises into practice. TI-UK is urging the Government to legislate on pledged reforms at the earliest opportunity, as well as ensure that they are adequately resourced once in place. New legislation will be ineffective if there are limited funds available to enforce it. Only time will tell whether the Government has the political will to ensure that the UK fosters an environment conducive to uncovering corruption, rather than hiding it.
7. The increasing rise, and impact, of SLAPPs: Strategic Lawsuits Against Public Participation

By Nik Williams, Laurens Hueting and Paulina Milewska

Strategic lawsuits against public participation (SLAPPs) are legal actions that are taken not necessarily with the goal of winning in court, but which instead aim to intimidate, to induce fear, to tire and consume the financial and psychological resources of the target. SLAPPs are initiated by influential elites, often state actors, business entities or powerful individuals, and their targets include journalists, human rights defenders, civil society organisations, activists, academics and anyone else who expresses an opinion on a public matter that is uncomfortable for this elite. The desired outcome is to silence the speaker and have a chilling effect on other critical and dissenting voices.

A Europe-wide problem

SLAPPs are not defined aspects of law themselves. Instead, they can be characterised by the manner in which a range of laws concerning typically defamation, but also other torts, labour laws, privacy and data protection, are used by litigants to threaten parties into silence, either through the

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Unsafe for Scrutiny

retraction of published public interest reporting (oftentimes coupled with extensive punitive threats) or the coerced commitment to not publish in the first place. A few examples may serve to demonstrate the scope of SLAPPs being used against journalists across Europe:

In Poland, since the Law and Justice (PiS) party came to power in 2015, the country’s second-largest daily newspaper Gazeta Wyborcza has received over 55 legal threats as a result of its work. The cases are brought by powerful state actors such as the Deputy Prime Minister and PiS chairman, Jarosław Kaczyński; the state television broadcaster, Telewizja Polska S.A.; and, other state-owned companies and individuals with close ties to the governing party. The claims in the cases against Gazeta Wyborcza include civil defamation and infringement of personal interests, which is also protected under the Polish Civil Code.144

In 2019 Inès Léraud, a French independent journalist, was sued for defamation by Christian Buson, a Breton agri-food business owner following her investigation, published as graphic novel Green seaweed - the forbidden story, into the proliferation of seaweed in Britanny. The case was dropped a few days before the start of the trial. Recently, another defamation case was brought against Léraud by the business tycoon Jean Chéritel, CEO of the Chéritel group. The trial is due to start in January 2021.145

In Malta, currently 25 civil defamation cases are still active against Daphne Caruana Galizia, an investigative journalist who was assassinated on 16 October 2017. At the time of her death, she was facing 47 civil and criminal libel suits filed in various jurisdictions, including Malta and the US.146 Recently, new legal threats have also been received by the Daphne Caruana Galizia Foundation. On 20 and 26 October 2020, the Foundation received two letters from Maggesi Maggi Mazza & Partners, an international law firm representing Domenico Lagrotteria and Vincenzo Giuliano, two businessmen mentioned in articles written by Caruana Galizia, who base part of their claim to have those articles removed on the European Union (EU) General Data Protection Regulation (GDPR).147

In addition to civil cases, criminal defamation cases are also used as part of a wider strategy to limit public participation. For example, in Slovenia three journalists from the investigative news website Necenzurirano (Uncensored) are facing a total of 39 vexatious defamation lawsuits. The criminal defamation complaints were filed throughout August and September 2020, by Rok Snežić, a tax expert and unofficial financial advisor to the Slovenian Prime Minister. The targets of the lawsuits, journalists Primož Cirman, Vesna Vukovic and Thomas Modica, currently each have 13 cases open against them. If found guilty, the journalists face fines or up to a year in prison. On 25 September, the Slovenian Association of Journalists (DNS) published a statement expressing concern about what it called the “systematic persecution” of the portal’s journalists by Snežić.148

A threat to the EU legal order

SLAPPs are not only a Europe-wide issue but they also represent a threat to the EU’s legal order. First, they are a threat to democracy and human rights, by impairing the right to freedom of expression of those who speak up in the public interest and through their chilling effect and impact on public interest activities more broadly. Furthermore, to the extent that they distort and abuse the

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144 MFRR supports Gazeta Wyborcza Poland who has received over 55 threats of legal action, Media Freedom Rapid Response, https://www.mfrr.eu/poland-mfrr-supports-gazeta-wyborcza-against-slapp-actions
system of civil law remedies, SLAPPs undermine the mutual trust between EU legal systems and as such, pose a threat to access to justice and judicial cooperation.

