

# UK Anti-SLAPP Conference

## SPOTLIGHTING SOLUTIONS

28-29 November 2022



#SLAPPS22



# Contents

|           |  |         |
|-----------|--|---------|
| <b>1</b>  | Introduction   | Page 2  |
| <b>2</b>  | Spotlight on the Conference Agenda                       | Page 6  |
| <b>3</b>  | Spotlight on the UK as a Leading Jurisdiction for SLAPPs | Page 12 |
| <b>4</b>  | Spotlight on UK SLAPP Cases                              | Page 17 |
| <b>5</b>  | Spotlight on UK Anti-SLAPP Developments: A Timeline      | Page 26 |
| <b>6</b>  | Spotlight on Anti-SLAPP Legislative Initiatives Globally | Page 28 |
| <b>7</b>  | Spotlight on the Role of Lawyers                         | Page 36 |
| <b>8</b>  | Spotlight on the Impact of SLAPPs                        | Page 41 |
| <b>9</b>  | Spotlight on Practical Support and other SLAPP Resources | Page 43 |
| <b>10</b> | Information about the Organisers and our Partners        | Page 45 |

“SLAPPs are now established on the political agenda in the UK, but the implementation of effective solutions is the key next step. The conference will explore not only the legislative, but also regulatory, cultural and behavioural changes needed.”



**Susan Coughtrie**

Deputy Director of the Foreign Policy Centre and co-chair of the UK Anti-SLAPP Coalition

“We are excited for the conference to again serve as a platform for the variety of voices from the media affected by this issue, taking stock of the significant progress made as well as focusing minds on solutions.”



**Maria Ordzhonikidze**

Director of the Justice for Journalists Foundation

# Introduction

We are excited to be welcoming you to the second edition of the **UK Anti-SLAPP Conference**, delivered this year in partnership with the International Bar Association’s Human Rights Institute (IBAHRI). When organising the first edition, held in London and online in November 2021, our ambition was to raise the profile of SLAPPs (strategic lawsuits against public participation). Despite being a growing global phenomenon, the term was still not well known in the UK, even among journalists and media outlets who had experience of such legal threats.

With the participation of more than 40 speakers from 20 countries, last year’s event reached a wide audience. The almost 500 people who attended heard journalists provide very similar testimonies, regardless of what they were investigating, and whether they were based in the UK or South Africa, Asia or South America. The financial and psychological impact on those subject to SLAPPs can be personally devastating, but the stories shared also highlighted their insidious effect on media freedom and the redress of wrongdoing in our societies.

The theme of this edition of the conference is **‘Spotlighting Solutions’**. Since it was established by the Foreign Policy Centre (FPC) and Index on Censorship in January 2021, members of the **the UK Anti-SLAPP Coalition**

have spoken out on many SLAPP cases - such as those brought against Carole Cadwalladr, Tom Burgis, Catherine Belton and Clare Rewcastle Brown, to name a few, all joining us as speakers this year. Crucially, however, the Coalition has also spent much of the last year exploring and developing potential legislative and regulatory solutions.

The Coalition has recently launched a **model UK Anti-SLAPP Law** to provide the basis for an effective legislation. The UK Government had been lagging behind the United States, Canada and the European Union to address SLAPPs. However, the Russian invasion into Ukraine, in February 2022, put the topic squarely on the political agenda. While the Government committed in July, after a two month consultation, to take action on SLAPPs, we are still awaiting a timeline for reform. In the meantime, we have been encouraged by the decision taken by the Solicitors Regulatory Authority (SRA) to proactively investigate potential SLAPP cases as well as adopt our recommendation to introduce specific guidance in the form of an **anti-SLAPP warning notice**.

It is our hope that you find the conference, and this accompanying booklet, useful and informative resources to understand more about SLAPPs, their impact and what concrete measures we can all take to stop them.

# Welcome from Baroness Helena Kennedy KC

The International Bar Association's Human Rights Institute is delighted to partner with the Foreign Policy Centre and Justice for Journalists Foundation to host the 2022 edition of the UK Anti-SLAPP Conference. It is increasingly clear that SLAPPs have a hugely detrimental effect on the right to freedom of expression and media freedom. The use, or even threat of, legal action in order to intimidate or censor journalists often creates a chilling effect and interferes with journalists' abilities to perform their professional duties whilst reporting in the public interest. SLAPP suits are an abuse of the legal system and often result in entertaining baseless court cases that can take years to defend.

In my keynote address at the Conference last year, I noted how the pervasive application of this type of litigation presents a serious challenge to media freedom as it is designed to drain resources and chill critical reporting. Whilst the majority of the reported cases related to SLAPPs in the UK are linked with investigations into financial crime and corruption, legal threats are used to suppress information on a wide range of topics. They are often filed with the intention to intimidate into silence. I will speak on a session **SLAPPedToo: What can we do to stop SLAPPs from preventing the reporting of sexual harassment?** which will highlight how SLAPPs are used against those reporting on sexual harassment and abuse.

Alongside distinguished speakers, we will discuss the effect on journalists who report these cases as well as the serious impact on victims which too often results in justice being delayed or denied.

The Conference will also shine a spotlight on proposed legislative and policy developments in the UK, EU and across the globe designed to address this growing phenomenon. As a member of the [High Level Panel of Legal Experts on Media Freedom](#), a group of leading experts in the field of international law, our remit is to provide legal advice and recommendations to the Media Freedom Coalition. In our role as the Coalition's independent advisory body, the High Level Panel is committed to drawing attention to the issue of SLAPPs and similar misuses of the law. We continue to work with partners to propose solutions to what is a growing and serious problem for journalists around the world.

The fear of the truth speaks to the power of media freedom, and the importance to fight for those who stand on the front lines courageously exposing corruption, abuses of power and human rights violations cannot be understated. We look forward to welcoming you to the Conference and to engaging in meaningful discussions focused on practical solutions and global reform.



**Baroness Helena Kennedy of the Shaws, KC**

Director of IBAHRI and a barrister at Doughty Street Chambers

# A few words from our 2022 Keynote Speaker

Since the start of 2022, Mr Davis has been spearheading cross-party efforts to address SLAPPs in the House of Commons and calling for swift action to address this issue in the UK. In January, he co-sponsored a debate on 'Lawfare and the UK Court System' together with Labour MP Liam Byrne, and in October,

he organised another debate on 'Lawfare and Investigative Journalism' in light of the recent legal challenges against the media outlets openDemocracy, The Bureau for Investigative Journalism (TBIJ) and the Telegraph, urging the Government to move more quickly with their planned reforms.

**“Centuries of jurisprudence mean that London is among the most respected cities from a legal perspective. However, what is attractive to legitimate businessmen is also attractive to those with nefarious intentions: there are those with exceptionally deep pockets and exceptionally questionable ethics. These people use our justice system to threaten, intimidate and put the fear of God into British journalists, citizens, officials and media organisations.**

**What results is injustice, intimidation, suppression of free speech, the crushing of a free press, bullying and bankruptcy. It results in protection from investigation and gives encouragement to fraudsters, crooks and money launderers. It has turned London into the global capital of dirty money. In extreme cases, it can undermine the security of the state by allowing people to act as extensions of foreign powers.**

**Other countries are already addressing this issue, and as they do, the problem for London will only grow as more and more ultra-wealthy individuals come here to exercise lawfare. If London is to remain the envy of the legal world, then we need to get a grip on the problem and stop this rampant abuse of our system. If we do not, we will continue to face these kinds of attacks on the freedom of our press—the foundation of our state—and we will leave our people subject to grotesque injustice in the face of this outrageous lawfare.”<sup>1</sup>**



Rt Hon David Davis MP

<sup>1</sup> Comments drawn from a speech originally made by Rt Hon David Davis MP during the 'Lawfare and the UK Court System' debate held in the House of Commons on 20 January 2022.

## Agenda Monday 28th November

# Day One

**09:45** Welcome to the conference

10:00

Maria Ordzhonikidze

**10:00** Opening Keynote

10:20

Mr Davis will share his thoughts on the issue of SLAPPs, their impact both on media freedom and the health of our society, as well as the Government's action to address this issue to date.

Rt Hon David Davis MP

10min Short Break

**10:30** Session 1

The UK's Anti-SLAPP Reforms – a big enough step in the right direction?

10:45

There have been many anti-SLAPP developments over the last year, but will the proposed reforms go far enough to tackle the issue of SLAPPs in the UK? How closely do the proposals reflect the recommendations made by the UK Anti-SLAPP Coalition?

Susan Coughtrie  
Rupert Cowper-Coles  
Gill Phillips  
Tom Burgis  
Chaired by Lord Cromwell

15min Short Break

**12:00** Session 2

The view from Scotland and Northern Ireland

13:15

Both Scotland and Northern Ireland have recently taken measures to reform their libel laws, but what is the current landscape in both countries for legal threats against the media? What, if any, further steps should be taken to protect against SLAPPs?

