

Petitioner submission of 11 March 2024

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

This update arises out of the Scottish Anti-SLAPP Summit, held at the University of Glasgow on Monday 26 February 2024. The all day summit involved over 20 platform speakers plus other contributors.

SLAPP Targets

While most targets of SLAPPs are not known, due to the majority of SLAPPs never making it to court, the summit heard presentations from a number of individuals who have been targeted with threats that bear the hallmarks of SLAPPs.

The 4 “Scottish” SLAPPs discussed, allowed those attending to hear at first hand of the considerable harassment, both legal and psychological, involved. Those targeted included a retired academic, a woman acting as an advocate for victims of a financial scam, an environmental campaigner, and a journalist and former MSP. The laws being deployed to harass were varied.

A number of the journalists and media workers present also highlighted the legal threats they have faced as a result of their public interest reporting.

Legal Issues

In an early response to my petition, the Scottish Government implied Scotland’s recently updated defamation laws would be sufficient. While this would only cover SLAPPs brought through defamation, academics at the University of Glasgow Law School have analysed the impact of the serious harm threshold established in the 2013 reform of defamation law in England and Wales. The research found “the serious harm test post-Lachaux has knocked out a significant number of cases. It certainly does act as an important filter for spurious cases.” However, the research shows that it is not operating as an early dismissal mechanism as “serious harm cannot normally be considered at an

early stage in proceedings. It often goes to full trial.” Full trials require significant and costly legal resources to defend. **The same threshold was established in the defamation and malicious publications (Scotland) Act 2021 and so there is no certainty as to whether it will ensure defamation actions are dismissed before legal costs have accrued.**

Moves in other Jurisdictions

When I presented my petition, there was already early consideration of moves to address SLAPPs in England and Wales and also in European institutions. The Summit heard of further progress including the recent passage of anti-SLAPP provisions in the Economic Crime and Corporate Transparency Act 2021, which protected reporting on economic crimes. Further to this, an anti-SLAPP Private Members’ Bill passed its 2nd reading in the UK Parliament on 23 February. Both would only establish limited protections in England and Wales. Both Northern Ireland and the Republic of Ireland have also included questions about SLAPPs in ongoing consultations as to their respective defamation laws, with a view to potential reform in the near future.

On 27 February, the European Parliament approved the EU Anti-SLAPP Directive, which will set the minimum standards for protecting public watchdogs against SLAPPs in EU member states. The Council of Europe has also established a draft recommendation on countering SLAPPs to outline further steps for member states (including the UK) to take to protect against SLAPPs, which is expected to be formally adopted in the coming months. Anti-SLAPPs laws are already in place in a number of different Canadian provinces and 34 US states.

SLAPP Tourism

There was agreement within the Summit that progress in other jurisdictions, including within EU member states, and England and Wales, could leave Scotland the jurisdiction of choice for SLAPP pursuers. Without robust protections against forum shopping and at a time of increased cross-border publication, especially through online platforms, SLAPP pursuers will seek to identify a jurisdiction that will enable them to threaten their critics and draw out costly legal threats. **With fewer protections than neighbouring jurisdictions, Scotland would face serious risks.**

Don’t wait

It was argued that Scotland must establish robust anti-SLAPP laws to ensure it does not fall behind other nations in Europe and across the globe. It also should not wait to see what others do before it responds to threats to free expression. The summit highlighted the presence of relevant expertise willing to assist, including the University of Aberdeen anti-SLAPP hub, Index on Censorship and the Scottish Anti-SLAPP Working Group who are already working on the development of an anti-SLAPP law for Scotland.