Additionally, because they undermine scrutiny by independent watchdogs, SLAPPs are a threat to the effective enforcement of EU law, including in connection to the internal market and the protection of the EU budget, which cannot be monitored solely by the European Commission. Lastly, SLAPPs are a threat also to the freedom of movement, as they discourage potential targets from confidently operating in jurisdictions where the risk of SLAPPs is higher.

According to a recent study commissioned by the European Commission, SLAPPs are “increasingly used across EU member states, in an environment that is getting more and more hostile towards journalists, human rights defenders and various NGOs.” Moreover, no EU member state has enacted targeted rules to provide protection against SLAPPs. To address this gap in protection, a broad coalition of civil society organisations have been advocating for the EU to undertake a number of complimentary steps. In particular, the EU must: reform the Brussels I (recast) and Rome II Regulations to end forum shopping and regulate applicable law in defamation cases; morally and financially support the victims of SLAPPs; and, enact an anti-SLAPP Directive.

An anti-SLAPP Directive is needed to establish harmonised EU-wide minimum standards of protection, including appropriate procedural safeguards, supportive and protective measures for targets, as well as deterrent and awareness-raising provisions. Among other things, the Directive should ensure that procedural tools exist in all EU member states to allow courts to consider a motion for dismissal as soon as possible after proceedings are initiated. If the court is satisfied that the claim arises from the defendant’s public participation on matters of public interest, moreover, the burden of proof should be reversed, leaving it to the plaintiff to demonstrate that the action has a reasonable prospect of success and that it was not initiated or maintained for an improper purpose. Further, the Directive should include provisions that ensure that SLAPP litigants who see their claim dismissed are ordered to pay costs to the defendant on a full indemnity basis. Deterrent measures may further also include the imposition of penalties and measures to ensure publicity of court decisions that expose SLAPPs.

After some initial recalcitrance, there has been a growing recognition among actors within the EU institutions that there is a need and competence for the EU to act. In response to a letter from Members of the European Parliament, Vice-President of the European Commission Vera Jourova recognised that journalists and civil society organisations “should use their expertise and time in being the needed watchdogs for our democracies, not in fighting abusive litigation.” The European Commission has indicated that the European Democracy Action Plan, to be launched in December 2020, will contain some measures addressing SLAPPs and it has committed to “take action to protect journalists and civil society against strategic lawsuits against public participation” in its 2021 work programme.

Beyond the EU

Several texts adopted at the Council of Europe also explicitly refer to the problem of SLAPPs and other forms of intimidating or vexatious litigation against journalists and media outlet, including the Committee of Ministers 2018 Recommendation on the roles and responsibilities of internet intermediaries and the 2012 Declaration on the desirability of international standards dealing with

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forum shopping in respect of defamation, to ensure freedom of expression. In October 2020, Human Rights Commissioner Dunja Mijatovic stated the need to devise a comprehensive response, comprising the prevention of SLAPPs by allowing their early dismissal, the introduction of measures to punish abuse and practical support to those who are sued.  

She also pointed out that already, the European Court of Human Rights has stressed that States are required to create a favourable environment for participation in public debate by all, enabling everyone to express their opinions and ideas without fear.

This is particularly relevant in light of Brexit and the fact that SLAPPs have long called London their home. The Town Named Sue offers wealthy and influential claimants a number of promises: significant amounts awarded as damages, prohibitive legal costs to dissuade a full and robust defence, and the proliferation of law firms willing to ferry cases to court or issue threats of legal action against a growing number of organisations, including journalists, media outlets, scientists, academics, campaign groups and individual members of civil society.

Defamation law in England and Wales was reformed in 2013. This brought forward a number of much needed reforms including the establishment of a serious harm threshold, a public interest defence, a single publication rule and the tightening up of jurisdictional checks to ensure that “England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.” However, the reform evidently did not go far enough, as England remains a legal jurisdiction commonly deployed for SLAPPs.