Rosalind McInnes  
Nik Williams  
Sam McBride  
Mike Nesbitt  
Chaired by Jim Fitzpatrick

60min Lunch Break

**14:15** Session 3

Anti-SLAPP Legislation: pros & cons from a global perspective

15:30

What learning can be taken from pre-existing anti-SLAPP laws and initiatives, as well as the various approaches and mechanisms used within them? How have these influenced the development of the UK Anti-SLAPP Law?

Flutura Kusari  
Charlie Holt  
Laura Prather  
Professor Chris Tollefson  
Chaired by Professor Dario Milo

15min Short Break

**15:45** Session 4

Legal intimidation, legal ethics & the role of lawyers?

17:00

Lawyers have often been referred to as potential enablers of legal intimidation and SLAPPs, with concerns raised about the level of due diligence law firms employ when onboarding clients, as well as the legal tactics deployed on their behalf. What should the legal community be doing to stop SLAPPs?

Matthew Jury  
Dan Neidle  
Pia Sarma  
Caoilfhionn Gallagher KC  
Chaired by Mark Stephens CBE

60min Drinks Reception / Networking

## Agenda Tuesday 29th November

# Day Two

**09:30** Welcome to the second day

09:35

Susan Coughtrie

**09:35** When a SLAPP is a SLAPP & defending yourself in the UK libel courts

10:20

Carole Cadwalladr will discuss her experience with Rebecca Vincent who monitored the trial in January.

Carole Cadwalladr  
Rebecca Vincent

10min Short Break

**10:30** Session 5

SLAPPs in today's independent investigative media landscape

11:45

How does dealing with legal threats and SLAPP cases sit alongside the other challenges facing the media today? This session will hear first hand from journalists as well as lawyers that support them.

Clare Rewcastle Brown  
Caroline Muscat  
Scott Stedman  
Ana Bejarano  
Chaired by Pádraig Hughes

15min Short Break

**12:00** Session 6

SLAPPedToo: What can we do to stop SLAPPs from preventing the reporting of sexual harassment?

13:15

While SLAPPs cases are often linked with corruption, they are also used against those investigating other issues including sexual harassment and abuse. This session will discuss the impact not only on media reporting these cases, but also on the victims and how this too often results in justice being delayed or denied.

Gabriel Pogrund  
Meirion Jones  
Suyin Haynes  
Paola Ugaz  
Chaired by Harriet Johnson

60min Lunch Break

**14:15** Session 7

What are the practical steps media, and publishers, should take to push back against SLAPPs?

15:30

A key challenge for the media is how to respond proactively to SLAPP threats. This session will provide insights from speakers with a variety of perspectives.

Arabella Pike  
Alexander Papachristou  
Juliet Oliver  
Annelie Östlund  
Per Agerman  
Chaired by Sarah Clarke

15min Short Break

**15:45** Session 8

SLAPPs Solutions – what action can the UK take to address SLAPPs domestically and internationally?

16:30

This closing session will examine what is next for SLAPPs reform in the UK as well as what more the UK could do to support anti-SLAPP initiatives underway at intergovernmental forums.

Can Yeginsu  
Teresa Ribeiro  
Sarah Clarke  
Chaired by Charlie Holt

**16:35** Closing remarks by Minister Freer

17:00

Mike Freer MP, Minister for Courts, Legal Services and International will provide closing remarks before JFJ's Director wraps up the conference with her reflections on key takeaways.

Mike Freer MP  
Maria Ordzhonikidze

60min Drinks Reception / Networking



# Evening Events

SLAPPs are frequently part of a much bigger picture – one about censorship and corruption, not just abroad, but increasingly in the UK too. Our evening events have been designed to allow for

a broader conversation about the impact that the UK's facilitation of corrupt wealth originating from authoritarian regimes has on media freedom and democracy globally.



The Azerbaijani Laundromat investigation, published by the Organised Crime and Corruption Project (OCCRP) in September 2017, revealed a “complex money-laundering operation and slush fund that handled \$2.9 billion over a two-year period through four shell companies registered in the UK.”<sup>2</sup> OCCRP reported that between 2012-14 members of Azerbaijan’s political elite were using these funds to “pay off European politicians, buy luxury goods, launder money, and otherwise benefit themselves.” This was happening at a time of severe crackdown within Azerbaijan itself, where independent media and wider civil society continues to be subject to tight restrictions.

This event will focus on the experiences of journalists who uncovered this scheme.

**Khadija Ismayilova, an independent investigative journalist in Azerbaijan**, who works with OCCRP, has faced significant persecution in her home country as a result of her reporting on corruption amongst political elites, including her arrest and imprisonment in 2014. While she was released from prison in 2016, by presidential pardon, her conviction was not overturned and she remained subject to a travel ban and other probationary measures until last year. Meanwhile, her colleague **Paul Radu, co-founder and Chief of Innovation at OCCRP**, was pursued through the London libel courts between 2018-2020 by Javanshir Feyziyev, a sitting Azerbaijani MP and businessman named in the investigation. This was despite Radu being a Romanian citizen and OCCRP being registered as an outlet in the US.

2

OCCRP, The Azerbaijani Laundromat, September 2017.

During the two years of trial proceedings, OCCRP journalists continued their investigation, collecting new information and strengthening their story. Due to disclosure rules, they were required to share this information with their opponent, who ultimately decided to settle on the eve of the trial in London. Feyziyev made a settlement in terms favourable to OCCRP, which included the original reporting staying online. However, while defending the case the media outlet had spent hundreds of thousands of dollars, as well as significant time, effort and stress diverting them from other investigations. As Radu himself has put it: “Even if you win, you lose.”

Less well reported, but connected, are threats to the principle of ‘open justice’ within the UK legal system. Since 2020, **Martin Bentham, Home Affairs Editor at the Evening Standard**, has challenged the awarding of anonymity orders to those subject to investigation by the National Crime Agency (NCA) for their links to the Azerbaijani laundromat scheme. Anonymity orders create a further shield against public scrutiny, and present an obstacle to media attempting to report on proceedings. Bentham challenged the anonymity orders against Izzat Khanim and Suleyman Javadov, from whom the NCA seized £4 million in July 2021 after they accepted that the money came into the UK unlawfully via the Azerbaijani laundromat.<sup>4</sup> The Javadovs entered the UK through the ‘golden visa’ scheme and Mrs Javadova was granted citizenship in February 2018, the same year the NCA started

investigating the couple. Notably, in January 2022, a UK court also approved the NCA’s seizure of £5.6m collectively from the family members of the Azerbaijani MP who sued Radu.<sup>5</sup>

The Azerbaijan laundromat is not a singular example of what happens when the UK fails to address the misuse of its legal and financial systems. **Dr Susan Hawley, Executive Director at Spotlight on Corruption**, has been working on anti-corruption issues in the UK for nearly two decades. A January 2022 report by Spotlight on Corruption, found that “despite overwhelming evidence of high money-laundering risks in the UK, criminal investigations into, and prosecutions for, money laundering in the UK have been falling rather than rising.”<sup>6</sup> Spotlight on Corruption’s research highlighted that the UK’s total budget for fighting economic crime is £852m a year, equivalent to 0.09% of total government spending, and 0.042% of the UK’s total GDP. As a result, the report concluded that “UK law enforcement capacity – an essential component of this fight – is under-resourced, over-stretched, and out-gunned.” While there has been a sharp increase in attention paid to tackling economic crime in the UK since the Russian invasion into Ukraine, including the adoption of the Economic Crime Bill in March, many campaigners have raised concerns that Government efforts to crackdown on corruption have come too little, too late.

This event will be chaired by **Susan Coughtrie, Deputy Director at the Foreign Policy Centre**.

“So, how does a Romanian reporter –or, for that matter, any foreign journalist– get sued in the United Kingdom by an Azerbaijani politician for an article about corruption taking place hundreds of miles away?”<sup>3</sup>



**Paul Radu**  
Co-founder and Chief of Innovation, OCCRP

3

Paul Radu, *How to Successfully Defend Yourself in Her Majesty’s Libel Courts*, GJIN, February 2020.

4

Martin Bentham, *‘Laundromat’ couple hand over £4m after Evening Standard win*, Evening Standard, July 2021.

5

Steve Swann and Dominic Casciani, *Court approves £5.6m seizure over money laundering*, BBC News, January 2022.

6

Daniel Beizsley and Susan Hawley, *Closing the UK’s economic crime enforcement gap*, Spotlight on Corruption, January 2022.

# Evening Events



The UK Government's efforts to address SLAPPs have been widely seen as a part of their response to the Russian invasion into Ukraine in February 2022. While interest in SLAPPs had already been growing, the Ministry of Justice launched their call for evidence on the issue on 17th March, just two weeks after the war started. By then, the UK had already sanctioned a number of Russian oligarchs, including Chelsea Football Club owner Roman Abramovich, as well as businessmen Mikhail Fridman and Petr Aven for their close ties to the Kremlin regime.

