

Our Ref: JLL/HEW/HA/Alan Dershowitz

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Martin Clarke  
Publisher  
MailOnline  
Northcliffe House  
2 Derry Street  
London  
W8 5TT

4 January 2019

**BY EMAIL**

Dear Sir

**Our client: Alan Dershowitz**

**Letter of Claim**

We write further to previous correspondence in this matter.

In the absence of a satisfactory reply to our letters, we have been instructed by our client to send you (in your capacity as Publisher of MailOnline) a formal letter of claim in accordance with the Pre-Action Protocol for Defamation.

For the avoidance of doubt, the article that forms the subject of our client's complaint is the one published on MailOnline on 18 December 2018 headed "*Second woman claims billionaire Jeffrey Epstein 'directed' her to have sex with lawyer Alan Dershowitz WHILE he was defending pedophile on underage prostitution charge*" (url: <https://www.dailymail.co.uk/news/article-6509743/Second-woman-claims-billionaire-Jeffrey-Epstein-directed-sex-lawyer-Alan-Dershowitz.html>). We attach a copy of the article for ease of reference (omitting the 'under-the-line' comments).

Despite our detailed initial complaint of 21 December, which requested that the article be removed immediately from the MailOnline website, and our follow-up letters of 22 and 29 December, the article remains online to this day.

In the light of this, we start by observing that your newspaper's lackadaisical and dismissive response to our client's complaint stands in stark contrast to the seriousness with which he takes this matter. Indeed, we cannot overstate – and you should not underestimate – how seriously he takes it. Both he and we are staggered at the indifference you have shown thus far.

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Professor Dershowitz, as you must be aware, enjoys a distinguished reputation as a practising and academic lawyer, as a jurist, as a writer, and as a commentator on legal issues in the media (print and television). He possesses this reputation not just in the United States, which is his home, but also in this country, where your newspaper attracts its primary readership, in Europe, and throughout the world more generally. He has worked hard for over 50 years of professional life to build up this reputation. Indeed, at 80 years old, he continues to work as hard as he ever has.

As such, you may not be surprised to learn that he regards it as completely unacceptable that an ostensibly reputable, well-established and well-resourced British newspaper such as yours, should seek to destroy that reputation at this stage in his life by disseminating appalling falsehoods concerning him to its very large audience on the internet. Since this is so, he is determined to obtain from your newspaper the reputational vindication in respect of these falsehoods to which he is clearly entitled.

Against this background, we turn to the offending article.

### **Defamatory meaning**

In its natural and ordinary and/or inferential defamatory meaning, the article means and would be understood by readers to mean that Professor Dershowitz engaged in unlawful, paedophilic sexual relations with two girls, namely [REDACTED] who were underage at the time (that is, below the legal age of consent) and who had been directed to have sex with him by his paedophile client, Jeffrey Epstein, while he was defending Mr Epstein on – and dishonestly submitting to the Court that Mr Epstein was innocent of – underage prostitution charges.

It perhaps goes without saying that this is an outrageous slur, which could not be more serious in terms of its defamatory effect.

It is grossly defamatory of Professor Dershowitz in a personal sense, that is, in terms of his personal reputation for probity and propriety, and in particular, sexual propriety. (Apart from anything else, at the time he was supposedly conducting himself in this way, he was married with a teenage daughter.)

However, it also imputes to him grave professional impropriety; that he was prepared to use his status as Mr Epstein's attorney to have unlawful, exploitative, paedophilic sex with girls procured for him by Mr Epstein at a time when – as the article, and specifically its headline, indicates – he was defending “pedophile” Mr Epstein on underage prostitution charges and thus presumably arguing before the Court that Mr Epstein was innocent of involvement in such activities. In this way, the article libels Professor Dershowitz by alleging that, in his capacity as Mr Epstein's attorney, he took advantage of and abetted his client's criminal wrongdoing, and while doing so, knowingly misled the Court about his client's supposed innocence of the offences with which he was charged.

### **Serious harm to reputation**

It perhaps also goes without saying, applying the principles laid down by the Court of Appeal in *Lachaux v Independent Print Ltd* [2018] QB 594, that the publication of this article has

caused – and for as long as it remains online and uncorrected – is likely to continue to cause very serious harm to Professor Dershowitz’s reputation. Having regard to the gravity of the defamatory imputations and the extent of their publication by your newspaper, this is not only an article which is likely to cause reasonable and right-thinking people to think seriously the worse of Professor Dershowitz, but one which is likely to make them shun and avoid him, personally and professionally.