However flawed the current status quo, 2021 will bring a number of unknowns. While Section 9 of the Defamation Act (2013) is intended as a check on international claimants using England and Wales as a legal jurisdiction, the section explicitly excludes claimants domiciled in EU member states or contracting parties to the Lugano Convention. When the Brexit transition period ends on 31 December 2020 and in light of the state of negotiations on the future relationship between the UK and the EU at the time of writing, this could potentially open the door to English courts having to rule on the appropriateness of EU-based claimants bringing actions in the UK. This would place a great deal of importance on English courts to ensure that defamation cases heard in England are there for a legitimate reason and not for the plaintiff to try to access the benefits of the jurisdiction, namely substantial damages and high costs for defendants.

As mentioned, with the English jurisdiction come the English law professionals. A case study in the continued influence of UK law firms is Malta and the multitude of SLAPP actions and threats directed at Maltese journalists. When in 2017 Henley & Partners, Malta’s concessionaire for its citizenship by investment programme, threatened Daphne Caruana Galizia with a defamation action in English courts through the London-based law firm Mishcon de Reya, that choice of jurisdiction was not incidental. On her blog, written less than six months before she was assassinated, Caruana Galizia reported on the contents of leaked emails between Henley & Partners Chairman, Christian Kalin, the then-Maltese Prime Minister and his Chief of Staff regarding this threat: “Keith Schembri and Joseph Muscat instructed Henley & Partners to go after me in the UK courts so as to intimidate me and ruin me financially.” Henley & Partners threatened similar action against The Shift News through their lawyers in the USA and UK and this choice of jurisdictions was also deployed by Turab Musayev, who instructed a US-based law firm, Lambert Worldwide and a UK-based law firm, Atkins Thomson to

156 Daphne Caruana Galizia, Why it was in November that the Prime Minister’s chief of staff instructed Henley & Partners to threaten to ruin me financially by suing me in a London court, Running Commentary, May 2017, https://daphne.caruana.galizia.com/2017/05/november-prime-ministers-chief-staff-instructed-henley-partners-threaten-ruin-financially-suing-london-court/
send legal letters to *Times of Malta, Malta Today, Malta Independent, Lovin Malta* and *The Shift News* in relation to their reporting and journalistic enquiries.\(^{157}\)

**The time is now**

At a time when media freedom and the right to information are increasingly under pressure across Europe, there is a clear and urgent need for policy and legislative intervention at the supranational and national levels that addresses strategic lawsuits against public participation. Such intervention must include financial and other support to the victims of SLAPPs and the establishment of procedural safeguards and jurisdictional rules designed to rectify the power imbalance between plaintiff and defendant that SLAPPs exploit to the detriment of public participation. Powerful elites must no longer be allowed to abuse the judicial process to silence their critics.

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8. The UK and media freedom: An urgent need to lead by example

By Jessica Ní Mhainín

“As we forge a dynamic new vision for a truly global Britain, this Government are [sic] absolutely committed to the United Kingdom becoming an even stronger force for good in the world,” Dominic Raab said when he announced the first sanctions under the Global Human Rights Sanction Regime to the House of Commons earlier this year. The UK’s decision to sanction 20 Saudi nationals involved in the death of journalist Jamal Khashoggi was widely commended, but was subsequently undermined by reports that Defence Minister Ben Wallace had phoned his Saudi counterpart to apologise for the sanctions.

In fact, despite having pledged to “counter threats to media freedom” both “globally and locally” at the Global Conference for Media Freedom in July 2019, the UK government has repeatedly undermined its pledge at home. Since the start of 2020 alone, journalists from at least four media...
outlets were denied access to a government briefing in February, a journalist was banned from asking questions at a government press briefing in May, and in September an investigative news outlet was blacklisted by a government department seemingly as a result of their reporting of the UK’s role in the Saudi-led coalition. That’s to say nothing of the ongoing detention of Julian Assange or the Brexit-related legislation that would, by the government’s own admission “break international law”, which prompted the resignation of Amal Clooney from her role as Special Envoy on Media Freedom.