All three, plus the Russian state oil company Rosneft, had spent much of the previous year actively pursuing Catherine Belton, investigative journalist and author of the book 'Putin's People: How the KGB Took Back Russia and Then Took On the West' and her publisher, HarperCollins through the London courts. This 'legal pile on' had been instrumental in raising public awareness of the dangers of SLAPPs, with HarperCollins having to spend £1.5 million to defend the cases, which were ultimately resolved by December 2021 without coming to trial (see page 20 for case details). The many articles published in the weeks

after the invasion about Abramovich in particular seemed to indicate that media outlets once afraid of potential legal threats were perhaps buoyed by the sanctions regime. That included the BBC investigations series Panorama, which finally released an episode 'Roman Abramovich's Dirty Money', which had reportedly been in the works since 2018.

Meanwhile inside Russia, the remaining space for independent media quickly started closing. A number of outlets, including the country's oldest independent newspaper, Novaya Gazeta, were forced to stop operating. With fears of further crackdowns there was also a mass exodus of independent journalists and civil society representatives. Among them was Galina Arapova, director and senior media lawyer at the Mass Media Defence Centre (MMDC), a prominent Russian NGO. MMDC had previously been designated as a 'foreign agent', a term used to vilify independent civil society. An expert media lawyer working in the field of freedom of expression and freedom of information in Russia since 1996, Arapova had been the first Russian lawyer to be designated a 'foreign agent' individually in October 2021.

While much attention has been placed on Russia, this event will focus on the UK's role as the 'enabler' both of the corrupt wealth being exported out of authoritarian countries but also as a hub for services (legal and beyond) to shut down scrutiny about it. Dame Margaret Hodge MP is Chair of the All Party Parliamentary Group on Anti-Corruption and Responsible Tax, and has been an active campaigner against dirty money, economic crime and illicit finance, calling on the government to introduce tougher measures. In a debate held in February 2022, Dame Margaret called for sanctions against a number of Kazakh individuals, highlighting how systemic corruption had negatively impacted the development of the country, which has a poor human rights record and little media freedom. She stated "Imposing sanctions on this corrupt elite will not of itself root out evil practices or lead to a radical democratic transformation in Kazakhstan, but it will demonstrate that we mean what we say when we commit to fighting dirty money and corruption."<sup>7</sup>

Franz Wild, Finance Editor at The Bureau of Investigative Journalism (TBIJ), has been exposing how the U.K. facilitates international corruption and wrongdoing, through the outlet's Enablers Project. Western financial and legal systems are far from passively servicing this corruption. Aside from utilising anonymous shell companies to launder

dirty money and parking it in luxury property, kleptocrats are also seeking to control their image and garner influence in the West. Law firms and PR companies enable this reputation laundering, including through initiating legal threats against those seeking to investigate apparent wrongdoing or share concerns regarding dirty money being used for political or charitable donations.

Currently, TBIJ, alongside The Telegraph and openDemocracy, are facing their own legal threat. After the outlets had reported on the link between the Nazarbayev Fund, associated with a former Kazakh president and Jusan Technologies Ltd, a UK registered company that controlled over \$7.8bn in gross assets, earlier this year, cases were filed at the High Courts in London in August. Last month, 22 members of the UK Anti-SLAPP Coalition released a statement in support of the media outlets, urging for the cases to be dropped and underscoring the urgent need for the UK to introduce anti-SLAPP measures.<sup>8</sup> Such developments lead to questions as to what has changed since February, the role and effectiveness of sanctions and whether or not these can lessen the impact of SLAPPs.

This event will be chaired by Edward Lucas, Author, European and transatlantic security consultant and fellow at the Center for European Policy Analysis (CEPA).

"The UK, like many other countries, really welcomed capital from places like Russia with open arms for the past twenty years. It's certainly a place that Russian oligarchs have flocked to, partly because they want to be part of the UK establishment, but partly because they have obviously taken advantage of our lax legislation and lax regulation... Without enabling journalists, and other financial watchdogs to look at these entities without fear of getting crushed by enormous lawsuits, that are going to cost more than anyone's budget allows, then we are going to be open to this type of abuse of our system forever."<sup>9</sup>



Catherine Belton  
 Journalist and author of the book Putin's People

<sup>7</sup> HoC, Kazakhstan: Anti-corruption Sanctions, 3 February 2022.

<sup>8</sup> Index on Censorship, Anti-SLAPP measures cannot come fast enough, 5 October 2022.

<sup>9</sup> Catherine Belton, Oral Evidence to the Committee for the Economic Crime and Corporate Transparency Bill, 27 October 2022.



# Spotlight on the UK as a leading jurisdiction for SLAPPs

SLAPPs are brought by the powerful and wealthy, eager to avoid scrutiny, to intimidate journalists into either not publishing or removing information from the public domain and penalise them for critical reporting. The use of this tactic to undermine the media's role as a public watchdog may have proliferated globally, but the UK has been identified as a jurisdiction of particular concern.

**In November 2020, a FPC survey found that the UK was the leading international source of legal threats against journalists working to uncover financial crime and corruption, almost as high a source (31 per cent) as those emanating from EU countries (24 per cent) and the United States (11 per cent) combined.<sup>10</sup>** Legal threats were also identified by the majority of respondents as having the most impact on their ability to continue working, more so than physical, psychosocial or digital threats. While they may also be facing legal threats in their home countries, the majority of the respondents indicated that they are concerned about being sued in the UK far more than in other foreign jurisdictions.

**A key question is why?** Part of the reason is the UK's legal system itself. It is seen as easier to win libel cases in than other parts of the world. Aside from the high level of costs and length involved, the 'burden of proof' in a UK libel case

is on the defendant – i.e. it is not up to the plaintiff to prove that the statement in question is false, rather the defendant must prove that the statement is true – which is often a far harder task than it might at first appear.<sup>11</sup> It is a judge that decides the single legal meaning of the words under claim, and it is this that then must be defended, even if it differs from what the journalist intended.

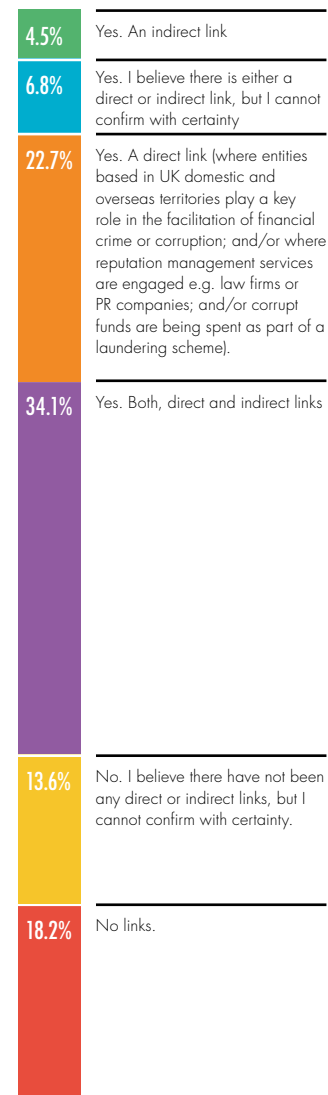
Another reason can be illustrated by another survey finding - **at least 61% of respondents reported their investigations had uncovered a link (directly or indirectly) with UK financial and legal jurisdictions.**

Despite the 2013 defamation reforms libel tourism remains an issue. The role that London plays as a global hub for the super-rich, including those enriched through illicit schemes, appears to be compounding the problem.

English courts have appeared to allow libel cases to proceed so long as a foreign claimant can show a reputation in the UK, for example owning a home, business dealings, children in school in this jurisdiction or some other personal or business interest can suffice. This does not fully take into account how easy that is for those with ample funds to effectively buy residency and citizenship via investment visas, even if they, or their business interests, are largely based elsewhere.

## Links with UK Financial and Legal Jurisdictions

Due to the UK focus of FPC's Unsafe for Scrutiny project, through which this survey was conducted, respondents were specifically asked whether their investigations had direct or indirect links with UK financial and or legal jurisdictions.



In April 2022, FPC together with ARTICLE 19 published 'London Calling': **The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom**, the first in-depth report on this issue. Overall the report found that legal challenges brought in the UK, against journalists and media outlets around the world, are stifling scrutiny and debate on matters of public interest. Below are some of the key findings:

**There is usually a severe power imbalance between the claimant and the defendant.** Claimants are typically members of the political or business elite or large corporate entities, both domestic or foreign, with significant financial resources, for whom the expense of bringing a lawsuit case is relatively negligible. The defendants are typically individual journalists or independent media outlets for whom the cost of defending the lawsuit can risk putting them in financial jeopardy.

