



## PEN/Index Libel Report Launch

"We don't have free speech in England, we have expensive speech". This was the opening line from Geoffrey Robertson QC, founder and head of Doughty Street Chambers and counsel in many landmark human rights cases, at the launch of the report, *Free Speech is Not for Sale*, the culmination of a year-long inquiry undertaken jointly by English PEN and Index on Censorship.

The event on 10 November 2009 also featured introductions from Sir Ken Macdonald QC, former Director of Public Prosecutions, Jo Glanville, editor of Index on Censorship and former BBC current affairs producer and Jonathan Heawood, director of English PEN.

A group of around one hundred publishers, newspaper editors, journalists, television presenters, authors, bloggers, scientists, MPs, QCs, solicitors and NGO representatives attended the launch.

The report has received an overwhelmingly positive reaction from a vast number of London's opinion shapers; within hours of the report's release, some of the news headlines included, *The laws that stain Britain's good name* (timesonline.co.uk), *Outdated libel laws 'need reform'* (bbc.co.uk), *Our libel laws shame us* (guardian.co.uk) and *Changes in law required to stop 'libel tourists' cashing in on London courts* (dailymail.co.uk). Many similar such headlines appeared in the ensuing days.

The results of the enquiry set down ten key problems with UK libel law, each with corresponding recommendations. The report also outlines a disturbing number of case studies which illustrate the various ways in which UK libel law is outdated and is being abused. In essence, the dilemma is that it limits freedom of expression, which is supposed to form the foundation on which liberal democratic countries are based.

The enormous support the report and its recommendations have received will help provide a stronger platform for heightened public debate on an already potent issue. By typing "Trafigura", "Simon Singh" or "Khalid bin Mahfouz" into any search engine it's easy to see that recent events have already drawn attention to the UK's libel laws which are dangerously out of date and "encourage corporate bullying, stifle investigative enquiry and limit freedom of expression", according to Macdonald.

The law is so oppressive that journalists, authors and publishers live in fear of libel cases because, like an old fashioned Communist witch hunt, one is guilty until proven innocent. This is the only piece of UK legislation where the onus is on the defendant to prove their innocence, making it a "black spot in international freedom of expression" and "contradictory to every other civil law", according to Robertson.

The publishing industry and the media are also afraid because defending a libel action is usually horrendously expensive due to the high hourly rates of many libel lawyers coupled with the 100 per cent uplift that some lawyers impose upon the successful completion of a case where Conditional Fee Agreements are used, often leading to defendants paying extortionate legal bills for the other party. Simon

Singh, a journalist with *The Guardian* and defendant in a libel case brought against him by the British Chiropractic Association, attended the event and commented, "even if you win, victory can be devastating." The newspapers are so afraid of libel action that articles are often gutted of their content, not to mention the ones that are never even written. In an article Singh wrote for the Guardian later the same day, he explained, "writers face an uphill struggle winning a libel case in England. Not only is the writer guilty until proven innocent, but there is no robust public interest defence and the definition of fair comment is very narrow." We have a state of affairs whereby many stories - most of which would fall within the realm of the 'public's right to know' - are put in the "too hard, too risky or forbidden" box because editors and publishers are simply too afraid to risk litigious action.

Another major fault is that the UK has become a hub of 'libel tourism', whereby individuals and companies from any country in the world can bring a libel case to the UK even where there are only tenuous links to the UK - for example, if a piece of writing is downloadable from within the UK, even if published on a foreign website, the case can be heard in a UK court. Judges in the UK have ruled that if even a handful of readers here have clicked on US-based websites, that is sufficient to sue for defamation. As a result US newspapers and magazines are increasingly blocking access to British internet users to avoid being sued. This also provides a loophole whereby people from countries where censorship is de rigeur will use London's courts to stifle free speech in their home countries.

The main people who benefit from the libel laws are libel lawyers, large corporations or wealthy individuals who can afford to pay libel lawyers, and people seeking to exploit our laws to increase censorship abroad. Macdonald stated that criticism should be permitted in the public sphere and that "freedom of expression is a human right which should be limited only in exceptional circumstances", while Heawood urges the UK's law-makers to "haul it into the modern era." Alistair Brett, from the legal department at *The Times*, believes that the vast bulk of libel cases could be handled through some sort of libel tribunal, enabling a fast-track avenue for resolving disputes quicker and faster. David Allen Green, a private practice solicitor, went so far as to say that, given that the laws are "so bad that there are at least 10 ways they can be improved", libel laws should be abolished altogether. It is likely that many members of the audience, and indeed the wider general public, share this sentiment.

*Report by Anika Morshead*

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