

# Ekklesia submission of 15 December 2022

## PE1975/E: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

As an Edinburgh-based thinktank addressing the intersections of ethics, beliefs, politics and public policy, we are writing to endorse [PE1975: Reform the law relating to Strategic Lawsuits Against Public Participation \(SLAPPs\)](#), submitted by Mr Roger Mullin. We thereby join the call on the Scottish Parliament to urge the Scottish Government to review and amend the law to prevent the use of SLAPPs. We do so in knowledge of some of the individuals and organisations impacted by SLAPPs or the threat of their use.

As legal scholars at the University have pointed out to you in [their submission](#), SLAPPs, unlike litigation to enforce legitimate rights, “are abusive lawsuits in which the pursuer seeks to use the cost of legal proceedings to chill free speech on matters of public interest.” We are aware of the wide range of circumstances in which such abusive lawsuits have been issued within the UK and beyond. These include such high-profile cases as those targeting Catherine Belton, Tom Burgis and Elliot Higgins, as well as openDemocracy and the Bureau of Investigative Journalism (BIJ). Such cases have been well documented by, among others, Index on Censorship, whose [29 November 2022 letter to the UK Justice Secretary](#) points out that these are emblematic of a long-term problem impacting the media on these islands.

People issuing SLAPPs against journalists in the UK rely on the potential legal bills involved in defending such actions being so large and intimidating that they will probably not be able to afford to respond to such threats.

We naturally welcome moves towards addressing the issue of SLAPPs at UK level, effecting England and Wales. But this is not sufficient. If only English law is reformed, then libel tourists will simply migrate north of the border. The legal jurisdiction in Scotland is therefore critical, and the role the Scottish Parliament and Government can play is correspondingly very important. This is why we back PE1975 and regard it as so vital.

As the legal scholars in Aberdeen have noted, draft anti-SLAPP legislation has now been introduced in the European Union, and the UK

Government has indicated that it proposes to introduce similar legislation in England and Wales. Such anti-SLAPP laws will rightly empower courts to dismiss unfounded claims at an early stage and will include deterrent measures such as penalties and fines to dissuade such claims being made.

However, without corresponding legislation in Scotland, Scottish courts risk becoming the preferred legal route for powerful economic and political actors seeking to suppress public scrutiny and intimidate legitimate investigative journalists and researchers – including academics – from doing their job.

In terms of how the Scottish Parliament and Government may act, we believe that there is much to commend in the Model Anti-SLAPP Law that has been drafted by the UK Anti-SLAPP Coalition in consultation with respected media lawyers and acknowledged industry experts. This is designed to offer robust protection against SLAPPs. Its major features include:

- A filter mechanism which empowers courts to dispose of SLAPPs swiftly, without the need for a subjective enquiry into the state of mind of the SLAPP filer. This mechanism would subject claims that exhibit features of abuse to a higher merits threshold.
- Penalties which are sufficient to deter the use of SLAPPs and to provide full compensation for those targeted by abusive lawsuits. Such penalties would consider the harm caused to the defendant(s), as well as the conduct of, and the resources available to, the claimant(s).
- Protective measures provided towards SLAPP victims – including cost protections, safeguards, and measures to reduce the ability of SLAPP claimants to weaponise the litigation process against public watchdogs.

We would urge the Scottish Parliament to encourage the Scottish Government to look to enact similar measures. As the petitioner says, “SLAPPs are abusive defamation or privacy cases, often initiated by mega-rich individuals with the intention to intimidate and harass individuals and publishers, and prevent them from publishing information of wide public interest.”

We regard this to be an ethical and public interest matter of the highest regard.