**SLAPPs can create significant financial jeopardy for journalists and media outlets.** If a case reaches court the combination of legal costs, fees and potential damages can run into the thousands if not, in some cases, millions of pounds. It is estimated to be a minimum of £500,000 to defend a case to trial in the UK. Claimants can exploit this financial pressure to force defendants to fold, even if they stand by their reporting and want to defend the case. Settlements often require the information to be removed and an apology, thus white-washing the claimant's reputation.

**An inequality in arms can put journalists and media outlets at a disadvantage from the outset, with legal costs starting to accrue long before reaching court – if they ever do.** All cases start with legal letters, which can result in weeks, months and even years of back and forth. Thousands of pounds can be spent in these early stages before seeing the inside of a courtroom. Those with in-house lawyers can perhaps more easily respond or call the bluff of the claimant, but this is much more challenging for small newsrooms or

independent journalists, especially those based abroad.

**SLAPPs brought in the UK are often pursued against individuals instead of, or as well as, the organisation they work for.** Particularly in some transnational cases, this appears to have made the UK a more desirable jurisdiction. Intentional or not, this can isolate individuals from resources that could help defend their cases, such as insurance which may not be available to them as individuals.

**As well as libel, privacy and data protection laws are increasingly being used, often in combination.** These laws have weaker journalistic exemptions for public interest reporting and longer statutes of limitation than libel, making them more attractive grounds on which to sue.

**There is a psychological impact on journalists subject to legal challenges, which is often not sufficiently recognised.** There is a huge amount of pressure on journalists subject to SLAPPs, beyond the financial strain, which can significantly impact their mental health. Journalists are sometimes unable to continue working, at least to full capacity, while a legal action against them is ongoing.

**Responding to legal threats and mounting a legal defence diverts resources away from journalism.** Legal challenges are relatively easy for claimants to issue but dealing with them is a hugely time-consuming process, slowing down publication and eating up valuable, and in the case of smaller newsrooms often limited, financial and other resources that could be spent investigating other stories.

Fundamentally, access to justice, and the right to defend yourself against spurious claims, is an important feature of democratic societies. However, the misuse of legal systems to bully journalists and shut down public interest reporting must also be seen as undemocratic and corrosive to our core values, including freedom of expression and the right to information.

**“The dual role that the UK, but especially London, plays as a hub not only for the facilitation of global financial crime and corruption, but also legal and other services that can be weaponised against journalists trying to shine a light on wrongdoing is highly disturbing.”**



**Susan Coughtrie**  
Deputy Director of the FPC and co-chair of the UK Anti-SLAPP Coalition

**10**  
Susan Coughtrie and Poppy Ogier, Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world, FPC, November 2020.

**11**  
David Carnes, Libel Law: past, present and future, All About Law, December 2019.



## The UK Anti-SLAPP Coalition and Progress to Address SLAPPs in the UK

Since January 2021, members of the UK Anti-SLAPP Coalition have been not only researching, monitoring and highlighting cases of legal intimidation and SLAPPs, but actively seeking solutions. Established by the Foreign Policy Centre and Index on Censorship as an informal UK working group, the Coalition now comprises more than 20 freedom of expression, whistleblowing, anti-corruption and transparency organisations, as well as media lawyers, researchers and academics.

In July 2021, 22 member organisations co-signed a joint policy paper ‘On Countering Legal Intimidation and SLAPPs in the UK’.<sup>12</sup> The policy paper outlined five principles that must be applied in any effort to address this issue:

1. **SLAPPs are disposed of and dealt with expeditiously in court:** SLAPPs take advantage of the litigation process to harass and intimidate their targets. The shorter the process, the less potential there is for abuse. The importance of disposing of a SLAPP quickly is particularly acute prior to the costly disclosure process, which provides the greatest opportunity for legal harassment.
2. **Costs for SLAPP Targets are kept to an absolute minimum:** an award of costs post-SLAPP is an important measure, but not sufficient in this regard. Costs need to be minimised throughout the litigation process to avoid the financial threat of prolonged litigation.
3. **Costs for SLAPP Litigants are sufficient to deter SLAPPs:** these must be made automatically available so as not to represent a further burden

for those already exhausted by the litigation process. They can take the form of punitive or exemplary damages or other sanctions.

4. **Laws implicating speech are narrowly drafted and circumscribed:** that is to say, they must be tightly worded enough to prevent their application being stretched to cover legitimate acts of public participation.
5. **The use of SLAPPs or legal intimidation is delegitimised as a means of responding to criticism:** this principle requires a process of delegitimation, involving an expansion of industry standards, engagement with stakeholders on the incoming standards and finally clear enforcement if the use of SLAPPs or legal intimidation is used in contradiction to these standards.

In the autumn of 2021, two legal roundtables were held with media law experts resulting in the publication of the Coalition’s ‘Proposals for Procedural Reform’, which were launched and discussed at the first edition of the UK anti-SLAPP conference in November 2021.<sup>13</sup> The aim of these proposals was to examine what could be done to address SLAPPs by amending current judicial guidance and Civil Procedure Rules (CPR), but ultimately pointed to a need for a UK Anti-SLAPP Law to fully address the problem.

SLAPPs came to increased political prominence in 2022. On 20th January 2022, MPs David Davis and Liam Byrne co-sponsored a backbench Parliamentary debate on ‘Lawfare and the UK Court System’, which had cross-party support

**“Follow the money’ is the oldest and wisest advice given to journalists who are pursuing the corrupt, shining lights where they need to be shone and hunting the truth, yet this dictum, which has served us so well since Watergate, is now being smothered, suffocated and strangled in courts by allies, associates and friends of President Putin, who is pursuing a hybrid war against the west and against us.”**



**Liam Byrne MP**  
Speaking at the ‘Lawfare’ debate on 20th January 2022.

**12**  
UK Anti-SLAPP Coalition, On Countering Legal Intimidation and SLAPPs in the UK: A Policy Paper July 2021.

**13**  
UK Anti-SLAPP Coalition ‘Proposals for Procedural Reform’, November 2021.

**14**  
House of Commons (HoC), Lawfare and UK Court System, 20 January 2021.

from more than 30 MPs.<sup>14</sup> As well as raising individual cases of those subject to SLAPPs, almost all MPs participating in the debate spoke in support of reform, with some signalling the potential for a UK Anti-SLAPP law. Sir Robert Neill MP, Chair of the Justice Committee, commented during the debate:

**“The anti-SLAPP law is worthy of consideration because it could involve an early strike-out mechanism that would speed up the means of dealing with cases without any substantive merit that have clearly been brought for the purposes of intimidation through a war of attrition.”**

Without question the issue of SLAPPs came into sharper focus in light of the war in Ukraine. After the Russian invasion in February, the then Foreign Secretary Liz Truss was reported to have told government lawyers to “find literally any way” to crack down on SLAPPs.<sup>15</sup> The most significant development was the launch, on 17th March, of a Ministry of Justice (MoJ) consultation on legislative proposals on SLAPPs, which cited research by FPC and the Coalition against SLAPPs in Europe (CASE) in its background document.<sup>16</sup> Announcing the consultation Deputy Prime Minister and Justice Minister, Dominic Raab, stressed that: “The Government will not tolerate Russian oligarchs and other corrupt elites abusing British courts to muzzle those who shine a light on their wrongdoing.”<sup>17</sup>

During the course of the next few months, several MPs continued to raise the issue of SLAPPs in Parliament, particularly during debates about the war in Ukraine, sanctions against Russian individuals and proposed reforms to tackle economic crime. In July, the MoJ published the outcome report of the SLAPPs consultation, to which they had received 120 submissions. The

consultation found that journalists, media and other publishers will “no longer publish information on certain individuals or topics – such as exposing serious wrong-doing or corruption – because of potential legal costs.”<sup>18</sup> It further stated that “the type of activity identified as SLAPPs and the aim of preventing exposure of matters that are in the public interest go beyond the parameters of ordinary litigation and pose a threat to freedom of speech and the freedom of the press.”

At the same time, the UK Government committed to legislative reform, with Raab announcing that this would involve both primary and secondary legislation.<sup>19</sup> However, it was not clear when the legislation would be tabled nor in what form that would take. The subsequent political turbulence over the summer, resulting in a temporary change in Justice Minister, created further uncertainty.

In September, Brandon Lewis was appointed to replace Dominic Raab, who was then reappointed on 25th October. A week prior, on 17th October, during a adjournment debate on ‘Lawfare and investigative journalism’, the then Parliamentary Under-Secretary of State for Justice, Gareth Johnson, commented on potential SLAPPs legislation: “There are two schools of thought on whether it can be placed in another piece of legislation, and thereby limited by the long title of that Bill, or whether it is better off dealt with in isolation, so it has more of a free rein. I can inform... the House that the legislation is still, at this stage, being drafted.”

