

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No. HQ17D/M01386

MEDIA AND COMMUNICATIONS LIST

Claim Form issued on 21 April 2017

BETWEEN

HONOURABLE ABDUL HADI AWANG MP

Claimant

and

CLARE REWCASTLE BROWN

Defendant

PARTICULARS OF CLAIM



The parties and the claim

1. The Claimant is President of the Pan-Malaysian Islamic Party (commonly known, and referred to below, as "PAS") which is one of the major political parties in Malaysia, with close to one million members. He has been its President since 2002. He was Chief Minister of the Malaysian State of Terengganu from 1999 to 2004 and Opposition Leader in the Malaysian Parliament from 2002 to 2004. He is the Member of Parliament for Marang constituency (which is in the state of Terengganu), and state assemblyman for Rhu Rendang constituency (which is in the district of Marang). He is Vice President of the International Union of Muslim Scholars.
2. The Claimant brings this claim over serious harm caused to his reputation in England and Wales, and also in Singapore and in Malaysia. In those jurisdictions, both individually and collectively, he has a substantial reputation to protect. If and insofar as necessary the Claimant will rely on the presumption of English law that the law of Singapore and Malaysia is the same as the law of England and Wales, or alternatively that relevant aspects of the law of defamation in Singapore and Malaysia are no more beneficial to defendants than

the law of England and Wales, and as such that the publication of the words complained of below is actionable under the law of both Singapore and Malaysia.

3. The Defendant is the founder and editor of the Sarawak Report, a website which reports on Malaysian affairs, with a particular focus on allegations of political corruption (“the Website”).
4. The Website is freely available on the internet without registration or payment. It has been reported that the Website is “blocked” in Malaysia, however, as set out in more detail below, it remains widely read in that jurisdiction. The “About Us” page of the Website states the following concerning its audience in Malaysia, which the Claimant will invite the Court to conclude is true:

The move to censor our website in Malaysia has been criticised by international groups including Human Rights Watch and Reporters Without Borders – meanwhile hundreds of thousands of Malaysians have managed to circumvent the ban, judging by the continuing number of hits on the site.

5. The Defendant and her Website are well known and respected for reporting on Malaysian politics and affairs, in the three jurisdictions in relation to which this claim is brought and internationally, having made their name in relation to the affair known as “1MDB” which linked the Malaysian Prime Minister Najib Razak with huge allegedly corrupt payments. A profile of the Defendant in Time Magazine in January 2017 stated that *“along with the Wall Street Journal, which has also reported the story thoroughly, Sarawak Report has been instrumental in both informing the Malaysian public and bringing the story [i.e. the 1MDB story] into the global consciousness.”*
6. On its “About Us” page of the Website the following claims are made:

Sarawak Report and its sister organisation Radio Free Sarawak were founded by Sarawak born investigative journalist Clare Rewcastle-Brown in 2010. Radio Free Sarawak has gone on to win the IPI International Press Institute’s Free Media Pioneers Award 2013 and the Communication for Social Change Award 2014. 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".

The words complained of

7. On or around 6 August 2016 the Defendant published and/or caused or authorised to be published on the Website an article headed "*As Najib Denies All Over 1MDB, Let's Not Forget His Many other Criminal Connections – COMMENT*" ("the Article") which contained the following words ("the words complained of"):

Are Malaysians to sit an [sic] tolerate a situation where a disgraced thief and liar has succeeded in driving the opposition leader into jail in a case he masterminded himself from start to finish?

...

Najib has worked to exploit the leaderless situation confronting the opposition ever since and BN/UMNO smugly talk of divisions faced by the party they deliberately decapitated. He has gone on to "woo" the PAS Islamic Party away from the opposition coalition in the normal way he woos – RM90 million is widely reckoned to have flowed into the top echelons of PAS in recent months (BN veterans would tell them they came cheap).

To sugar matters further for PAS, Najib has gone on a crusade to show himself 'more holy than thou' on every PAS religious agenda, stirring up extremism in Malaysia and undermining civil law and institutions without turning a single hair over the destabilising, divisive and dangerous consequences to his country and his own party.

He thinks it's clever. If a man has no charisma to attract his followers he buys them, whatever it takes.

...

With Guan Eng in jail alongside Anwar, PAS on the pay-roll, all his critics sacked and his emergency powers in place, Najib plainly reckons he can pull off another "election win".

8. As is made clear elsewhere in the Article (all of which is relied on for meaning and context) "Najib" was a reference to the Prime Minister of Malaysia, Najib Razak.
9. "BN" was, and would have been understood by the ordinary reader of the Article to be, a reference to the ruling Malaysian political grouping Barisan Nasional

which comprises a number of parties including the United Malays National Organisation, often abbreviated to “UMNO”. Prime Minister Najib is the Chairman of BN and a member of UMNO.

