

# Press Release

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## Supreme Court rules unanimously against Home Secretary in landmark libel claim brought by prominent Muslim community leader, Chowdhury Mueen-Uddin

### Summary

In a unanimous, landmark Judgment handed down today, the Supreme Court<sup>1</sup> has allowed in full an appeal by Chowdhury Mueen-Uddin in his libel action against the Home Secretary. The Court has reversed the decision of the lower Courts to strike out the claim as an abuse of process, and confirmed that Mr Chowdhury Mueen-Uddin should be permitted to pursue his claim at trial.

Mr Mueen-Uddin's claim relates to the publication by the Home Office in 2019 of allegations of complicity in war crimes and crimes against humanity during the Bangladesh war of independence in 1971. Chowdhury Mueen-Uddin, who has lived in the United Kingdom since 1973 and been a UK citizen since 1984, has always vigorously denied the Bangladeshi authorities' allegations as being entirely false and politically-motivated.

As Lord Reed, President of the Supreme Court (giving the judgment on behalf of the Court), observes: "*it is difficult to imagine a graver allegation than guilt of war crimes and crimes against humanity, and that "the allegation is especially grave when it is made by the government of this country against one of its own citizens"*."

### Background

Mr Mueen-Uddin was born in East Bengal in 1948, which at that time was part of the state of Pakistan. Since the conclusion of the war of independence in December 1971, it has been the state of Bangladesh. Mr Mueen-Uddin has lived in the United Kingdom since 1973 and has held a number of prominent public and charitable positions in British society. Among many other roles in civic society, he has served as Secretary-General of the General Council of Mosques, Director of Muslim Spiritual Care Provision in the NHS, as well as being a founder member and chair of Muslim Aid.

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<sup>1</sup> Lord Reed (President), Lord Sales, Lord Hamblen, Lord Burrows and Lord Richards

In 2013, more than 40 years after the war of independence, Mr Mueen-Uddin was convicted in Bangladesh, *in absentia* by an “International Crimes Tribunal” (“ICT”), of crimes against humanity said to have been committed by him during the 1971 war. Mr Mueen-Uddin was sentenced to death.

The ICT was not in fact “international” but an institution of Bangladesh’s domestic legal system. It had been convened by special legislation which necessitated the amendment of the Bangladeshi constitution, so as to remove fundamental procedural protections from the individuals accused. The ICT was not constrained by the ordinary rules of evidence and procedure, and was allowed to rely on newspaper reports from the time as admissible evidence of “guilt” (indeed Mr Mueen-Uddin’s conviction relied primarily on such reports).

Unsurprisingly, the ICT was universally condemned by human rights organisations, the United Nations, EU and UK Parliaments.

Given the grave concerns around the ICT and the fact he faced likely execution, Mr Mueen-Uddin did not, and (as the Supreme Court has today recognised) *could not* realistically have been expected to attend the trial. He was deprived of any proper due process or effective access to legal representation. Any appeal would have been entirely futile (and again would have required his attendance and likely execution – a fate which had already befallen another accused individual). There was no prospect of the UK extraditing him (or even any extradition request). Indeed, Interpol withdrew a Red Notice seeking Mr Mueen-Uddin’s arrest, which had been issued at the request of Bangladesh, in light of the fundamental concerns regarding the ICT process.

Mr Mueen-Uddin has continued repeatedly, and vigorously, to make clear his innocence of the allegations, including through his UK lawyers.

### **The Home Office’s publication**

Six years after the ICT conviction, in 2019 the Home Office published a report (“the Report”) prepared by the Commission for Countering Extremism, a non-statutory committee of the Home Office, entitled “Challenging Hateful Extremism”. As well as being circulated in hard copy, the Report was downloaded online around 5,000 times and may have reached over 900,000 followers of the Home Office’s social media accounts.

As the High Court has found, the Report referred to Mr Mueen-Uddin in terms that readers would have understood to mean that he was one of those responsible for, and had committed, war crimes during the 1971 war.

Following Mr Mueen-Uddin’s initial letter of complaint sent through Carter-Ruck in December 2019, the Home Office refused to apologise or agree to his other demands for redress, instead limiting its response to removing the offending words from the online version of the Report (and even then not until four months later). Mr Mueen-Uddin was left with no alternative but to sue for libel.

