

JULIETTE GARSIDE

Presentation to TAX3, Thursday 21 June 2018

Good morning. Thanks for inviting me to give evidence. I have been asked to come today because I led the Guardian's reporting on the Paradise Papers, and before that the Panama Papers. I have also worked more recently on the Daphne Project, another collaboration set up to continue the work of the murdered Maltese journalist Daphne Caruana Galizia. My evidence will draw from experiences of these three investigations.

I plan to talk about the legal difficulties that exist for journalists working on these kinds of investigations.

That should take about five minutes, and then I can take some questions about the kinds of tax structures we uncovered in the Paradise Papers. About the amount of money that flows offshore. And about the work of offshore law firms like Appleby.

• How do you assess the protection within the EU of journalists in the framework of investigations of aggressive tax planning and other phenomena of tax evasion and tax avoidance?

Our recent investigations are a strong reminder of just how vulnerable journalists who investigate corruption can be. The attacks have ranged from legal threats, to prosecutions, and, tragically, to the killing last year of a very brave journalist.

Our experience at the Guardian is that when we behave responsibly and seek responses from the people we want to write about, we can be threatened with legal action. In the UK there is a lot of use of pre-publication injunctions and legal threats. The UK seems to be much more vulnerable to this than other jurisdictions.

I can give you two examples.

First:

One of the firms whose information was leaked in the Paradise Papers was an offshore law firm called Appleby.

Appleby are not based in the UK – they have a big Bermuda office and another in the Isle of Man, and their managing partner is based in Jersey.

The data was obtained in Germany, by SZ

The data was hosted by the ICIJ which is based in Washington

But Appleby decided to sue the Guardian and the BBC in London. They wanted financial compensation and, more importantly, they wanted us to hand over the Paradise Papers.

We even came under pressure from our own Prime Minister to hand over the material. Theresa May stood up in parliament and said she wanted us to hand this data to law enforcement agencies. Can you imagine the chilling effect this would have had on other potential whistleblowers?

I don't think she was asking for the data because she wanted her tax inspectors to bring evaders to justice. I'm ashamed to say I think the prime minister was just trying to intimidate the Guardian. To push back against our reporting because it was politically inconvenient. Inconvenient for those who donate money to her party, and for Britain's relationship with its former colonies.

So we were under huge pressure.

I'm glad to say we fought very hard to protect the material, and to protect its source, and to protect our right to report on the material. The BBC and the Guardian have agreed a settlement with Appleby and that settlement protects our journalistic integrity and our ability to continue to do public interest journalism. We have simply assisted Appleby by explaining which of the companies documents were used to underpin our journalism.

If genuine whistleblowers come to the Guardian with information, they have to be reassured they are not placing themselves in danger.

We will always fight to protect our sources.

The Paradise Papers data was reported by 100 media organisations in 67 countries. But only two of us faced litigation. The BBC and the Guardian. Why?

Two reasons: The Guardian and the BBC are English language and we have no paywall. We were among the loudest voices in the project.

Nothing we can do about that.

The second reason is that our laws are weak when it comes to protecting journalists. Our press has a fierce reputation. But we operate under some of the strictest libel laws in Europe. In the UK, the newspaper must prove that what they wrote is true. In France, for example, it is up to the person bringing a libel case to prove that what the newspaper wrote is not true. And unlike America, we have no first amendment, no right to free speech enshrined in a constitution.

We do have article 10 of the European Convention on human rights, which enshrines freedom of expression.

However, that freedom is worthless if states and courts don't properly protect journalists

This leads to my second example of intimidation. The UK has some very powerful libel lawyers.

Many of the people we write about in offshore investigations have vast wealth acquired in countries where corruption is endemic. Individuals from Russia, Ukraine, Libya, Azerbaijan, China. Many of these individuals now have a stake in Europe, and particularly in Britain. They have acquired property here, their kids go to school here, they have visas to live here. They come to take advantage of the huge tax breaks offered by our non dom regime.