A UK Industry Aimed at Silencing Investigative Journalism

One of the most pervasive issues faced by investigative journalists is not as overt as being denied, banned, or blacklisted by the government. Vexatious legal threats and actions are insidious, frequently being used to quash investigations yet rarely brought to light. “I would say that over the years I have had hundreds of threatening letters from lawyers. They are intended to frustrate any attempts to tell the truth about things,” said Meirion Jones of The Bureau of Investigative Journalism. Many of these, he says are brought by wealthy individuals trying to silence their reporting. “If you make billions and billions of dollars a year, spending a few million on a case to try and shut down criticism is nothing.”

There is little doubt that the scale of these vexatious lawsuits – known as strategic lawsuits against public participation (SLAPPs) – is increasing, an increase supported by a London-based industry aimed at silencing investigative journalism. “It does appear that there are specialist PR/legal entities, especially operating out of London, who respond to journalistic requests with legal threats,” said Scottish investigative journalist Chris Smith. “I’ve been doing this for 30 years – that’s definitely a big change in the last while.”

Journalists based outside the UK are not immune from receiving communications from these specialist PR/legal entities. Of the investigative journalists recently surveyed by the Foreign Policy Centre for their report into the pressures faced by journalists uncovering financial crime and corruption, 67 per cent in the US and 48 per cent in Europe reported receiving legal communications from UK-based PR/legal firms. Journalists in the Middle East North Africa and Africa also reported receiving such communications from the UK (25 per cent and 20 per cent respectively).

“British law firms have a reputation for muscling in on journalists and silencing critics with the threat of ruinous court action,” MaltaToday’s executive editor Matthew Vella said, amid legal threats to his own publication in 2018. Similarly, in an interview with Index on Censorship earlier this year, Jesper Nymark of the Danish investigative media outlet Danwatch said that they have also received such communications from British lawyers. “We can publish something in Danish without any legal

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163 Journalist’s name has been changed as he asked to remain anonymous.

risk but if we publish the same in English for example, we have experienced getting [legal letters] from British and Irish companies via a UK attorney.”

Far from being “an even stronger force for good in the world”, the UK is harbouring an industry that profits from the intimidation of journalists and suppression of information. It must take action – including legislative action – to protect journalists from wealthy and powerful individuals who are bending the laws to their interests. Several jurisdictions, including states in Canada, Australia, and the United States, have already introduced anti-SLAPP legislation. Such legislation, if implemented effectively, protects those facing a SLAPP from excessive costs and unduly time-consuming legal processes, while simultaneously safeguarding an individual’s entitlement to defend any infringements on their rights in the courts. The EU is considering similar legislation. The UK should do the same.

**Economic Factors Are Further Undermining Investigative Journalism**

While reform of legislation will be important – even essential – to protecting press freedom, it will not be a silver bullet. “These are all issues really fundamentally to do with the economic crisis within the newsprint industry,” said freelance journalist Chris Smith. Already struggling before the pandemic, many news outlets are facing an existential threat due to lack of funding. In a recent survey by the Reuters Institute, more than a third of news media organisations said that they expected a “severe drop of 30% or more” in their 2020 revenues.¹⁶⁶

When funds are depleted, investigative reporting which is time-consuming and therefore costly is often the first to go. Some investigative journalists, particularly freelancers, are finding the current situation unsustainable. “I had a really good [investigative] story recently for which I was paid £250. It took me two weeks to do it,” Smith said. “You can get £250 for a story you did in a day. So why would you do that? And then if you’re also getting legal threats. Why? It would make no financial sense for a freelance journalist in particular to do that.”

Even the BBC has not escaped the crisis. With the announcement of 520 job losses in July, the investigative programme Newsnight was reported to have been subject to hefty cuts.¹⁶⁷ The reduced funding was, at least in part, due to the drop in commercial income caused by the pandemic but it came after months of government vitriol, including multiple hints from ministers about the scrapping the license fee – the BBC’s primary source of funding.¹⁶⁸

“The real pressure – the real lever that politics holds is on funding,” said Noel Curran of the European Broadcasting Union (of which the BBC is a member) in a recent seminar on public service broadcasting, stressing the need for decisions on funding to be taken out of politicians’ hands in order for public service media be fully independent.¹⁶⁹ “People from outside of the UK look at the debate around the future of the BBC, which makes it sounds like its existential - like it’s an existential

debate - and they are absolutely baffled,” Curran said, underlining the fact that the BBC is among the most trusted sources of crisis news in the UK.170

The National Committee for the Safety of Journalists: A Step in the Right Direction?
The establishment of a National Committee for the Safety of Journalists in 2020 is positive as it gives press freedom organisations, including Index on Censorship, the opportunity to regularly voice their concerns directly to the government. The Committee will have a key role in drawing up a National Action Plan for the safety of journalists, due to be published in Spring 2021, which the government hopes will be a model for other countries.