10. On 7 August 2016 the Defendant also published, or caused or authorised the publication of the Article by sending it (or by causing or authorising it to be sent) from the email address notifications@sarawakreport.org to a mailing list of subscribers to the Website. The body of that email contained the Article in full, and also a link to the Article as published on the Website. A link to the Article as published on the Website was also sent to the mailing list of subscribers on 12 August 2016.

11. The Article continues to be accessible on the Website as of the date of this document, 8 months after publication. An indication of the popularity of the Article is that it has, according to a note at the beginning of the Article, attracted 82 reader comments during that period. Further facts which the Claimant relies on to demonstrate the popularity of the Website and the Article are set out below.

Reference to the Claimant

12. The Claimant is well known as the leader (and thus a member of the “top echelons”) of PAS both in Malaysia and amongst the Malaysian diaspora and others interested in Malaysian affairs living outside Malaysia, including in Singapore and in England and Wales.

13. The Claimant has previously been identified on the Website as the leader of PAS, for example in an article dated 24 August 2015 entitled “*Honest Defectors Have Law And Precedent On Their Side*” which began with the words “*PAS President Abdul Hadi Awang...*”.

14. In the circumstances a very substantial, but unquantifiable, proportion of the readers of the Article in Malaysia, in Singapore and in England and Wales will have understood the words complained of to refer to the Claimant.

15. If and insofar as the Defendant challenges the Claimant's case that a very substantial proportion of the readers of the Article in England and Wales would have understood the words complained of to refer to the Claimant, the Claimant will rely, as indicative examples, on the experiences of the individuals referred to below at paragraphs 19.3.1 – 19.3.6, who each understood the words complained of to refer to the Claimant.

Meaning

16. In their natural and ordinary meaning the words complained of meant and were understood to mean that the Claimant had personally accepted, or had procured or approved the acceptance by PAS of, a massive bribe from Prime Minister Najib in exchange for compromising PAS's political independence, with the effect of subverting or undermining the political opposition coalition, thereby accepting a place for PAS on the corrupt payroll of Najib and disgracefully undermining the democratic process.

Serious harm

17. It is the Claimant's case that his reputation has been caused serious harm by the publication complained of in each of the jurisdictions of England and Wales, Singapore and Malaysia, both individually and collectively.

18. In relation to reputational damage across each of those jurisdictions the Claimant will rely on the following in support of the inference of serious harm:

18.1. The words complained of are very seriously defamatory of the Claimant at common law.

18.2. The allegation is particularly damaging for a person such as the Claimant, who has been involved in and committed to the democratic process for very many years, and whose political philosophy and conduct is, and is well known to be, to adhere fully to the tenets of Islam.

- 18.3. The Defendant, and the Website which she runs, is well respected as a source of credible and reliable news about corruption in Malaysia. Paragraphs 4, 5 and 6 above are repeated.
- 18.4. The Website has a very substantial readership and, it is to be inferred, a substantial subscriber base, in each of the relevant jurisdictions.
- 18.5. "Similarweb" is an internet traffic analysis service the results of which, pending disclosure, the Claimant will invite the Court to conclude are broadly reliable. According to Similarweb the total number of visits to the Website in October 2016 (which it is to be inferred was broadly typical of its monthly traffic) was around 268,000. Of those visitors around 52% came from Malaysia. The next top two sources for visitors to the Website were the United States and Singapore, with around 13% of visitors from Singapore. The United Kingdom was the fifth most popular source of visitors, with around 4% of the visitors (amounting to around 10,700 visits from the UK each month).
- 18.6. The Sarawak Report Facebook profile has been 'liked' by around 299,000 people and 'followed' by 296,000 people. A person who has 'liked' or 'followed' a Facebook page or profile receives a notification in their Facebook timeline every time the 'liked' or 'followed' page makes a new posting. The headline and the first few words of the Article complained of in these proceedings was posted on the Sarawak report Facebook page on 8 August 2016. The posting contained a link to the Article on the Website. The posting received around 1,200 reactions (including 1000 'likes'), 429 'shares' and 67 comments.
- 18.7. The Sarawak Report Twitter feed (@sarawak_report) has around 22,300 followers. On 7 August 2016 @sarawak_report tweeted the headline of and a link to the Article complained of. That tweet received 26 retweets and 8 likes.

18.8. Pending disclosure the Claimant will invite the inference that the jurisdictional origins of subscribers to the Website, those who have followed or liked the Sarawak Report Facebook page, and those who follow the Sarawak Report Twitter feed are broadly similar to the jurisdictional sources of visits to the Website as given by Similarweb.

19. In support of the inference invited that serious harm has been caused to the Claimant's reputation in England and Wales he will rely in addition on the following:

19.1. The Sarawak Report is well-read amongst Malaysians living in England and Wales and amongst others in England and Wales who are interested in Malaysian politics and affairs. It is respected by many such people as a credible source of news about Malaysia.

19.2. The allegations in the words complained of have been the subject of extensive discussion amongst the Malaysian community in England and Wales, online and on social media, as well as face-to-face and at a variety of events, meetings and gatherings.