### **Factual inaccuracies / falsity**

Furthermore – if it needs to be spelled out – the article, in the defamatory meaning which we have identified above, is entirely false. There is no factual substance to it whatsoever. To be clear:

- (1) Professor Dershowitz is not a paedophile and has never had sex or sexual relations with anyone under the legal age of consent.
- (2) He has never had sex or sexual relations with either [REDACTED] or [REDACTED] [REDACTED] whether in the context or at the time described in the article or at any time. Insofar as Ms [REDACTED] and Ms Roberts have alleged otherwise, each is lying, and demonstrably so.
- (3) He has never knowingly or dishonestly misled a Court, whether in the context of Mr Epstein’s case or on any other occasion.

### **No tenable defence**

In the light of the above, any suggested defence of truth would be misconceived, bound to fail and be apt only to aggravate the situation yet further (if that is possible).

To the credit of Mr Martin Wood, Group Legal Adviser of Associated Newspapers Ltd, who wrote to us in connection with this matter on 28 December 2018 (email, 15:24), he proposed no such defence. However, he did suggest – without providing proper particulars of the same – that your newspaper might be able to rely on reporting privilege by way of a defence.

While the burden of proof in respect of any such defence is on your newspaper (and strictly without prejudice to that burden of proof), our client’s position is that any defence of reporting privilege on which your newspaper might seek to rely would also be misconceived and bound to fail, not least for the following reasons:

- (a) Firstly, so far as concerns the reference in the article to Ms Roberts’s affidavit, this reference cannot possibly be described as a report of court proceedings, which are not even specified, let alone a fair and accurate one.
- (b) Secondly, no affidavit of Ms Roberts making the mendacious claims concerning our client referred in your article is (or was at the time of article’s publication) a document required by law to be open to public inspection for the purposes of Schedule 1, Part I to the Defamation Act 1996, paragraph 5. No such affidavit – or,

more accurately, declaration – of Ms Roberts forms any part of the publicly accessible record of any legal proceedings in which it was filed.

- (c) Thirdly, even if – which is denied – the reference in the article to Ms Roberts' affidavit was capable of engaging paragraph 5 of Schedule 1, Part I to the Defamation Act 1996, it would not attract a reporting privilege under s.15 of that Act. This is so: (i) because, under s.15(3), that section does not apply to the publication to the public of matter which is not of public interest and the publication of which is not for the public benefit; and (ii) because your newspaper's publication was made with malice.
- (d) In relation to (i), we invite you to consider (1) whether it can realistically be said to have been of public interest or for the public benefit to recycle the dishonest allegations concerning our client made in Ms Roberts' affidavit without mentioning, as the New York Daily News did in the item on which your article was based, that a judge had ordered those claims to be stricken from the record ("*She [Roberts] alleged in 2014 that Epstein 'trafficked' her to Dershowitz...for sex – a claim that has since been stricken from the record*"), or without making any reference to the plethora of information readily available on the internet and elsewhere from credible discrediting those allegations; and (2) the approach that Tugendhat J adopted towards issues of this character in the case that Mr Irfan Qadir brought against the Mail on Sunday and MailOnline in 2011, as reported at [2013] EMLR 15.
- (e) With respect to (ii), malice, it seems clear to us that your newspaper's dominant motive and purpose in publishing its article was not to discharge any public interest, 'watchdog', reporting role, but to publish sensational, salacious and attention-grabbing allegations concerning Professor Dershowitz and thereby to injure him and his good name. Furthermore, the inference of malice is strengthened in this case by reference to another specific matter, as follows. We have good reason to believe that you and other persons among your senior colleagues at MailOnline are, and were at the time of the article's publication, privy to emails passing between Ms Sharon Churcher, a journalist working for the Mail on Sunday and MailOnline, and Ms Roberts which demonstrate that Ms Roberts's allegations concerning Professor Dershowitz were fabricated. Our client will seek to prove this fact in any legal proceedings that may ensue in the event that your newspaper declines at this stage to provide him with the redress he requests in relation to the offending article (as to which, see below). Needless to say, if he succeeds in doing so, the inference of malice will become irresistible.
- (f) Meanwhile, regarding the allegation comprised in the article attributed to Ms [REDACTED], while it may be correct to say that Ms [REDACTED] (entirely false) claims were referred to in the course of the telephone conference held on 7 November 2018 in the recently settled legal proceedings brought by Ms [REDACTED] against Mr Epstein and Ms Ghislaine Maxwell in the Manhattan federal court, the account of the matter contained in your article is plainly and obviously not a fair and accurate report either of Ms [REDACTED] claims or of the treatment they received at the court hearing during which they were mentioned. We say this for two principal reasons:

- (i) At no time during the hearing did Ms Maxwell's attorney, Ms Laura Menninger, state or suggest that Ms ██████ was alleging that she had actually had sex with Professor Dershowitz. Ms ██████ allegation, as Ms Menninger said, was strictly confined to one that Mr Epstein had directed her to have sex with him: see, for example, the article published concerning the matter on 19 December in the Miami Herald ([url https://www.miamiherald.com/latest-news/article223315075.html](https://www.miamiherald.com/latest-news/article223315075.html)) ("*Nowhere in the court case or the transcript does ██████ or anyone else allege that ██████ had sex with Dershowitz*"). Your newspaper's article fails to make clear this important limitation upon what Ms Menninger told the Court.
- (ii) The offending article also fails to make clear the significant point that neither Ms ██████ nor Ms Menninger were alleging that Ms ██████ was under the legal age of consent at the time Mr Epstein was said to have directed her to have sex with other persons: see, by contrast, the 18 December New York Daily News article, which states "*██████ has sued Epstein and his alleged madam, Ghislaine Maxwell, saying they trafficked her for sex from 2006 to 2007, while she was in her 20s*" (emphasis added).
- (g) In the premises, your newspaper's article cannot on any sensible view be characterised as a fair and accurate report of the court proceedings between Ms ██████ and Mr Epstein and Ms Maxwell. Even if it could, our client would contend, for similar reasons to those stated above in relation to the references to Ms Roberts's allegations, that the article was not of public interest or for the public benefit, and was published with malice.

### Redress / remedies sought

In these circumstances, if legal proceedings by our client for defamation are to be avoided, he expects to receive from you and Associated Newspapers Limited **as a matter of urgency** the following redress:

- (1) The **immediate** removal from your website of the offending article and confirmation in writing that this has been done. By "immediate", we mean by no later than 12 midnight on the date of your receipt of this letter (i.e. on the date of this letter, as set out above). Naturally, we include in this request all the comments that appear below the article. We note – with some incredulity – that these comments were apparently moderated in advance of publication. Some of them, in their references to Professor Dershowitz, are nothing less than monstrous (he is described, inter alia, as a "pedo", "a sick sick man", a "perv", a "pedophile", "guilty as hell", "despicable pond scum"; as someone "who slept with minor girls", who is "in the Epstein's club", who should be "hauled into court and charged for this disgusting behaviour"). Many of them strengthen the inference that readers are taking the article seriously and regard the defamatory allegations concerning our client that it contains as credible and worthy of belief.
- (2) Your unequivocal agreement to do the following things:

- (a) To publish prominently on your website a correction and apology to Professor Dershowitz in terms to be agreed in advance by us, reflecting all aspects of the defamatory meaning identified above.
- (b) To join with Professor Dershowitz in the making of a statement in open court in which you retract and apologise for the libellous allegations concerning him which you have published.
- (c) To undertake not to republish those allegations or any similar allegations concerning Professor Dershowitz.
- (d) To pay Professor Dershowitz substantial damages to vindicate his reputation and to compensate him (i) for the serious harm that has been done to his reputation and (ii) for the distress, hurt and humiliation that your publication has caused him. We invite your proposals as to quantum. Having regard to the gravity of the libels and the extent of their circulation, we anticipate that your offer will be towards the top end of the conventional scale: *cf Cairns v Modi* [2013] 1 WLR 1015 at [25] and the remarks of Nicklin J in the recent case of *Monir v Wood* [2018] EWHC 3535 (QB) at [236].
- (e) To pay Professor Dershowitz's legal costs.

Please may we hear from you by return. We should not need to remind you that your newspaper has been on notice of our client's complaint about the offending article since 21 December, which is already some two weeks ago. We therefore make it clear to you now that in default of receipt of a satisfactory substantive reply to this letter within 14 days of the date of this letter, our instructions are to proceed to issue proceedings for libel on our client's behalf without further delay.

In the meantime, we specifically draw to your attention your obligation to preserve and to keep safe all potentially relevant and disclosable documentation within your control, including electronic documents: see CPR PD 31B, paragraph 7 as to the latter.

Otherwise, we expressly reserve all of Professor Dershowitz's rights on his behalf.

Yours faithfully



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## Second woman claims billionaire Jeffrey Epstein 'directed' her to have sex with lawyer Alan Dershowitz WHILE he was defending pedophile on underage prostitution charges

- It was revealed in a November 7 telephone conference that [REDACTED] was accusing Jeffrey Epstein of 'directing' her to have sex
- The New York Daily News is reporting that [REDACTED] alleges that she was asked to have sex with Alan Dershowitz by Epstein
- The transcript of that conference has since been sealed and will not be released until the end of the month
- Dershowitz previously denied a claim that he had sex with another Epstein accuser, [REDACTED]
- Roberts said that she was asked to have sex with Derhsowitz six times, starting when she was 16
- Epstein served less than two years in prison despite 40 women coming forward and saying they were forced into sex acts with the billionaire while underage

By [CHRIS SPARGO FOR DAILYMAIL.COM](#)

PUBLISHED: 22:07, 18 December 2018 | UPDATED: 06:57, 19 December 2018

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A second woman is claiming that she was 'directed' to have sex with lawyer Alan Dershowitz by one of his clients, billionaire felon Jeffrey Epstein.

