

[GB] Libel trial against investigative journalist concludes before the High Court: a landmark test of the public interest defence

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On 14 January 2022, a high-profile libel trial began before Mrs Justice Steyn at the Royal Courts of Justice in London. The British businessman Arron Banks sued investigative journalist Carole Cadwalladr for libel. Mr. Banks is an outspoken backer of Brexit. Ms Cadwalladr is an award-winning journalist who writes for the *Guardian* and *Observer* in the United Kingdom. She is particularly known for her work in uncovering the Cambridge Analytica scandal.

The case arose out of remarks in a Ted Technology Conference titled 'Facebook's role in Brexit – and the threat to democracy' given by Ms Cadwalladr in April 2019, and a related Tweet. In the course of the Ted talk, which centred on the UK's 2016 vote to leave the European Union, she said: "And I am not even going to go into the lies that Arron Banks has told about his covert relationship with the Russian Government".

Arron Banks has always strongly denied any illegal Russian links, but he has admitted meeting Russian embassy officials on a number of occasions. Although his Leave.EU campaign was fined GBP 70,000 over multiple breaches of electoral law, the National Crime Agency's investigation found no evidence of criminal activity.

Proceedings were issued on 12 July 2019. In a preliminary ruling on the meaning of Ms Cadwalladr's words, Mr. Justice Saini held on 12 December 2019 that an average ordinary listener would have understood her words to mean: "On more than one occasion Mr. Banks told untruths about a secret relationship he had with the Russian Government in relation to acceptance of foreign funding of electoral campaigns in breach of the law on such funding."

Mr. Banks maintained in his legal claim that the threshold of 'serious harm' under section 1 of the Defamation Act 2013 had been met in terms of damage to his reputation. Ms. Cadwalladr stated that this was not the meaning she had intended and that she had always taken care to say there was no evidence to suggest Banks had accepted any money. She originally pleaded the defence of 'Truth' under section 2 of the 2013 Act but, after Mr. Justice Saini handed out his ruling on the meaning her statement bore, Ms. Cadwalladr withdrew this defence in

November 2020. She is now relying on the defence of 'Publication on a matter of public interest' under section 4 of the Act.

The defence under section 4 reflects principles established by previous case-law. It consists of two elements: Section 4(1)(a) requires that the words complained of were (or formed part of) a statement on a matter of public interest, and if the publication in question passes this test, then it also needs to meet the requirement of section 4(1)(b), which contains objective and subjective components.

The subjective component is that the defendant must believe the publication was in the public interest and the objective component is the question of whether it was reasonable for the defendant to hold that belief. Section 4(2) of the 2013 Act requires in particular that, in determining these matters, the court 'must have regard to all the circumstances of the case'.

Thus, the central issue at this trial is likely to be whether it was reasonable for Ms. Cadwalladr to believe that the publication of her statements was in the public interest. The court will also look at the content and subject of the allegations, and the way the journalist acted in researching and reporting them. If Ms. Cadwalladr loses, she faces legal costs of up to GBP 1 million on top of damages.

In a piece published by Open Democracy, Ms. Cadwalladr stated: "Right now, we can't police the money spent in our elections: this is a massive problem for our democracy. Facebook is unregulated and our electoral laws are still hopelessly unenforceable. There was (and still is) a huge public interest in journalists raising these issues - both as a warning for us here in Britain, and for countries everywhere".

An interesting aspect of this case is that Arron Banks sued neither the Guardian Media Group which published Ms. Cadwalladr's reporting for years nor TED which hosted her talk (or other large media outlets which made similar allegations). Instead, he chose to sue Cadwalladr personally. Press freedom groups have called for the case to be thrown out and described it as bearing many of the elements of a so-called SLAPP lawsuit - Strategic Litigation Against Public Participation. A key characteristic of such types of actions is the disparity of power between the claimant and the defendant.

The case has renewed calls for the UK Government to ensure that SLAPPs are not used to silence legitimate criticism and stifle any public interest reporting. Action to combat the emergence and growth of abusing litigation targeting journalists throughout the EU and ensure convergence in Member States' approaches to SLAPPs is currently being considered at the EU level.

The *Banks v Cadwalladr* trial was heard over five days and judgment was reserved. The case has been followed closely by several investigative reporters.

The Reporters Without Frontiers emphasised in particular that “the ruling will have serious implications for journalism not only in the UK, but internationally, given the popularity of London courts as a jurisdiction for such suits, and highlights the need for greater protections for journalists facing legal threats”.

Banks v Cadwalladr [2019] EWHC 3451 (High Court of Justice, Queen's Bench Division, Media and Communications List)

<https://www.bailii.org/ew/cases/EWHC/QB/2019/3451.html>

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<https://www.opendemocracy.net/en/opendemocracyuk/arron-banks-vs-carole-cadwalladr-shows-how-weak-uk-press-freedom-is/>

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