

NEWS REVIEW

LAWFARE

THE OLIGARCHS' WEAPON TO BURY THE TRUTH

Russia's super-rich have used our courts mercilessly to censor reporting of their wealth. Publisher *Arabella Pike* fought back

How does it feel to be sued by some of the richest men in the world? It's not a question I ever thought I'd be in a position to answer. I did not go into publishing expecting to engage in legal combat with billionaires. Yet for the past two years, HarperCollins has been fighting an assortment of Russian and Soviet-era oligarchs, defending our authors Catherine Belton and Tom Burgis.

I am the editor and publisher of both their books. It is my job to look every day at projects from writers and journalists on a huge variety of subjects, and to commission what I believe to be the best.

Many have been shocked by reports in recent weeks of oligarch wealth being based upon multiple acts of gross theft, corruption and state collusion. Why on earth has it taken so long for this truth hiding in plain sight to be revealed? Perhaps our recent experience with these men and their advisers might go some way to explaining it. At times it has felt like running an endless marathon through thickets of defamation law. Win and your prize is truth. Lose and that truth is murdered.

Two weeks ago we finally reached the finish line. Mr Justice Nicklin dismissed the case brought against HarperCollins and Tom Burgis by Kazakh mining company Eurasian Natural Resources Corporation (ENRC), refused permission for an appeal and awarded us costs on account of £50,000, with the likelihood of more to come. His judgment in the High Court was a complete vindication for Burgis and his book *Kleptopia*. The truth lived.

This came only a few months after the slew of attacks against our author Catherine Belton were resolved. In early 2021, her book *Putin's People* attracted five near-simultaneous defamation suits. The book is the No 1 bestseller in the UK non-fiction chart, widely acclaimed by critics as the essential meticulously reported book to understand Putin and the corruption of his regime.

Both Burgis and Belton have written books that, in different ways, investigate Putin, dirty money and mass corruption. They look at how kleptocratic forces erode democracy and create unimaginable poverty. It is hard to think of subjects more in the public interest, even before Putin embarked on his blood-soaked invasion of Ukraine. It is also easy to imagine why some may not wish these abuses spotlighted.

For both authors, the storm clouds of legal trouble began to gather even before their books were published. Gennady

Timchenko, a member of Putin's inner circle, responded to Catherine Belton's requests for comment with legal threats. As did ENRC to Tom Burgis. Unlimited resources can pay for what Burgis terms "the legions of private spies" who work for oligarchs and other rich and powerful people. Microphones on phones can be activated remotely to eavesdrop on confidential conversations. Data sent to a network printer can be hijacked, meetings on digital platforms accessed. We exchanged drafts of the manuscripts using triple encryption.

Covid-19 made matters more challenging. When regulations allowed, we could often be found huddled in discreet corners of London parks – our phones at home – discussing developments with sources, or news of those willing to testify. It always seemed to be raining. I felt as if I'd woken up in the pages of a John le Carré novel.

Our own security was not the primary concern. Writers depend on the immense courage of people who, at great personal risk, come forward to share information. Some of the darkest moments in our tortured two years came when it became clear our authors were under active surveillance.

One of Belton's sources was sent death threats soon after her visit. Burgis now uses anti-surveillance techniques he employs in Angola or Kazakhstan even for anodyne meetings in the UK with anyone who has crossed a kleptocrat. Sometimes that's not enough: a letter to one contact from ENRC lawyers Quinn Emanuel described a meeting in a London car park down to the colour of a notebook. The message: "We are watching you."

For those facing it, this kind of lawfare fast becomes a many-headed monster. For the powerful, it can be a tool to ferret out information on who has "ratted". ENRC issued subpoenas against HarperCollins US in a futile attempt to obtain the names of Burgis's sources, an action that cost tens of thousands of pounds. When it failed, it used an equally spurious legal procedure to insinuate that he had been taking corrupt payments – an accusation without foundation. In total, the legal correspondence received from ENRC lawyers runs to more than 600 pages – twice the length of Burgis's book itself.

If the case against Burgis was expensive and terrifying, those faced by Catherine Belton have been described collectively as the "defamation case of the century". *Putin's People* was first published in April 2020 and acclaimed by The Sunday Times as "an outstanding exposé of Putin and his criminal pals". Almost immediately we were hit by a

ROB PINNEY FOR THE SUNDAY TIMES



Arabella Pike published *Putin's People* and *Kleptopia*, earning the tycoons' ire

LAWYERS WHO LED THE CHARGE



Hugh Tomlinson QC acted for three oligarchs in their case against Catherine Belton and HarperCollins



John Kelly of Harbottle & Lewis has represented Roman Abramovich in a number of legal disputes



Geraldine Proudler of CMS acted for Alfa Group's Mikhail Fridman in the tycoon's claims against HarperCollins

flurry of letters from John Kelly of Harbottle & Lewis, acting for "a highly successful businessman", one Roman Abramovich.