[REDACTED], who is currently suing Epstein and his team of alleged enablers, claims that she was trafficked by the pedophile starting in October 2006 and into April fo the following year.

It was during this time that she was told by Epstein to have sex with Dershowitz according to the [New York Daily News](#).

That allegation was revealed in a November 7 telephone conference according to the report, the transcript of which has since been sealed until the end of the month.

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Dershowitz would have been defending Epstein at the time of the alleged sexual encounter, having been hired to work on the case in 2005 when a number of underage girls began coming forward and telling police they were paid to have sex.

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© Corbis via Getty Images Friends: Alan Dershowitz is being accused of having sex with a second Epstein victim (pair above in 2004)

This makes ██████ the second woman to allege that she had sex with Dershowitz at the behest of Epstein.

██████ alleged in a court affidavit that she had sex with the lawyer six times.

Dershowitz has denied that claim for years, and said that he only once received a massage from one of Epstein's female employees and that the woman was not a minor.

Roberts claims that she was just 16 the first time she had sex with Epstein.

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The case is back in the spotlight after a blistering expose in The Miami Herald that took a look back at the allegations made against Epstein.

That piece included interviews with a number of Epstein's alleged victims.

Epstein pleaded guilty to sex crimes involving underage girls and got 13 months behind bars.

What the public and his accusers did not know at the time was that he had secretly struck a deal with federal prosecutors that spared him from charges that could have put him away for the rest of his life.

When the deal finally came to light years later, it immediately raised suspicions that Epstein - a man who counted Bill Clinton and Donald Trump among his friends and had some of the finest legal talent in America as his lawyers - had used his wealth and political connections to win special treatment.

Those allegations flared anew after the Herald published interviews with the alleged victims and took a closer look at Alexander Acosta, who as the U.S. attorney in Miami

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in 2008 approved the secret deal.

Acosta is now Trump's secretary of labor.

Epstein, 65, reached the non-prosecution deal with Acosta's office while under investigation on suspicion of sexually abusing at least 40 teenage girls.

Under the deal, he pleaded guilty to two state charges, did his time in jail, paid settlements to many of the alleged victims and registered as a sex offender.

He could have faced a far more severe penalty if federal prosecutors had pursued a draft 53-page indictment that was never filed and included sex trafficking charges.

Some of Epstein's accusers are now arguing that their rights were trampled under a federal law that says crime victims must be informed about plea bargains.

One of Epstein's lawyers, Roy Black, has said there was no conspiracy to violate victims' rights, and the plea agreement was 'no sweetheart deal by any stretch of the imagination.'

Even if the plea bargain is nullified, the final decision on bringing charges would rest solely with the Justice Department.

On Tuesday, Epstein settled a defamation lawsuit brought against him by a lawyer for some of the accusers, Bradley Edwards, who said Epstein tried to derail his representation of the women and ruin his career.

In settling, Epstein apologized and agreed to pay an undisclosed amount.

Edwards said some of the accusers - some of whom say they were 13 or 14 when they were molested - were prepared to testify in the lawsuit and may yet get their day in federal court.

Congressional Democrats are calling for an internal Justice Department investigation.

Acosta has not commented about the case during the recent media coverage. He was asked briefly about the non-prosecution agreement at his Senate confirmation hearing.

According to court papers, Epstein had a Palm Beach mansion where girls were brought for what they were sometimes told were massage sessions.

He allegedly had female fixers who would look for suitable girls, some of them recruited from Eastern Europe and other parts of the world.

Before the scandal broke, Epstein was friends with Trump and had visited the real estate developer's Mar-a-Lago resort.

Trump told interviewers that Epstein was 'a great guy.' Records also show Clinton flew on Epstein's jet more than two dozen times.

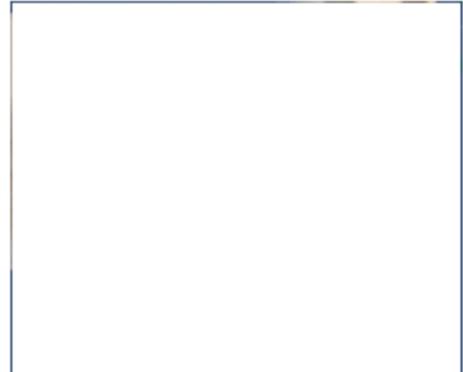
Attorney reaches settlement with convicted sex offender Epstein

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