Rather than submitting a Defence (which the Home Office has still not done over three years on), the Home Secretary applied to the Court to strike out Mr Mueen-Uddin’s claim, asserting that it was an abuse of process.

In particular, it was asserted that Mr Mueen-Uddin’s libel claim was nothing more than an attempt to use a libel claim in the (English) High Court as an improper collateral attack on his 2013 conviction by the ICT in Bangladesh. It was asserted by the Home Office that Mr Mueen-Uddin had had a proper opportunity to defend himself in the ICT proceedings (and then to appeal following his conviction) and that it was his decision not to do so. The Home Secretary also asserted (without any proper evidence to support that

submission) that as Mr Mueen-Uddin's reputation in the UK was already that of a convicted war criminal, and given the "unfairness" for the Home Secretary of having to try to prove the truth of allegations concerning events over 50 years ago, Mr Mueen-Uddin should be prevented from using the English Court to seek vindication over the allegation.

At first instance, the High Court agreed with the Home Secretary's submissions, thereby striking out the claim. The Court of Appeal, by a majority of 2 to 1, agreed, albeit a strong dissenting judgment described the majority's approach as "unprincipled" (a criticism now endorsed by the Supreme Court).

Permission to appeal to the Supreme Court was granted on 1 February 2023.

### **The Supreme Court judgment**

A summary of the case can be found [here](#), and the full judgment itself [here](#).

As can be seen, the Supreme Court has roundly and robustly rejected the Home Secretary's submissions as well as the approach taken both at first instance and by the majority in the Court of Appeal. Lord Reed observes (at paragraph 36):

*"...individuals have a fundamental right of access to the court for the determination of their civil rights. That right has been recognised by the common law for many centuries, and has been protected by statute from Magna Carta....to the Human Rights Act 1998".*

In rejecting the Home Secretary's submission that the proceedings were an abuse of process as being an improper collateral attack on a previous conviction (known generally as *Hunter* abuse), Lord Reed states (at paragraph 63)

*"In the present case.... the claimant was tried in absence before the ICT. He could not realistically be expected to attend the trial or any subsequent appeal, since he faced real risk of execution"*

*"I need only add in relation to this aspect of the case that it is surprising that the Secretary of State should submit that even if the proceedings before the ICT were unfair – even, indeed, if there was a gross miscarriage of justice – a challenge to the conviction should nevertheless be struck out as an abuse of process."*

The Supreme Court was "*unable to agree*" with the majority in the Court of Appeal that it was manifestly unfair for the Home Secretary to have to prove Mr Mueen-Uddin's guilt, so long after the events in question. Indeed, Lord Reed concludes that but for the fact that the Courts below had reached a different conclusion:

*"I should have regarded the Secretary of State's submission that the Claimant's action is an abuse of process because it is difficult for [the Secretary of State] to establish his proposed defence as unarguable". [Emphasis added]. It is difficult to accept that, if the Secretary of State is unable to establish the truth of his allegations against the claimant, therefore he can defame the claimant with impunity."*

*"The burden of proof [in establishing a Truth defence in defamation claims] allocates the risk of insufficiency of evidence to the Defendant. If the Secretary of State is unable to establish the truth of the accusation which he chose to publish concerning the claimant's conduct more than 50 years ago, he should have thought of that before he published the Report."*

.....

*“The Claimant has a legitimate interest in vindicating his reputation in this country, where he resides and of which he is a citizen, against an extremely serious allegation made by the government of this country.”*

The case will now proceed towards trial.

Speaking today, Mr Mueen-Uddin said:

*“I wish to express my deep gratitude to the Supreme Court for today’s judgment. As a proud and longstanding British citizen who has placed his faith in our justice system, it had been dispiriting to have been refused the right to seek to vindicate my reputation over such serious and false allegations made by my own government. I am delighted that, more than four years after my initial complaint, I am now once again able to pursue that vindication, which I consider to be several years overdue.”*

Mr Chowdhury Mueen-Uddin is represented by a Carter-Ruck team led by [Adam Tudor](#); along with a counsel team comprising [Jacob Dean](#) and [Lily Walker-Parr](#) of 5RB.

For further information, please contact Adam Tudor – [adam.tudor@carter-ruck.com](mailto:adam.tudor@carter-ruck.com)