The letters got longer, the language of hurt indignation more pronounced, and the complaints themselves bloomed like toxic hothouse flowers. It was claimed Belton had used "antisemitic" language to describe Abramovich (she hadn't); that she had suggested he was in a corrupt relationship with Putin (she didn't – she said he often had no choice but to do as he was told or face ruin or jail); that he had bought Chelsea FC on Putin's orders (we reported three former associates making this claim – it was clearly in the public interest to do so, while including a denial); that the book contained defamatory content such as to cause "serious harm to his reputation and his business interests" (no evidence for this was offered). The letters twisted the truth to suggest that Belton was maliciously motivated and lacking in proper journalistic standards. They demanded we withdraw the book immediately. We did not.

Defamation law in the UK has a 12-month statute of limitation. For Belton, the landscape shifted during the first weeks of 2021, when Russia's now jailed

opposition leader Alexei Navalny returned to Russia (having survived an attempted poisoning) and released a film revealing details of Putin's \$1 billion Black Sea palace. During the video he condemns Putin's regime and publicly endorses Belton's *Putin's People*.

My first response on seeing the film was of delight. Here was a book I believed in being brandished as a force for change. Looking back now, we believe this must have enraged the Kremlin afresh.

It marked the beginning of an oligarchic onslaught. Over the next five weeks or so, squeaking in at the very end of the limitation period, we were hit by claims from Harbottle & Lewis, acting for Roman Abramovich; Geraldine Proudler of CMS for Alfa Group's Mikhail Fridman and Petr Aven; Keidan Harrison LLP for Shalva Chigirinsky; Schillings for Alisher Usmanov; and finally, the complaint with the most overt Kremlin fingerprints, Carter-Ruck for oil giant Rosneft, a corporation run by Putin's old St Petersburg mucker and former deputy prime minister Igor Sechin. It was David v Goliath on steroids. A phalanx of the world's richest men gang up against a lone journalist.

Some months later, we were invited by Hugh Tomlinson QC – acting for three of the oligarchs – to accept that the timings of these claims had been coincidental, with no co-ordination. I'll let you decide.

The attacks were swiftly identified by various media campaigners as Slapps (strategic litigation against public participation). These are abusive lawsuits designed to manipulate existing legislation to intimidate and outspend journalists, writers, whistle-blowers, activists, NGOs, academics and publishers into silence and/or censorship.

This litigation takes many forms, but its common purpose is to remove information from the public domain or prevent its publication altogether. The law firms specialising in this are expensive and expert. Having read so much of their literary output, it seems to me they are masters of the bullying, righteous, lengthy letter, phrased to cause maximum psychological impact.

What is going on? We all have a right to access the law in our defence, but something has gone wrong with our system of justice when journalists fear to report on the business interests of the super-rich or feel bullied to print corrections to stories they believe to be true. We felt this viscerally during the attacks, as we sat in a succession of legal conferences at extreme expense, forced to debate why any one specific word had been chosen to characterise a situation, a person, a relationship, and what this might mean for our defence. It is worth noting that we had the text extensively read by a barrister before publication.

The exorbitant costs are what make Slapps on public-interest writing so devastatingly effective. We spent an estimated £1.5 million just to get to the pre-

liminary meaning hearings. Continuing to fight the case against Roman Abramovich would have cost upwards of £5 million, since he had filed his extensive claim challenging 26 passages in two jurisdictions – not just in the UK but in Australia too. These are sums that can bankrupt publishers, let alone individual writers.

For the oligarchs, it is win-win. Large legal bills are immaterial when you have billions in the bank. Use of Slapps may stop publication altogether – as has happened too often. Regardless of the case's outcome, they have tied up their opponent in months of legal wrangling and expense that might well deter any future commentary on them.

It is this "chilling" effect that is perhaps hardest to evaluate. How many stories have been spiked from fear of legal action? How many tales of corruption not told? It is especially frustrating when one considers that none of these Slapp cases would get off the starting blocks in America.

These are the perils of lawfare. I know our team shares my hope that a consultation on anti-Slapp legislation announced last week by the justice secretary, Dominic Raab, might herald real reform. This is not an argument to give journalists limitless rein. Libel law is important to protect reputations and privacy. But its use to block investigations into matters of public interest and the business interests of the super-rich is an abuse of the law.

The names of the solicitors we faced have been cited in parliament by MPs such as Bob Seely, Liam Byrne and David Davis. The lawyers all claim to represent the genuine legal interests of valid clients. Inconvenient, then, that most of these Russian oligarchs are now sanctioned.