19.3. The Claimant will rely on the following indicative examples of how his reputation has been seriously damaged in England and Wales:

19.3.1. Dr Wan Ahmad Hilfi Wan Ahmad Junaidi, a GP of Malaysian origin who has lived in England for around 10 years, has been spoken to about the allegations published by the Defendant by very many people, including work colleagues and friends and University students, and at a variety of events including Malaysian festival gatherings. At one of those festivals Dr Wan heard someone refer to PAS as the "90 million party" and allege that PAS had a "back door relationship" with Najib's ruling party.

19.3.2. Jupri Bade is an engineer of Malaysian origin who has been living in the UK for 18 years. He has been questioned by a number of friends

about whether it was true whether PAS had taken money as alleged in the words complained of.

19.3.3. Dr Nurul Aini Annuar is an NHS doctor specialising in sexual health and has worked in the UK for 8 years. She first read the Article after seeing it being discussed online and following links to it. Several people in the UK have raised the content of the Article with her.

19.3.4. Dr Badrul Hisham Esa is a GP who has lived in the UK since he came here to study in 1992. A number of individuals have raised the allegations complained of with him and have expressed concern about them.

19.3.5. Aizuddinur Zakaria is an accountant from Malaysia who has lived in the UK since early 2014. Several people from the Malaysian community in the UK have raised and discussed the allegations complained of with him, both online and face-to-face.

19.3.6. Raja Petra bin Raja Kamarudin is a blogger, writer and political analyst who writes on the political situation in Malaysia. He lives in Manchester and has been resident in the UK since 2009. He is a subscriber to notifications from the Website. The Article has been raised with him by friends and family from the large Malaysian community in Manchester and also by a number of customers who have attended his son's Malaysian restaurant.

20. If necessary, in support of the inference that serious harm has been caused to the Claimant's reputation in Singapore he will in addition rely on the fact that Malaysia and Singapore, as well as being very close geographically, have deep shared cultural and historical roots. Singapore was a state of Malaysia between 1963 and 1965. Very many Malaysians or those of Malaysian origin live in Singapore. The Singaporean Census of Population of 2010 recorded that around 386,000 Singaporean residents had been born in Malaysia (over 10% of the resident population).

21. The publication of the words complained of is likely to cause further serious damage to the reputation of the Claimant in the future.

Damages and injunction

22. In addition to the serious harm caused and likely to be caused to his reputation by the publication of the words complained of, the Claimant has suffered serious embarrassment and distress. That embarrassment and distress derives from the publication of the words complained of in each of the three jurisdictions in question, individually and collectively.

23. In support of his claim for general damages, including aggravated damages, the Claimant will rely on the following:

23.1. The Defendant did not seek to verify the allegations complained of with the Claimant, or anyone within PAS, before publication, nor did she afford him or PAS any opportunity to comment.

23.2. The Defendant has treated the Claimant's complaint with contempt:

23.2.1. Solicitors for the Claimant, Carter-Ruck, complained to the Defendant on behalf of the Claimant by letter dated 13 December 2013. No response has ever been received to that letter, despite a chasing request on 5 January 2017.

23.2.2. In a report in www.malaysiakini.com dated 17 December 2016 headed "*PAS demand letter political posturing, says S'wak Report editor*" the Defendant was quoted as saying: "*I note that PAS has paid a law firm to send a letter, which has no legal validity, and then immediately indulged in posturing in the media on the basis of that letter and in advance of their own deadline for a reply.*"

23.2.3. On 11 February 2017 the Defendant published on the Website an article headed "*CORRECTION – PAS Statements Are Inaccurate*".

That article referred to the complaint made by the Claimant and stated the following:

Sarawak Report is of the opinion that this individual does not have a case and neither does he embody the party PAS, which has not as an entity submitted any letters, claims or threats and would be hard-pressed to find grounds to sue under British law. We suspect that his own lawyers have given him the same advice, which would explain his failure to file a writ.

Two months on, we assume he chickened out.

24. Unless restrained by injunction the Defendants will further publish the words complained of or words with a similar defamatory meaning.

25. In support of his claim for an injunction the Claimant will rely on the fact that the Defendant has declined to remove the Article from the Website, and paragraph 23 above (including sub-paragraphs).

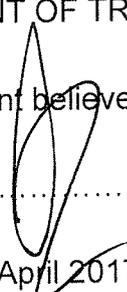
AND THE CLAIMANT CLAIMS

- (1) Damages, including aggravated damages, for libel;
- (2) An injunction to restrain the Defendant, whether by herself, her servants or agents or otherwise howsoever, from publishing, causing, authorising or procuring the publication of the allegation complained of or any similar allegation defamatory of the Claimant.

JACOB DEAN

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Particulars of Claim are true.

Signed.....

Dated...21 April 2017.....

Served this 21st day of April 2017 by Carter-Ruck Solicitors, 6 St Andrew Street, London EC4A 3AE, solicitors for the Claimant.