And they employ UK law firms to manage their reputation. It has become a real problem because instead of opening a dialogue with us through a press officer, some kind of spokesperson, these individuals will go straight to their lawyers.

The letters their lawyers write are very aggressive, and often very rude about individual journalists. For example I will send some questions to the office of an oligarch. And what comes back is a letter from their lawyer, not addressed to me, but addressed to my legal department and the editor of the Guardian. Sometimes they don't even bother to copy me in on the email. The letter will accuse me of incompetence, or of not doing proper research.

They just want to frighten the reporter. It doesn't frighten me, because I work for a strong newspaper with fantastic lawyers. But they do frighten smaller media organisations and freelance reporters who don't have an experience team behind them.

I am particularly concerned because some of these firms have also started writing to reporters outside the UK. Daphne Caruana Galizia was threatened by Mishcon de Reya on behalf of its client Henley & Partners.

Henley markets Maltese citizenship to those with money to invest in Malta. Golden passports. Daphne wrote things in her blog about Henley, some of which she did correct after being contacted by UK lawyers Mishcon on behalf of Henley. Fair enough. But she was threatened by them on behalf of their clients with libel action not in Malta, but here in the UK courts. The cost of fighting such an action would have crippled her financially.

And there is the case of the Angolan journalist Rafael Marques de Morais. He was very surprised in March to receive a letter from another UK law firm, Schillings. He was an Angolan journalist, writing in Angola, about the looting of the Angolan sovereign wealth fund. It was part of the Paradise Papers. Schillings was making its threats on behalf of a Swiss Angolan fund manager, Jean Claude Bastos. In its letter, Schillings reserved its right to sue Morais on behalf of its client in a jurisdiction other than Angola.

When he received the Schillings letter, the journalist wrote a blog. He asked this question: "Mr Bastos is not a British citizen, nor does he reside in the UK. Why then did Mr Bastos seek out an English law firm to make his complaint? That phrase "libel tourism" comes to mind."

<https://www.makaangola.org/2017/03/a-london-law-firm-wont-stop-us-exposing-those-who-swindle-angola/>

These firms describe themselves as reputation managers and what they are paid to do is to try and stop stories about their clients. Stories which we think often have a high public interest. Their clients can include people who have benefitted from kleptocratic regimes. And they pay huge fees to British lawyers to try to stop these things being reported.

A British law firm should not be able to threaten a Maltese journalist writing in Malta about corruption in her own country with legal action in the UK. Fair enough to pursue them through their own courts using their own laws. But it just feels wrong that they can threaten to sue in the UK. As I understand it, EU laws allow this to happen. But the way it is deployed can feel like intimidation. So perhaps the law needs changing. We might want to consider introducing some sort of anti-slapp legislation in Europe.

Slapp stands for strategic lawsuit against public participation. Slapps can be defined as often baseless claims which aim to silence free speech and debate about issues of public interest by forcing critics to spend money defending themselves.

America has strong anti-Slapp laws, but the concept does not exist in the UK. The European Union is being urged to by some MEPs to introduce Slapp laws here. I think they could be a good defence in the fight against money laundering and corruption.

• **Could you describe the most frequent schemes identified in the Paradise Papers used by corporations to evade the payment of taxes?**

One of the most common tax avoidance structures is property. The ownership of UK and other European property through offshore companies rather than in the proprietor's own name. This has been done to avoid capital gains and stamp duty. The tax advantages of such structures have been reduced through changes made by the UK treasury. But there are still some advantages. For example for UK non-doms. Non-doms are only taxed on UK income and gains. If you put your home into an offshore company, you can live here and own a house here without having to be taxed on your profit when you sell it.

Discretionary trusts. Trusts established by rich men and sometimes women, so that the money doesn't belong to them alone anymore, but to them and a group of family members. However, they continue to benefit from the money in the trusts, the money builds up in the trust untaxed, and when they die their children inherit the money without paying inheritance tax. They create artificial structures where they can claim the money doesn't belong to them, but they continue to benefit. That's the game.