You need a spine of titanium to withstand the pressures of litigious billionaires. Stress does awful things to your health, whatever its cause. I think we all suffered sleepless nights, exhaustion and feelings of being stuck in a process that would never end. The letters are crafted to undermine confidence in yourself and your work. The financial costs are huge, but so are the psychological.

Looking back on it all, I feel incredibly fortunate to have had the unwavering support we did from HarperCollins, our phenomenal legal team in-house and at Wiggin, plus the best Socratic advocacy from Andrew Caldecott QC and David Hirst. The likes of Roman Abramovich tried to silence Catherine Belton. They failed. Rosneft withdrew its case after the judge threw out three of its four claims. For the giant Abramovich case, we softened some language, added some further denials and corrected one error involving reporting on Abramovich's ownership of the Russian oil firm Sibneft. Abramovich tried to rewrite his history through lawfare, and he failed in that too.

Arabella Pike is publishing director of William Collins, an imprint of HarperCollins

Kipping in parliament or a siesta at school, there are ways to fight the power of the nap, says *Stuart Heritage*



Don't be snoozist — let sleeping lords lie

You have to pity Labour's Lord Young. At approximately half past nine on Monday night, just a few minutes into a sparsely attended second chamber debate about genetic modification, the 79-year-old peer succumbed to the effects of tiredness. Slumping to the side, with his head back and his jaw open, he remained there, deep in a state of blissful slumber, until the doorkeeper discreetly nudged him awake.

Lord Young deserves our pity. No, he deserves our pity because he got caught. When the time came for him to contribute to the debate, he stood up – hair slightly matted, tie slightly askew – and got only a handful of words out before the government whip Lady Bloomfield butted in. "I am afraid the noble lord was fast asleep for the entirety of the minister's opening speech," she told the House, like a massive snitch.

And then she promptly banned him from taking part in the rest of the debate. Lord Young has done what anyone would in this situation and denied it, claiming he was merely resting his ear against a speaker.

Either way, you can relate, can't you? Only a person with an inhuman level of self-control could manage to go their entire life without drifting off somewhere they shouldn't. I know I certainly haven't. Like Lord Young, I am an

inveterate napper. Luckily I work from home, so it's rare that I get caught. However, it has not always been this way. I might be one of the only people, for instance, who has fallen asleep in a classroom both as a pupil and as a teacher. The glares you get as the latter are far worse.

In my defence, it happened only once. I was teaching English in Seoul. It was an especially warm, airless summer's day. I had slacked off a little by setting the children the task of drawing. And, crucially, I had a

whopper of a hangover. So I decided to rest my head on my desk for just a second, only to be awoken some time later by an incredulous cry of "Teacher?!" from one of my pupils, staring at me with a look of bafflement and horror on his face.

"If you are sleepy, then sleep will take any opportunity to occur," says Neil Stanley, author of *How to Sleep Well*. "It tends to happen when you are in a low-stress, low-stimulus environment," he adds, accurately describing a quiet

office, a classroom and (quite possibly) the House of Lords, with its soft seats, low-level burble and subsidised bar.

So what of Lord Young? What could possibly have caused him to drift off so ignominiously? The sleep scientist Sophie Bostock suggests it may be down to adenosine, a molecule that builds up throughout the day, causing drowsiness. This naturally sleep-inducing chemical is so effective that it is undergoing trials as an insomnia treatment.

Some of us, though,

struggle to keep our natural reserves at bay. "Some people use caffeine to block the effects of adenosine," says Bostock. "But when it wears off you can get hit by the wall of adenosine that's built up in the background."

Another theory of Bostock's is that Lord Young's inappropriate tiredness might stem from sleep apnoea. "This is when you temporarily pause in breathing during the night," she explains. "It's often associated with snoring. And it's usually because the tissue in the palate or the tongue falls and blocks the airway. What happens is the brain recognises the oxygen levels are low and triggers a large breath. But this also triggers you out of deep sleep."

People suffering from sleep apnoea can have 200 of these micro-arousals a night, she says, which keeps them in a permanently light sleep, meaning they are often tired throughout the next day. Is there a specific demographic

that sleep apnoea likes to target? According to the experts, it is overwhelmingly males who suffer, which perhaps explains why we so rarely see female politicians asleep in the House.

"Other risk factors include being over the age of 50, having a high BMI and having a large neck circumference," Bostock adds. Which – not to unduly categorise anyone – does seem to describe Lord Young perfectly.

Luckily, if this is the case, help is at hand. "I contacted some researchers who have done some studies that showed that, by practising certain exercises to strengthen the muscles in your tongue and throat for eight weeks, if you have mild to moderate sleep apnoea, then it can actually cure you," says Bostock. She points to the YouTube videos of the ear, nose and throat consultant Vik Veer as a way of finding out more about these exercises. Perhaps there's hope for Lord Young.