As of November 2022, the UK Anti-SLAPP Coalition has published a model UK Anti-SLAPP Law, building on the framework outlined by the MoJ in July, to provide an effective legislative solution. It is outlined on page 28.

**“Investigative journalists are a key component of a democratic society, which is why they are anathema to repressive regimes around the world. They risk their reputations, their assets and sometimes their lives to expose corruption. All they ask from the Government, who purport to believe in free speech, is to make the rules of the game fair.”**



**Andy Slaughter MP**  
Speaking at the Lawfare Debate on 21 January 2022.

**15**  
Elgot, Allegretti, Walker and Neate, UK imposes sanctions on Russian billionaire and former deputy PM, The Guardian, March 2022.

**16**  
MoJ, Strategic Lawsuits Against Public Participation: A Call for Evidence, March 2022.

**17**  
MoJ, Government clampdown on the abuse of British courts to protect free speech, March 2022.

**18**  
MoJ, Strategic Lawsuits Against Public Participation (SLAPPs): Government response to call for evidence, 20 July 2022.

**19**  
MoJ, Crackdown on corrupt elites abusing UK legal system to silence critics, Gov.uk, July 2022.

## Recommendations

For the UK Government:

- Adopt a UK Anti-SLAPP Law, as standalone legislation, in the earliest possible time frame to strengthen procedural protections, in line with the model UK Anti-SLAPP Law.
- Expand anti-money laundering (AML) regulations to cover legal advice provided by law firms when acting for claimants pursuing civil cases against the media.
- Ensure the effective funding and enforcement of anti-corruption measures and include anti-SLAPP initiatives within its strategies to tackle corruption to recognise the role that journalists play at the frontline of exposing corruption and to support their protection.
- Recognise the danger of legal intimidation and SLAPPs within the UK's National Action Plan on the Safety of Journalists, creating mechanisms by which monitoring and reporting of this issue can take place at a national level on an annual basis through the National Committee for the Safety of Journalists.
- Place stronger scrutiny over the granting of licences for individuals subject to sanctions by the UK Government, or by their partners such as the US and EU, to pursue civil legal cases in the UK.

- Create a defence fund in the UK, along the lines of the US's Defamation Defense Fund, launched in December 2021, to shield investigative journalists from potential SLAPP attempts. A straightforward step would be to expand admissibility of legal aid for defendants acting in the public interest by extending Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

While the English and Welsh legal system has been the primary focus of UK anti-SLAPP efforts to date, concerns regarding the chilling nature of the libel laws in Scotland and Northern Ireland have led to reforms in both countries in the last couple of years, but they do not specifically address SLAPPs.

Recommendations for the devolved administrations in Scotland and Northern Ireland:

- Engage stakeholders with a view to understanding SLAPPs and the extent to which they are having a chilling effect on freedom of expression and public participation nationally.
- Adopt relevant anti-SLAPP legislation and regulation in line with initiatives outlined above.

**“Scotland and Northern Ireland cannot afford to fall behind in protecting against SLAPPs. For the UK to ensure public watchdogs are free to challenge power, all four nations must act without delay.”**



**Nik Williams**  
Policy and Campaigns Officer,  
Index on Censorship and co-chair  
of the UK Anti-SLAPP Coalition

## Spotlight on UK SLAPP cases

# Carole Cadwalladr

## Investigative Journalist

### STATUS

Initiated in July 2019, trial in January 2022, Cadwalladr won in July 2022, but now under appeal.

In January 2022, Carole Cadwalladr, best known for her work uncovering the Facebook – Cambridge Analytica scandal in 2018 and investigations into campaign funding around the 2016 Brexit referendum, spent five days in the Royal Courts of Justice defending herself against a libel claim brought by millionaire businessman and Leave.EU funder Arron Banks. Banks had filed a case against Cadwalladr in July 2019 regarding two tweets and two public talks she made between April and July 2019.

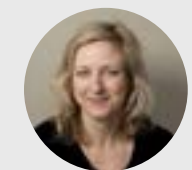
After a preliminary ruling in December 2019, in which the judge decided the legal meanings of the contested publications, Banks withdrew two of his claims in January 2020.<sup>20</sup> The judge had found the remaining claims, statements made within a TED talk and a tweet that linked to it, to mean that: “On more than one occasion Mr Banks told untruths about a secret relationship he had with the Russian Government in relation to acceptance of foreign funding of electoral campaigns in breach of the law on such funding.”<sup>21</sup> Cadwalladr, however, contested this interpretation, stating in an interview in 2020: “But these are not words I have ever said. On the contrary, I’ve always been very clear that there is no evidence that Banks accepted Russian funding.”<sup>22</sup> Ultimately, this impacted her defence strategy as she would need to prove the truth of the ‘legal meaning’ defined by the judge. As

a result, in November 2020, Cadwalladr decided to drop the ‘truth defence’ and she had to pay Banks £62,000 in costs. Much was made of this by Cadwalladr’s detractors to imply she does not believe in her own reporting.

Cadwalladr would ultimately go on to win, but her three-year battle came at great personal cost and was, as she has described, akin to stepping ‘into the pages of a Kafka novel’. The judgement handed down by Justice Steyn in June 2022 was heralded as a landmark case for media freedom, as a test case for the public interest defence, however, the judge also took the unprecedented step of stating she found it “neither fair nor apt” to describe the case as a SLAPP suit.

This is not a view shared by members of the UK Anti-SLAPP Coalition (whose co-chairs outlined why in a guest article for the Bar Council).<sup>23</sup> Banks decided to sue Cadwalladr as an individual rather than The Observer, which published her original reporting, or TED, the publisher of her talk. It is this type of tactic that can characterise SLAPPs, not simply the merits of the claim. Isolated from institutional support and funding, Cadwalladr had to risk financial ruin and was only able to defend the case thanks to a successful crowdfunding campaign. During that time, she was also subject to other forms of harassment, including online trolling and smear campaigns.

**“The personal, physical, psychological and professional toll of fighting this case has been profound. But it’s not my win, it belongs to the legal team and the 28,887 people who stood alongside me. Banks could [...] appeal against Mrs Justice Steyn’s interpretation of the law. But not the facts.”<sup>24</sup>**



**Carole Cadwalladr**  
Investigative Journalist

### 20

Owen Bowcott, Arron Banks drops two parts of libel claim against Carole Cadwalladr, The Guardian, January 2020.

### 21

Bailii, England and Wales High Court (Queen’s Bench Division) Decisions, Banks v Cadwalladr, December 2019.

### 22

Charlotte Tobitt, Carole Cadwalladr drops truth defence in Arron Banks libel battle but insists claims were in public interest, PressGazette, November 2020.

### 23

Co-Chairs of the UK Anti-SLAPP Coalition, SLAPP: A question of definition? The Bar Council, June 2022.

### 24

Carole Cadwalladr, Arron Banks almost crushed me in court. Instead, my quest for the facts was vindicated, The Guardian, June 2022.

# Forensic News

Investigative news website based in California, its founder and individual journalists.

## STATUS

Ongoing since July 2020, with a preliminary judgment on jurisdiction in January 2021 and a Court of Appeal judgment in December 2021. The next hearing is expected in early 2023.

Forensic News, an investigative news website, its founder Scott Stedman and several of its journalists, all based in the US, have been subject to legal action in the UK brought by British-Israeli security consultant and businessman Walter Soriano since July 2020. Soriano made five claims in relation to data protection, libel, misuse of private information, harassment, and malicious falsehoods, relating to ten internet publications and various social media postings published between June 2019 and June 2020.

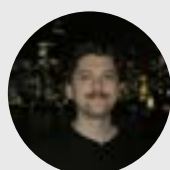
Forensic News started writing about Soriano after he was summoned by the US Senate Intelligence Committee, which was reportedly interested in Soriano's connections to several people of interest. This included the Russian oligarch Oleg Deripaska, a former business associate of Donald Trump's campaign chairman Paul Manafort.<sup>26</sup> In evidence given to the US Congress in April 2022, Stedman noted that US based lawyers for Mr Deripaska initially wrote to him and threatened legal action while also demanding that Stedman provide information about his sources. However, legal action against Stedman and Forensic News, based in California, where strong anti-SLAPP legislation is in place, never materialised.

In January 2021, a preliminary ruling on jurisdiction dismissed the GDPR, harassment and malicious falsehood claims, but allowed Soriano to proceed with his libel claim and privacy claim

(although this latter claim only pending the success of a libel claim). In December 2021, what is believed to be the first appellate decision on the territorial reach of the UK GDPR, the Court of Appeal overturned the earlier ruling and gave Soriano permission to bring a data protection claim. The court held that subscriptions to the news site, facilitated through the Patreon platform – paid in sterling or euros – amounted to 'stable arrangements' to satisfy article 3(1) of the GDPR.<sup>27</sup> According to court documents, since opening up its Patreon subscriptions from USD only in August 2020, Forensic News had received 3 Patreon subscriptions in EUR and 3 in GBP.<sup>28</sup>

As a result of losing the December 2021 appeal, Forensic News owes Soriano 'tens of thousands' in costs. As Stedman explained in his testimony to Congress: "For over a year, we contested the jurisdiction of the lawsuit. I have never stepped foot in the United Kingdom. Forensic News has no corporate presence in the UK and the vast majority of my readers are in the US." Yet there is an expectation that the defendants should pay the claimant for losing this appeal, before even reaching a trial. Currently, the cases are only continuing against the outlet, Stedman and one of his colleagues, with the other contributors having decided to settle. Mr Soriano has denied all wrongdoing alleged against him.