The establishment of the Committee is a step in the right direction, but the government has undermined its progress by repeatedly refusing to be interviewed by the media. Shortly after being elected, the government began boycotting the BBC’s flagship Today programme on the basis that the show speaks to a “pro-Remain metropolitan bubble”. No sooner had the boycott of the Today programme ended, than the boycott of ITV’s Good Morning Britain began in response to an “unnecessarily confrontational” interview with the health secretary about his handling of the pandemic.171

Moreover, one of the issues that Index on Censorship has raised at the Committee is that of the UK’s lacklustre engagement with the Council of Europe Platform to promote the Protection of Journalism and Safety of Journalists.172 The Platform enables Council of Europe member states to be alerted in a timely and systematic way to media freedom violations, to take prompt action when necessary, and to update the Platform thereafter.173 So far this year there have been twelve media freedom alerts in relation to violations in the UK. Only five have received a response. Neither a National Committee nor a National Action Plan can make up for lack of engagement with existing mechanisms aimed at defending media freedom. If the UK wants to be an example to other countries, it must lead from the front.

Northern Ireland: A Country of Pressing Concern
The situation facing the media in Northern Ireland is of particular concern. Despite accounting for less than three per cent of the UK’s population, it’s notable that Northern Ireland accounts for a third of the UK’s alerts on the Council of Europe Platform so far this year, all of which arise from violent threats from paramilitary organisations. In October, journalist Patricia Devlin filed a complaint to the Police Ombudsman due to what she feels has been the failure of the police to adequately investigate serious threats to her and her family, including her new born baby, as a result of her work.

Having spent decades reporting on Northern Ireland, journalist Ed Moloney knows all too well the physical dangers associated with investigating paramilitaries.174 But in 2016, he also experienced legal threats in the form of a lawsuit was filed against him after he asked someone he was investigating to provide a comment on racketeering allegations. “I had been writing about the IRA for a long long time and I got quite a lot of information about them over the years,” explained

172 Platform to promote the protection of journalism and safety of journalists, Council of Europe portal, https://www.coe.int/en/web/media-freedom
173 The Platform has 14 civil society partner organisations, including Index on Censorship.
Moloney, who published A Secret History of the IRA in 2002. “They had all sorts of reasons to come for me.” Mr Moloney believes that this was a case of libel laws being used to pursue a vendetta against him as a result of his journalism. The legal action against Moloney was ultimately dropped in June 2020, but it nonetheless succeeded in wasting valuable time, money, and energy.

“The libel laws in Northern Ireland are anti-diluvian. They are really so backward,” Moloney said. Northern Ireland’s defamation law is mostly determined by legislation conceived in the 1950s and 1960s when, as Lord Lexden pointed out as he was making the case for reform in 2013, “computing was in its infancy”.175 This legislation remains in force despite calls for measures equivalent to the provisions of the Defamation Act 2013 to be introduced.176 The Defamation Act 2013, which applies to England and Wales, has helped stem the flow of lawsuits by introducing a serious harm threshold and placing restrictions upon the types of cases that can be brought to court in that jurisdiction. Similar provisions must be brought forward in Northern Ireland.

Conclusion
“To focus on solving problems at home is not enough,” the government’s media freedom pledge states, but improving media freedom and safety of journalists domestically is a prerequisite to being seen as a bona fide actor in advancing media freedom internationally. The government must empower journalists to investigate and report in the public interest by ensuring that any threats against them are thoroughly investigated and the perpetrators brought to justice. It should reform laws or adopt new measures to prevent journalists from facing legal harassment as a result of their work. It must respect the role of the public broadcaster and ensure that adequate funding is available to public interest investigative journalism, which is essential to a healthy democracy.

