



Parliamentary briefing session: Countering Legal Intimidation and SLAPPs in the UK

Joint session: APPGs on Anti-Corruption & Responsible Tax and on Fair Business Banking

22nd June between 14:00 and 15:00

Objective of the session

- Promote understanding of the issue of Strategic Lawsuits Against Public Participation (SLAPPs)
- Win over Parliamentary champions for tackling legal Intimidation and SLAPPs in the UK

Speakers

- **Chair:** Lord Cromwell, Crossbench
- **Susan Coughtrie**, Project Director at the Foreign Policy Centre, co-chair of the UK anti-SLAPP coalition, and author of 'London Calling': The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom
- **Charlie Holt**, UK Campaigns Manager at English PEN, co-chair of the UK anti-SLAPP coalition and leading the development of a model UK anti-SLAPP law
- **Caroline Kean**, Founding Partner at Wiggin Law Firm, defended the journalists and authors Catherine Belton, Tom Burgis and their publisher HarperCollins in recent SLAPP cases

Key themes of the session

- The session focused on the publication of [a new report by the Foreign Policy Centre](#) titled 'London Calling': The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom', which highlights three major reasons why SLAPPs are so effective in the UK - the cost and length of trials and the procedural nuance of burden of proof being on the defendant.
- There are additional reasons for the UK's attractiveness for prospective SLAPPs, including the UK's position as a hub of illicit financial flows and the cultural normalisation of aggressive legal tactics.
- The main recommendation of the report was for a new Anti-SLAPP law in the UK, which would dispose of SLAPPs as quickly as possible in order to reduce their impact, provide protection to defendants by reducing the potential trials costs and aim to dissuade future SLAPPs via sanctions for obviously vexatious cases.
- In addition, tweaks to existing laws could help the issue, though not entirely as undoubtedly enablers would find workarounds, hence the need for new universal legislation. Tweaks could include reform of Privacy Laws which are spuriously used for legal threats and the Defamation Act, which at present does not adequately protect journalists acting in the public interest.

Please find a full summary of the briefing session below.

Why are SLAPPs such an issue in the UK?

- SLAPPs are such a commonly used mechanism of journalistic suppression in the UK primarily due to the particularly onerous conditions facing a potential challenge, particularly the astronomical costs they could accrue, the amount of time they could spend fighting a case and the procedural nuances of UK law which place the burden of evidence on the defendant.
- Another reason we see so many SLAPPs in the UK is that there is a demonstrable link with the reputation management and laundering of individuals who profit from crime and corruption, due to the UK's unique position as a hub of illicit financial flows.
- SLAPPs are facilitated in the UK by a legal culture which has normalised aggressive legal tactics and firms who serve as enablers for even the most transparently vexatious claims.

What would a new Anti-SLAPP Law look like?

- Tweaks to existing legislation could help the issue, but would undoubtedly be insufficient to stamp out SLAPPs entirely, not least because enablers would surely find new ways of exploiting loopholes, resulting in a neverending game of 'whack-a-mole'. As such, a new UK Anti-SLAPP law is required.
- There are international examples, such as the Ontario model, which the UK could draw inspiration from. The US has 34 Anti-SLAPP laws in operation, and the UK would do well to learn from both the good and the bad results these have yielded.
- A good anti-SLAPP law would achieve three primary objectives:
 - 1) Dispose of SLAPPs as quickly as possible, as the best way to defuse the threat is by cutting the process short. This could include the use of an early dismissal mechanism, avoiding subjective testing and pre-empting a scenario where a court has to identify the 'meaning' of the subject of a SLAPP, which is a very hard thing to do. An objective test for claims targeting an act of public participation, such as a piece published by an investigative journalist, would require a claimant to reach a higher threshold in demonstrating the likelihood of prevailing at trial.
 - 2) Provide protection to defendants by reducing costs, which cannot be done without establishing a fund or expanding eligibility to legal aid to those acting in public interest. Further measures could include the full recovery of costs on an indemnity basis, to offset vexatious claimant's intentions to financially harm a defendant.
 - 3) Use dissuasive sanctions to deter further SLAPPs, such as punitive court fees and naming and shaming illegitimate litigants, in an attempt to delegitimise their use and change the contributive legal culture.

What other changes could be made to mollify the issue?

- Theoretically, existing laws could filter out improper claims, but in practice this doesn't happen and it is clear that the judiciary won't develop in this way if left to its own devices.
- Though the issue can't be properly addressed by remedying existing laws, there are a few worthwhile tweaks that could be made.
- Making sure illicit funds are not used to fund SLAPPs, via more proactive SRA monitoring of SARs and more discerning client onboarding from UK Law Firms, would certainly reduce the number of SLAPPs being issued by individuals with seemingly corrupt sources of wealth via UK courts.
- Ambiguities in Privacy laws, such as the Defamation Act, have been abused in the past and used as a vehicle for SLAPPs. In these cases the problem isn't with the substance of law, more with how it's used.



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