**"Over the last 18 months, I have lived the increasingly-too-common life of an investigative journalist who splits his time between researching and writing articles and tending to a lawsuit."<sup>25</sup>**



**Scott Stedman**

Founder of Forensic News, in his testimony to US Congress, April 2022.

## 25

Helsinki Commission, Helsinki Committee session on 'Countering Oligarchs, Enablers, and Lawfare', YouTube, April 2022.

## 26

Index on Censorship, Fifteen organisations condemn lawsuit against Forensic News, deeming it a SLAPP, February 2022.

## 27

Sam Tobin, Law Gazette, Landmark jurisdiction ruling on data protection and libel claims, December 2021.

## 28

Judgement in Soriano v Forensic News LLC + others, 21 December 2021.

# Realtid

Swedish business publication, its editor and two of its journalists.

## STATUS

Ongoing since November 2020, with a jurisdictional hearing in March 2021, the judgement for which was handed down in May 2022. A meaning hearing is expected in early 2023.

Realtid, a Swedish business publication, its editor and two of its journalists are subject to legal action in London for their investigations into the business affairs of the Monaco-based Swedish businessman, Svante Kumlin. Realtid had been investigating Kumlin's group of companies, Eco Energy World (EEW), ahead of an impending stock market launch in Norway. Although Realtid's public interest investigation was published in Swedish for a Swedish readership, the case was nevertheless filed in the UK in November 2020.

Swedish freedom of expression campaigners have pointed out that despite the negligibility of Realtid's readership outside of Sweden, Kumlin has chosen to pursue claims in foreign jurisdictions but not in Sweden itself. Under Swedish law its not possible to sue journalists independently of their publication. Two of the journalists, Per Agerman and Annelie Östlund, and the editor-in-chief, Camilla Jonsson, are also being sued personally.<sup>29</sup> Kumlin's London-based solicitors, TNT, also warned the journalists in the early communication of the potential for criminal defamation proceedings to be pursued in Monaco in what has been seen as exceptionally heavy-handed effort to stop their reporting.

The justification put forward for the libel claim, estimated to be worth more than £13 million, to be heard in the UK is that Kumlin resides in the UK part-time, while his company EEW Energy, listed as a second plaintiff, is registered in London (since 2019). A hearing to decide the jurisdiction admissibility was held on 24th and 25th March 2021, presided over

by Justice Julian Knowles. On 11th May 2022, 15 months after the jurisdiction hearing took place, Justice Knowles ruled that the courts of England and Wales do not have jurisdiction over ten of the 13 defamation claims. EEW was precluded from bringing its claim over five different articles on the basis that it did not show that it suffered serious financial loss stemming from Realtid's publications. is proceeding with the case as an individual on only three of the original eight articles he sued over, but these actions have been restricted to claiming for any harm he suffered in England and Wales. In his judgement Mr Justice Knowles concluded that Kumlin "has failed to displace the general position that his centre of interests is Monaco, where he is habitually resident." Mr Kumlin has refuted the allegations made against him.

It is worth noting that at the time that case was filed at the High Court against Realtid and its journalists, the UK was still a member of the EU and part to the Lugano Convention, which meant that previously it was more straightforward to bring cases against defendants domiciled in states party to the convention.<sup>30</sup> When the Brexit transition period ended on 31st December 2020, the UK also was no longer subject to the Lugano Convention and as of yet its request to rejoin has not been granted by the EU.

**"We started to do a really basic story, and this is what many people ask, when they look into our case and say 'Oh, why are you being sued?' and we kind of ask ourselves the same question... It's a fairly basic due diligence story. We thought it was a good story, in the public interest... but nothing special really. But then we started to approach the company and ask questions. Quite soon, instead of returning with answers from a PR agency, we got these law firm letters saying we should not proceed with publication."**



**Per Agerman**

Speaking at the first UK Anti-SLAPP Conference, November 2021.

## 29

Index on Censorship, SLAPP lawsuit against Swedish magazine Realtid filed in London, December 2020.

## 30

"The Lugano Convention 2007 is an international treaty negotiated by the EU on behalf of its member states (and by Denmark separately because it has an opt-out) with Iceland, Norway and Switzerland. It attempts to clarify which national courts have jurisdiction in cross-border civil and commercial disputes and ensure that judgments taken in such disputes can be enforced across borders.



# Catherine Belton

## Investigative Journalist and author of *Putin's People*

### STATUS

Four cases filed between May-March 2021, hearing in July 2021, last case settled in December 2021.

Catherine Belton and her publisher HarperCollins were subject to several legal cases in connection to the book *'Putin's People: How the KGB Took Back Russia and Then Took on the West'*, published in 2020. Between March-May 2021, four Russian oligarchs and the Russian state owned oil company, Rosneft, stated their intention to sue. Of these five cases, four made it to a preliminary hearing held in July 2021. During this hearing, HarperCollins decided to settle two of the cases, which had only been brought against them, by the Russian billionaires, Petr Aven and Mikhail Fridman. They claimed the book contained inaccurate personal data concerning them, with Fridman also suing for libel. HarperCollins agreed to make minor amendments to wording within four paragraphs and a footnote in future editions of the book, but there was no acceptance that the texts had been defamatory.

In November 2021, the judgments regarding the 'legal meaning' in the cases brought by the Roman Abramovich and Rosneft were handed down by Justice Tipples. In relation to the claims brought by Rosneft, Justice Tipples found that three of the four passages complained about were not defamatory and two days later Rosneft decided to discontinue its claim.<sup>31</sup> In relation to the claims brought by Abramovich, Justice Tipples ruled against Abramovich on one meaning claiming that the book meant that he had a corrupt relationship with Putin. Instead, she found the book said that he was under Putin's control. However, on other meanings she ruled that the allegations in the book were

presented as statements of fact, rather than expressions of opinion, and would have needed to be defended as such at trial.<sup>32</sup>

A month later, on 22nd December 2021, it was announced that Abramovich had decided to settle the case with HarperCollins and Belton.<sup>33</sup> The settlement meant that both sides covered their own legal fees and no damages were awarded, minor amendments were made but the main claims remained intact in the book.<sup>34</sup> As part of the settlement, HarperCollins agreed to make a payment to charity in relation to one error involving Abramovich's ownership of the company Sibneft. In a statement the publisher offered an apology that "some aspects of the book were not as clear as they would have liked them to have been and are happy to have now clarified the text", adding: "While the book always included a denial that Mr Abramovich was acting under anybody's direction when he purchased Chelsea, the new edition will include a more detailed explanation of Mr Abramovich's motivations for buying the club."<sup>35</sup>

In June 2021, Abramovich had also lodged a defamation action against HarperCollins in Australia and, while that was withdrawn as part of the settlement, HarperCollins asked the Australian courts to rule on whether filing the same claims in two jurisdictions was an abuse of process. It has been estimated that if the libel trial had gone ahead in the High Court and Australia the legal bill was likely to have exceeded over £5 million. While the cases linked to *Putin's People* were significant in highlighting the

**"The cases really show just how important it is that there are better defences for journalists. No matter how good the sourcing is on some of these claims, and no matter how great the public interest, the cases are just too expensive to defend. The system is stacked in favour of deep pocketed litigants from the outset. My cases are now pretty well known, but they are just the tip of an iceberg; there are journalists who have been censoring themselves, particularly about the activities of Russian oligarchs, for a very long time..."<sup>36</sup>**



**Catherine Belton**  
Journalist and Author

### 31

Judgement in *Rosneft v HarperCollins and Catherine Belton*, [2021] EWHC 3141 (QB), November 2021.

### 32

Judgement in *Abramovich v HarperCollins and Catherine Belton*, [2021] EWHC 3154 (QB), November 2021.

issue of SLAPPs in the UK, they also demonstrated issues within the UK media for reporting on complex legal cases. In March 2022, while giving oral evidence to the Foreign Affairs Select Committee, Belton noted that "On the Abramovich case, we were able to keep in the book most of the main claims that he attacked. For instance, on the Chelsea purchase, when we settled, Mr Abramovich's press people got most of the UK press to write that we had admitted that it was a false claim and that it had been removed from the book. In fact, that wasn't the case—far from it. In fact, that claim is still there—the quotes are still there."

