

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1975](#): reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs), lodged by Roger Mullin

Brief overview of issues raised by the petition

Strategic lawsuits against public participation (SLAPPs) refer to court action taken by rich and powerful interests (both individuals and businesses) with the intention of silencing critical views. The intention may be to weaken the party defending the claim personally or financially. It can also be to divert resources away from the activities generating the criticism because of the necessity of fighting legal action.

Defamation claims are a common tool to take forward SLAPPs but other types of legal action can also be used – for example data protection legislation.

The petitioner has been told that the Scottish Government is not currently planning any legal reforms to deal with SLAPPs. He is concerned that Scotland could become a focus for the powerful interests who wish to raise SLAPPs.

- The Scottish Parliament scrutinised reforms to defamation law via the Defamation and Malicious Publication (Scotland) Bill. In its [Stage 1 Report on the Bill](#), the Session 5 Justice Committee recognised the “chilling effect” that defamation claims could have on freedom of expression.
- The results in defamation cases relate closely to the specific facts of the situation. It is therefore difficult to predict the likelihood of success. In addition, defamation action can be expensive. This may mean that people are unwilling to take the risk of defending their position.
- The Justice Committee heard that many more journalists are self-employed than in the past. Traditional news organisations were also struggling to maintain their financial viability. In this financial environment, the threat of legal action could be sufficient to get an investigation dropped.
- The Defamation Bill proposed reforms that would strengthen protections for freedom of speech. These included codifying the law to make it clearer and requiring that someone must have suffered “serious

harm” before they could bring a defamation claim. The Bill became the Defamation and Malicious Publication (Scotland) Act 2021.

- The Justice Committee touched on SLAPPs in its Stage 1 Report. It noted a proposal from Scottish PEN (defending literary freedom) to create an “unjustified threats” court action. This would give someone targetted in a defamation case the right to ask the court to dismiss the action as an unjustified threat. Ultimately, the Committee thought there were advantages and risks to the proposal, so it recommended further consideration of this issue by the Scottish Government.
- The UK Government has published its response to a recent consultation on SLAPPs. This recognises that SLAPPs are happening and are having an impact on freedom of expression. The intention is to legislate for a new process to allow early dismissal by the courts of SLAPPs. The UK Government also plans to change rules about the costs that can be claimed by the parties to court action for SLAPPs-type actions.
- The European Commission has proposed European Union legislation to tackle SLAPPs. The proposals would allow the courts to dismiss “manifestly unfounded” court action. There would also be the ability to award expenses to the defending party and financial penalties against the party who raised the unfounded action.

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