

National Union of Journalists submission of 30 March 2023

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

This submission expands upon our letter of 26th October 2022 to Jackson Carlaw MSP in his role as Convener of the Citizen Participation and Public Petitions Committee.

The National Union of Journalists (NUJ) is the voice for journalism and journalists in the UK and Ireland and has more than 24,000 members working in broadcasting, newspapers, news agencies, magazines, book publishing, public relations, photography, videography and digital media. The NUJ is not affiliated to any political party.

The NUJ is a member of the UK Anti-SLAPP coalition, actively campaigning for an end to the use of SLAPPs, and for stronger legislation to ensure protections for those targeted in efforts to shut down public participation. This submission is made as a member of the Scotland Anti-SLAPP sub-working group.

A free media is vital to the functioning of a democracy. That freedom is severely curtailed when those with deep pockets are allowed to use the law to threaten the very future of media organisations.

Whilst the abuse of legislation by those in powerful positions is not new, the union is concerned about the increasing use of SLAPPs to deter and stymie journalists in their reporting. Well-known cases including Roman Abramovich's against Catherine Belton for publication of her book *Putin's People*, or Eurasian Natural Resources Corporation against Tom Burgis and the Financial Times over *Kleptopia* – both of which the union condemns, raised awareness about the impact these lawsuits have on freedom of expression and public interest journalism.

High profile SLAPPs cases in the public domain are simply the tip of the iceberg, which do not reflect the volume of threatening letters and interference that takes place pre-publication. Members have told us of the significant financial and emotional distress caused by receiving legal

threats including in the form of emails and letters. Journalists ensuring they offer a right of reply, an important step ahead of publication, are then faced with threatening correspondence that fails to answer the questions posed, and is designed to deter and stymie publication. Law firms often send these letters on behalf of their clients, in a manner designed to make the publisher and individual journalist back off. This abuse of process can be drawn out and often goes unreported. Again, this means its true scale cannot easily be captured.

The NUJ has recognised the growing trend of journalists directly receiving threats of legal action. Previously, such threats/lawsuits were targeted at publishers considered responsible for publication of content. The impact of this shift in the use of SLAPPs, is to ensure a chilling effect and no doubt instil fear that deters any future journalistic content on an issue. For small publishers and freelance journalists without the backing of large legal teams, financial resources, or support structures, avoiding publication can seem the most appropriate course of action to prevent bankruptcy. Where publication proceeds, reports may be watered down in fear of legal action. This means stories, including those about financial misuse and corruption in the public interest, go untold.

Post publication in SLAPPs cases, it is not uncommon for journalists to be targeted in lawsuits, named as defendants without any case being brought against their publisher. By singling out individuals without resources, powerful oligarchs and wealthy individuals/institutions aim to bury journalists under legal costs for prolonged periods of time.

Many if not all Scottish media organisations are facing financial challenges, and can find it increasingly difficult to justify the huge costs involved in defending a claim. Doing so redirects time and resources away from stories and reporting that would otherwise have been pursued. Freelances have the added burden of legal action inhibiting their ability to carry out other paid work.

The changes brought to the Defamation legislation in Scotland were welcome and overdue, but do not, in themselves, form a comprehensive anti-SLAAP approach. Any statutory definition of SLAPPs must be broad and consider the tactics deployed in their use, alongside the characteristics that feature across cases. These include threats against individuals instead of those they work for; a review of previous history of legal intimidation using the same law firms; issuance of legal threats at right to reply stage and lengthy and complex communication prior to

publication. A rigid definition could mean cases fall outside scope, increasing threats to journalism as loopholes are found.

The NUJ has long campaigned for low-cost arbitration solutions to settle genuine disputes and would welcome any moves to ensure journalists and media outlets no longer face prohibitive costs and deliberate intimidation by wealthy litigants with the deepest of pockets. For too long the super-rich have got away with abusing the law to bully journalists and undermine media freedom.

High legal bills involved in bringing a SLAPPs case do not currently act as a deterrent to wealthy individuals. As the truth defence in defamation cases means the burden of proof falls on those subject to SLAPPs action, cases are able to move forward with little pressure on claimants. Instead, the ability to tie journalists in knots, recognising cases can often proceed for years, is a tactic used. A focus on reducing costs throughout the process, and a costs cap on the damages claimants can seek would be positive reform.

Reform to legislation and any consideration of anti-SLAPP law should include a clause that enshrines the right of journalists to publish information in the public interest. Enshrining a statutory public interest defence would be cross-cutting and a major advance in protecting journalists and public interest journalism.

The appropriate jurisdiction test requires reform to ensure a reversal in the current view of the UK as an attractive place to file SLAPPs suits. If the situation in England and Wales were to change, Scotland would be seen as an appropriate legal haven. Journalists around the world are defending themselves against lawsuits filed in the UK and face not only daunting legal costs and lengthy process times, but must also attempt to gain an understanding of UK and Scottish law.

SLAPPs cases in the UK have also been linked to financial crime. Previous investigations into how cases have been financed have found links to corruption and 'dirty money'. Used to prevent publication of stories, such cases negatively impact media freedom. A survey by the Foreign Policy Centre in 2020, found "63 journalists working on financial crime and corruption in 41 countries identified the UK as the leading international jurisdiction for legal threats. More than 60% of respondents were working on corruption investigations with a direct or indirect link to the UK."

Without Scottish Anti-SLAPP legislation, those wealthy enough to bring lawsuits in will continue to restrict media freedom, inhibit the work of journalists, and damage the media industry in Scotland. Public interest journalism is a vital service and adequate reform will ensure better protection for journalists and others who seek to report on such matters.