At an event held at the Frontline Club, in February 2022, Arabella Pike, Publishing Director at HarperCollins, has commented on how there were a number of "disobliging" articles in the tabloid press that "utterly distorted" what had happened in court. Pike acknowledged that they were perhaps not adequately prepared for the challenge of informing journalists "up against a deadline to get 800 words up on to a website, within half an hour, [how] to deal with an 80 page, very complex legal judgment." How a case is reported is important, because otherwise it can play into a spinning exercise by the claimant, which further undermines the journalists' credibility, even if as in Belton's case, the changes were very minor and the main thrust of the claims under question remained in the book.

The use of GDPR claims by Fridman and the Aven, was also an interesting aspect to these cases. Belton, again in her oral evidence to the Foreign Affairs Select Committee, stated: "In the Fridman and the Aven cases, for instance, they were essentially using GDPR claims... to whitewash their histories... It was a reputation issue for [Aven]. He did not want to be seen as having supported Putin in any way. However, because he personally was behind on the statute of limitations [for libel]—it was already beyond the year, his lawyers issued a data protection claim saying it was inaccurate. It was accurate. It was an issue of reputation rather than accuracy." Belton added: "The changes we made were absolutely tiny, but again, they made much hay of this in the press, claiming victory even though we had made very small changes indeed. Essentially, these changes were made because we had too many cases to deal with and not because there was anything wrong or we couldn't defend them." To note, there is a much longer statute of limitations on filing a GDPR claim of six years, compared to one year for libel cases.

### 33

Luke Harding, Roman Abramovich settles libel claim over Putin biography, December 2021.

### 34

Twitter post by Catherine Belton, 23 December 2021.

### 35

HarperCollins, *Putin's People*: settlement reached in Roman Abramovich v HarperCollins and Catherine Belton, December 2021.

### 36

House of Commons Foreign Affairs Committee, *Oral evidence: Use of strategic lawsuits against public participation*, March 2022.



# Eliot Higgins

Founder of Bellingcat, an open source news agency

## STATUS

Filed in December 2021, case thrown out in April 2022.

In December 2021, Eliot Higgins had a libel case filed against him in London by Yevgeny Prigozhin, a Russian oligarch often referred to as 'Putin's Chef'. The claims related to five tweets, published in August 2020, in which the Bellingcat founder had linked to the investigations published by Bellingcat, CNN and Der Spiegel that reported on Prigozhin's connections with the Wagner Group. None of the media outlets were sued. Prigozhin had been sanctioned by the UK Government in October 2020 for significant foreign mercenary activity in Libya and multiple breaches of the UN arms embargo, which has been linked to the Wagner Group, a private military company.<sup>37</sup> At the time, Prigozhin denied any association with the Wagner Group, which was also sanctioned in March 2022.<sup>38</sup>

At an early hearing, on 23rd March 2022, Edward Miller from Discreet Law LLP successfully applied to withdraw the law firm from representing Prigozhin and asked for said withdrawal to be discussed in private with the judge as it regarded confidential information.<sup>39</sup> The first substantive hearing in the case was scheduled for 13th April 2022 but was postponed due to a last minute request from Prigozhin due to his lack of legal representation. On 18th May 2022, Justice Nicklin struck out the claim from the High Court as Prigozhin

repeatedly failed to comply with court orders.<sup>40</sup> According to a press release by Higgin's lawyers McCue Jury and Partners: "This followed [Prigozhin's] legal representatives, Discreet Law, withdrawing due—according to Prigozhin—the increased negative attention representing Prigozhin would attract following Russia's invasion of Ukraine."<sup>41</sup>

In order for a person under sanctions to be able to pay for legal services in the UK, they would have needed a licence from the Office of Financial Sanctions Implementation (OFSI) in HM Treasury. It was initially thought that this licence was given as Prigozhin succeeded in serving Higgins with the lawsuit in London's High Court.<sup>42</sup> However, Higgin's lawyers also noted in their press release: "Discreet Law did not see through the request to HM Treasury for a licence for payment on account of costs that would have enabled Higgins to enforce any costs order issued by the Court against Prigozhin." This means that Higgin's has been left out of pocket for this failed case against him. In September 2022, Higgins posted a twitter thread in which he pointed out that Prigozhin has now admitted his involvement with Wagner and cited it as "a perfect example of how crooks like Prigozhin get to game the UK legal system to attack genuine investigative work."<sup>43</sup>

**"Prigozhin's SLAPP case against me was one of the most blatant SLAPP cases I've encountered, with evidence indicating it was a direct response to EU sanctions against Prigozhin in part referencing Bellingcat's work as justification for the sanctions. I also found myself in the perverse situation of Prigozhin receiving sanctions relief from the UK Treasury so he could sue me for saying the thing that he was sanctioned for. It's clear the current UK laws around SLAPPs are not fit for purpose, and urgent reform is needed."**



Eliot Higgins  
Bellingcat Founder

37

FCDO, UK sanctions Alexey Navalny's poisoners, Gov.uk, October 2020.

38

FCDO, Foreign Secretary announces 65 new Russian sanctions to cut off vital industries fueling Putin's war machine, Gov.uk, March 2022.

39

Ibid.

40

Jonathan Ames, 'Putin's chef' loses court case against Bellingcat founder, The Times, May 2022.

41

McCue, Jury & Partners, Yevgeniy Prigozhin's SLAPP action against Bellingcat founder is struck out, May 2022.

42

CoE's Safety of Journalists Platform, British Journalist Eliot Higgins Facing SLAPP from Russian Oligarch in London, April 2022.

43

Eliot Higgins, Twitter Post, 27 September 2022.

# Tom Burgis

Investigative journalist and author of Kleptopia

## STATUS

Two cases filed in the UK in August 2021, one thrown out and the other retracted in March 2022.

Tom Burgis was subject to two legal cases relating to the publication of his book, 'Kleptopia: How dirty money is conquering the world', and related newspaper articles published in the Financial Times (FT).<sup>45</sup> The Eurasian Natural Resources Corporation Limited (ENRC), whose business dealings are examined in Kleptopia, first initiated a case in the US courts against the US arm of HarperCollins seeking disclosure of wide-ranging information relating to Burgis' book in September 2020.<sup>46</sup> In August 2021, ENRC launched legal action in the UK, claiming Burgis and HarperCollins had made a series of 'untrue' and 'highly damaging' allegations made about the company. Burgis was also jointly named in a separate legal case against his employer, the FT, in relation to articles they published related to the issues raised in Burgis' book. To note, ENRC has initiated more than 18 legal proceedings in the US and the UK, against journalists, lawyers, investigators and the Serious Fraud Office.<sup>47</sup>

At a meaning hearing held on 2nd March 2022, Justice Nicklin dismissed

ENRC's case against Burgis and HarperCollins finding their claim that Burgis had defamed the company was without merit as only individuals can commit murder, not corporations. The judge awarded £50,000 in costs against ENRC and refused the company permission to appeal.<sup>48</sup> Burgis stated at the time, "It's harder to imagine a higher public interest than reporting on the deaths of potential witnesses in a major criminal corruption case. I'm delighted that this attack on our journalism has failed."<sup>49</sup> Meanwhile, HarperCollins reaffirmed its commitment to "defend our authors in the face of legal attacks from those who would seek to use the UK courts to silence them."<sup>50</sup>

Less than two weeks after Justice Nicklin's judgment, ENRC withdrew its remaining case against Burgis and the FT on 14th March. Roula Khalaf, FT Editor, stated in response: "I'm pleased to hear of ENRC's decision to withdraw a claim that was always without merit and had put Tom Burgis under enormous strain. The FT and all our reporters, including Tom, will continue to investigate the activities of businesses and individuals, however powerful or wealthy."<sup>51</sup>

**"Winning these cases, settling them and making them go away is not a complete victory. There is money that will not be got back that could have been spent on other books... [and] there is always a danger, as I know from conversations with colleagues, that you become an expensive and problematic journalist. In an era when the newspaper business model remains broken and oligarchs are amassing more and more wealth, this inequality of arms is extraordinary."**<sup>44</sup>



Tom Burgis  
Author of Kleptopia

46

Reporters' Committee for Freedom of the Press, In Re: Ex parte Application of ENRC Limited Pursuant to 28 U.S.C. § 1782 for Leave to Take Discovery for Use in Foreign Proceedings, December 2020.

47

Index on Censorship, Index and 21 other organisations condemn lawsuits brought by ENRC against public watchdogs, June 2021.

44

House of Commons Foreign Affairs Committee, Oral evidence: Use of strategic lawsuits against public participation, March 2022.

45

Index on Censorship, Index condemns lawsuits brought by ENRC against Tom Burgis, October 2021.

48

Dominic Casciani, BBC News, Journalist wins 'kleptocrat' book High Court libel case, March 2022.

