

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

Michelle Thomson MSP submission, 28 March 2024

I have previously written in support of Petition PE1975 submitted by Roger Mullin and have been following its progress via the Petitions Committee with interest.

I thank the committee for offering me the chance to contribute to the session planned for 17/04/2024 but I will be attending another committee of the Parliament on that date.

However, I offer some further information which I hope the committee will factor into their deliberations.

On a recent trip to Malta, I was able to meet with Katherine Ward LVO OBE who is the British High Commissioner.

Part of our discussions were into the case of an investigative Maltese anti-corruption journalist called Daphne Caruana Galizia. She was murdered in 2017 and, at the time of her death, it was estimated she had forty-eight SLAPPs against her.

As you can appreciate, the circumstances of her death, whilst tragic, also brought renewed global interest in measures to stop the use of SLAPPs.

Work is still underway in Malta, but Ms Ward was able to confirm that the Maltese Government is watching with interest measures being brought forward in the UK and the European Union.

The “Strategic Litigation Against Public Participation Bill”, brought forward by Wayne David MP passed its 2nd reading in the UK Parliament on 23 February 2024 with UK government support. It builds on the Economic Crime and Corporate Transparency Act 2023, which included new laws to stop wealthy elites using SLAPPs on issues around economic crime, including corruption and embezzlement, by extending its scope beyond financial crime. It seeks to block SLAPPs across all other types of litigation, including sexual harassment.

These initiatives, however, only cover England and Wales.

On 27 February, the European Parliament approved the EU Anti-SLAPP Directive (Daphne’s Law).

Anti-SLAPPs laws are already in place elsewhere, including in a number of Canadian provinces and thirty-four US states.

Scotland has fallen behind such moves in other jurisdictions, and if urgent moves are not made, we will likely become the destination of choice for so-called “forum shoppers” intent on pursuing SLAPPs – not least because we live in a world of online publications which allowing for a publication based anywhere in the world to face a SLAPP in Scotland because the publication is accessible in Scotland.

I know that some doubt we will become a destination of choice. But I point to an example where we have significant evidence that Scotland has become a destination of choice for criminal behaviour. I supported the petitioner when we were MPs together, as he sought to persuade the UK government to reform Scottish Limited Partnerships. He did so, as SLPs had become commonly used by international financial criminals and others to hide their assets and illegal earnings behind their very opaque structure. This therefore is another example of “forum shopping” where criminals in places ranging from Russia to the USA, Israel to the Baltic states were able to choose Scottish Limited Partnerships as their vehicle. Forum shopping is not new to Scotland.

It would be naïve in the extreme to believe Scotland would not become an increasing destination for SLAPPs. As other countries act so must Scotland.

I stand firm in my support for this petition.