

Newsbrands Scotland submission of 19 October 2023

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

Newsbrands Scotland (formerly the Scottish Newspaper Society) is the trade association which represents the news publishing sector in Scotland, and I write in support of a petition about Strategic Lawsuits Against Public Participation (SLAPP) currently before your committee.

The Defamation and Malicious Publication (Scotland) Act (DMPA) of 2021 successfully introduced some key principles into Scots law, not least of which is the serious harm test, and its very success means those wishing use the law to limit freedom of expression in Scotland must find other avenues.

That such avenues exist is not a failing of what was exemplary legislation, and the potential use of SLAPPs should not be regarded as exploiting loopholes, but determined individuals finding new ways to achieve their goals unrelated to personal or corporate reputation. Similarly, the lack of cases in Scotland, which was used by some to argue that defamation reform was unnecessary, is not a reason for inaction in this regard.

The UK government is in the process of tightening restrictions on the use of SLAPPs, and with progress in the Council of Europe and the European Union there is therefore a danger that without parallel legislation here, the Scottish courts could become a favoured jurisdiction for vexatious litigants seeking to limit others' freedom of expression, including public interest reporting.

SLAPPs are an abuse of the litigation process, but as it stands there is no means in Scots law to dismiss SLAPP threats at an early stage, reduce costs for targets, or increase costs for pursuers to dissuade future abuse. Such changes would give editors and journalists more comfort that they can continue to report in the public interest.

News publishers, editors and journalists depend on a legal system which protects against systemic threats to public interest reporting, but dealing with SLAPPs can drain financial, editorial and personal resources at a time when all parts of the sector, from freelancers and small independent

publishers to large corporations, remain under considerable commercial pressure, and even just threatened SLAPP action can therefore chill reporting.

Like the DMPA, any anti-SLAPP legislation should clearly enshrine the right of journalists to publish information in the public interest, which would be a significant advance in protecting public interest journalism, something I know you fully understand is essential for a functioning modern democracy.