Loans: Often, for people who live in big economies like the UK, money is pumped offshore and returned to the UK in the form of loans to avoid tax. We found a scheme used by the cast of a well known comedy show, Mrs Brown. The actors

had their earnings paid into trusts in Mauritius. They were then employed as advisors to companies owned by the trusts. When they needed money, they would ask the trust to pay them in the form of loans.

It's the interplay between loans and jurisdiction that tax advisers love to exploit.

In corporate schemes, money generating businesses in the UK are saddled with loans they don't need, so that the profits can be wiped out by interest payments or royalty payments to an offshore company.

Avoidance on private jets. The owners want to import them into Europe so they can fly around without delays at customs. But they don't want to pay 20% import tax. So they use a scheme facilitated by Ernst and Young and local companies like Appleby on the Isle of Man. Here, the jet owner pretends to be operating a jet chartering business. They effectively rent their jet from themselves. Nobody else rents the jet, so it's not a real business. And they pretend the business is operated on the isle of man. But there are no staff and there's no office on the isle of man, because there is no real business.

• **Have you been able to quantify the amount of money lost in taxes as a result of schemes identified in the Paradise Papers?**

The economist Gabriel Zucman calculates more than €600bn is artificially shifted by multinationals to the world's tax havens each year. The EU loses a fifth of the corporate tax it currently collects. About €60bn a year.

The richest families keep a large share of their wealth offshore. Zucman again believes €155bn of revenue is lost each year in taxes to the world's governments. That's on top of the corporate tax avoidance.

Zucman says 10% of global GDP is held in tax havens.

Then there is money laundering. The United Nations Office on Drugs and Crime puts the annual sum laundered everywhere at between 2 and 5% of global GDP, so between \$800bn and \$2tn.

• **In the Paradise Papers, the ICIJ highlighted the role of one specific intermediary, Appleby, in assisting clients. Appleby has declined the committee's invitation to participate at this hearing. Could you please explain to us about their services of aggressive tax planning for their clients? Baker McKenzie has also declined our invitation, could you also explain to us whether their services of aggressive tax planning were of the same nature than Appleby? Are you aware of other actors offering the same services throughout the world? Would you say that their practices could be considered as illegal or legal but contrary to the spirit of tax law? Do you think that the argument of confidentiality privilege invoked by Appleby and Baker Makenzie justifies their refusal to attend this hearing?**

Until 2016, Appleby had a fiduciary business.

This is where most of the data in the Paradise Papers came from.

And this is where it becomes controversial.

A fiduciary business is a secrecy service. It is the same sort of service that Mossack Fonseca used to offer. It means that it is impossible in most instances to know who owns a company. If you don't know who owns a company, it is hard to hold people properly accountable, whether for tax payments or something more serious like fraud.

Secrecy combined with offshore also allows people to pick and chose jurisdictions in a way that is only available to the rich.

At the time, Appleby was licenced in various jurisdictions to incorporate offshore companies. In Bermuda, and Jersey for example.

Also, for a fee, Appleby supplied trustees and nominee directors, or it acted as a shareholder, or its staff were given power of attorney, and the right to sign for bank accounts, in order to keep the real owners secret. The Appleby fiduciary business was sold to a big private equity company, Bridgepoint, a couple of years ago. It is now called Estera. Bridgepoint is hoping to increase the size of Estera and sell it at a profit. It has been buying up other fiduciary businesses and consolidating them.

Appleby could very easily come to talk to you about their business model. Confidentiality privilege is not a block to discussing your business model. To be fair Appleby are no longer in the fiduciary business. But you should call some other fiduciary businesses – Estera, or Trident Trust is another big one. Or perhaps STM Fidecs – that is the fiduciary business owned by Arron Banks. It operates out of the Isle of Man, Gibraltar, Jersey and Malta.