“Where governments are not the source of the problem, they often fail to provide the solutions needed to counter the actions of those who attack media freedom,” the pledge says. The UK government must pay heed to ensure that their Global Pledge on Media Freedom is more than just a Brexit-era PR campaign.

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176 Andrew Scott, Reform of defamation law in Northern Ireland, LSE Research Online, August 2016, http://eprints.lse.ac.uk/67385/1/Scott_Reform%20of%20defamation%20law_2016.pdf
9. Conclusions

*By Susan Coughtrie*

While the UK, and its offshore jurisdictions, are not the only locations used for the facilitation of financial crime and corruption, the extent to which the UK is a facilitator of financial crime, a destination for illicit money and the source of a wide range of enablers to support corrupt individuals as well as suppress public interest reporting is alarming. As the contributors to this publication have illustrated this undermines the UK’s claim to be both a global leader in the fight against illicit finance as well as a promoter of media freedom and safety of journalists around the world. If the UK is serious about taking steps to realise these important aims, the first must be to acknowledge and re-assess the gap between its aspirations and reality.

Investigative journalists have repeatedly demonstrated their critical role in creating transparency by bringing financial crime and corruption to light, the crucial first step in ensuring accountability and redress. Successive large-scale transnational investigations, conducted by huge global networks of several hundred journalists, have evidenced how political and business elites, as well as organised crime groups, all over the world have avoided law enforcement and misused financial and legal systems to facilitate the theft of public funds, tax avoidance, money laundering, bribery and other forms of crime and corruption. Journalists, working as part of these networks or independently, have

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177 Susan Coughtrie joined the FPC as a member of staff in July 2020 as Project Director for a new project called "Unsafe for scrutiny: How journalists around the world investigating financial crimes in UK jurisdictions face risks to their freedom and security from vexatious lawsuits (SLAPP) to violence". Previously a Research Fellow at the FPC, she undertakes a variety of consultancy work and is an advisor to the European Centre for Press and Media Freedom (ECPMF). Until December 2018, Susan spent seven years at ARTICLE 19 where she developed projects across the Eurasia region on topics including safety of journalists, access to information, restrictions to freedom of expression online and countering hate speech. She also serves on the committee for the Campaign for Freedom of Information in Scotland (CFoIS). Image under (CC).
demonstrated that in a number of cases they are able to follow leads, pick apart complex schemes and identify individuals and entities involved in wrong-doing far more effectively than those working in law enforcement bodies, which often cite journalists’ findings in their official reports. It is the fallout of these journalists’ investigations that has led to high profile resignations; changes to financial regulation; arrests and indictments against criminal figures; as well as the recovery of several billion in fines and seizure of illicit funds.\textsuperscript{178} Yet the importance of investigative journalism, and how the evidence journalists’ uncover can be utilised by the authorities, is woefully missing in official Government strategies, such as the UK’s 2019-2022 Economic Crime Plan and the 2017-22 Anti-Corruption Strategy.\textsuperscript{179}

Moreover, if the role of investigative journalists is threatened, if they are prevented from continuing their work, or unfairly restricted due to threats and harassments, it only increases the scope for financial crime and corruption to continue unchecked. Investigative journalism is hard enough, especially in countries where media freedom is not respected, without additional challenges – such as vexatious legal action or surveillance and smear campaigns - enabled by companies in the UK. Steps must be taken to redress issues in the UK legal system that allow for SLAPP cases, but UK law firms and other companies should also be vigilant in ensuring that their services are not being utilised to cover up financial crime and corruption.

Tools such as encryption are crucial for shielding journalists against surveillance and fishing attempts for information that can be used to blackmail or smear them, as well as to protect their sources. The UK’s continued pursuit, as part of the Five Eye’s Alliance, to undermine end-to-end encryption can therefore be seen as regressive action towards media freedom.

Ultimately, breaking the cycle of financial crime and corruption taking place with the facilitation of services in the UK’s borders should be the UK Government’s priority. This would go a long way to not only countering financial crime, but removing resources from those individuals who would wish to use utilise them to silence journalists who write about their wrongdoings. After all, prevention is better than cure.

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