49

Jane Croft, ENRC drops lawsuit against FT and journalist Tom Burgis, Financial Times, March 2022.

50

HarperCollins UK, Twitter post, Twitter, March 2022.

51

Croft, Ibid.

# Clare Rewcastle Brown

## Investigative journalist and founder of The Sarawak Report

### STATUS

Libel case filed in London in 2017, settled in 2019. Rewcastle Brown continues to receive legal challenges in the UK and Malaysia related to her reporting on the 1MDB scandal.

Clare Rewcastle Brown, a UK journalist, has been subject to significant legal challenges, while investigating Malaysia's 1MDB corruption scandal.<sup>53</sup> From 2017-19, Rewcastle Brown was pursued through the London libel courts by a Malaysian politician before the case was withdrawn and a settlement was made in her favour. By that point, the fallout from 1MDB had resulted in bringing down the previous Malaysian government, as well as the arrest (and later conviction) of the former Malaysian Prime Minister, Najib Razak. The believed mastermind of the scandal, businessman Jho Low, is currently on the run from justice in Malaysia, Singapore and the US. Rewcastle Brown has also been subject to legal cases in Malaysia, which led to a warrant being issued for her arrest in September 2021.

Rewcastle Brown has likewise received well over a dozen legal threats from London law firms representing Malaysian clients and clients linked to 1MDB. In May 2021, received legal threats from the London law firm Taylor Wessing (TW) on behalf of Hamad Al Wazzan, an investment advisor, currently on bail in Kuwait accused of brokering a deal believed to be linked to 1MDB.<sup>54</sup> After Index on Censorship and ARTICLE 19 submitted a Council of Europe alert on these legal threats, no further communication was received from TW and once the writ had expired, Rewcastle Brown decided to write an article about this experience, which indicated that public exposure of these tactics does have a positive impact to push back against SLAPPs.<sup>55</sup>

**"Those wishing to pursue legal action against me in 2017 were advised, according to someone involved in the conversations, that for an outlay of no more than £200,000 I could be forced to issue the sort of retraction that could be spun into a total discrediting of myself and my wider reporting on corruption in Malaysia."**<sup>52</sup>



**Clare Rewcastle Brown**

Investigative journalist and founder of The Sarawak Report

### 52

Clare Rewcastle Brown, FPC, Unsafe for Scrutiny: A scandal of corruption and censorship: Uncovering the 1MDB case in Malaysia, December 2020.

### 53

Clare Rewcastle Brown, FPC, Unsafe for Scrutiny: A scandal of corruption and censorship: Uncovering the 1MDB case in Malaysia, December 2020.

### 54

Council of Europe Media Alert Platform, Journalist Clare Rewcastle Brown Subject to Legal Harassment from London Law Firm on behalf of Kuwaiti Investment Advisor, June 2021.

### 55

The Sarawak Report, How Foreign Litigants Abuse UK Law firms To 'Launder' Reputations, October 2021.

## Recommendations

Recommendations for organisations supporting journalists and defending media freedom in the UK and abroad (including NGOs, donor organisations, trade unions and associations):

- Provide more funding for legal defence and guidance on how to respond to legal communication and litigation (e.g. SLAPPs).
- Support awareness raising initiatives on legal intimidation and SLAPPs, including speaking out publicly about cases of those subject to them to provide solidarity and support.

Recommendations for journalists and media:

- Report incidences of legal threats made towards you to the appropriate authorities (such as the Solicitors Regulatory Authority) as well as to relevant regional monitoring mechanisms (such as the Council of Europe's Safety of Journalists Platform) and media freedom NGOs. While not all incidences may receive immediate remedy or redress, such reports will create a better understanding of the threats faced, the instigators, and methods used. This can support the development of stronger measures for protection and defence, as well as the prioritisation of funding.
- Put risk protections in place to guard against potential legal challenges. This can include, for example, media liability insurance or pre-arranged pro bono legal support that would be available when incidents arise. Ensure this applies not only to employees, but also to freelancers.
- Support other journalists and media outlets subject to legal threats or SLAPPs by monitoring and reporting on their cases. This creates important solidarity and ensures that intimidation does not happen in darkness.

# KEY UK ANTI-SLAPP DEVELOPMENTS

|  |   |   |   |   |  |  |   |   |   |  |   |  |  |   |  |  |
|--|---|---|---|---|--|--|---|---|---|--|---|--|--|---|--|--|
| <p>The UK Anti-SLAPP Coalition is formed by the Foreign Policy Centre and Index on Censorship.</p> | <p>SLAPPs are mentioned in the UK Parliament for the first time by Damian Collins MP during a debate for World Press Freedom Day 2021</p> | <p>22 UK Anti-SLAPP Coalition members publish a policy paper on 'Countering legal intimidation and SLAPPs in the UK'.</p> | <p>At the first ever UK Anti-SLAPP conference, the Coalition publishes its 'Proposals for Procedural Reform', developed during roundtables with legal experts, which conclude the need for a UK Anti-SLAPP Law.</p> | <p>A debate on 'Lawfare and the UK Court System' is held in Parliament on 20th January. Co-sponsored by Conservative MP David Davis and Labour MP Liam Byrne, 16 MPs took part to discuss SLAPPs.</p> | <p>At the debate the UK Government announced that it will be a member of the Council of Europe's working group on SLAPPs, to produce an anti-SLAPP draft recommendation for member states due in December 2023</p> | <p>On 24th February, Russia invades Ukraine and the then Foreign Secretary Liz Truss, is reported to have told government lawyers to "find literally any way" to crack down on SLAPPs.</p> | <p>On 4th March, the Solicitors Regulatory Authority (SRA) mentions SLAPPs for the first time in its updated guidance on Conduct in Disputes.</p> | <p>On 17th March, Justice Minister Dominic Raab, launches a call for evidence on SLAPPs, which cites FPC and the CASE's research.</p> | <p>On 10th May the Justice Committee holds a one off evidence session on SLAPPs, with evidence from lawyers, legal experts and the National Union of Journalists.</p> | <p>On 24th June, FPC and ARTICLE 19's report 'London Calling', is presented in Parliament at a briefing hosted by the APPGs on Anti-Corruption and Responsible Tax, and Fair Business Banking. An Economic Crime Manifesto, published jointly by both APPGs, includes a call for anti-SLAPP legislation.</p> | <p>The MoJ publish the outcome report from their consultation. It finds that journalists, media and other publishers will "no longer publish information on certain individuals or topics – such as exposing serious wrongdoing or corruption – because of potential legal costs." The UK Government commits to legislative reform. The co-chairs of UK Anti-SLAPP Coalition release a statement welcoming this step but calling for bolder measures.</p> | <p>The SRA, that regulates solicitors in England and Wales, sets out its ongoing steps to address this issue. These have included instigating a thematic review, identifying almost 30 cases where a firm may have been involved in a SLAPP.</p> | <p>On 17th October, David Davis MP sponsors a <u>Lawfare and investigative journalism</u> in light of the claims filed against TBJ, the Telegraph and openDemocracy, and calls for SLAPP reforms to "move more quickly." During the debate Dame Margaret Hodge also raises concerns regarding a legal challenge against Chatham House, in relation to their December 2021 report 'The UK's Kleptocracy Problem.'</p> | <p>On 4th November, the <u>Joint Committee on Human Rights</u> holds a one off evidence session on SLAPPs, including Coalition co-chair Nik Williams.</p> | <p>On 22 November, the <u>Model UK Anti-SLAPP Law</u>, developed by the Coalition together with expert media lawyers, is launched in Parliament at an event co-hosted by MPs David Davis and Liam Byrne.</p> | <p>The SRA announces imminent publication of a SLAPP warning notice.</p> |
| January 2021   | May 2021  | July 2021   | November 2021   | January 2022  | February 2022  | March 2022   | May 2022  | June 2022   | July 2022   | September 2022   | October 2022  | November 2022  |  |   |  |  |

## 2021 2022

|   |  |  |  |  |  |  |   |   |   |   |   |   |
|---|--|--|--|--|--|--|---|---|---|---|---|---|
| <p>March 2021</p> <p>Russian oligarch Roman Abramovich files a case against journalist Catherine Belton and her publisher HarperCollins for her book Putin's People.</p> <p>Realtid, a Swedish publication, its Editor and two journalists face their first jurisdictional hearing against the Monaco-based Swedish businessman, Svante Kumlin, for their investigation into his business affairs. 24 Coalition members release a statement in support.</p> | <p>June 2021</p> <p>Abramovich also lodges a defamation action against HarperCollins in Australia regarding Putin's People.</p> <p>openDemocracy, a UK registered media outlet, writes about a previous legal challenge they faced in an article, 'Jeffrey Donaldson sued us. Here's why we're going public'.</p> <p>22 Coalition organisations condemn lawsuits brought by ENRC against public watchdogs in a <u>shared public statement</u>.</p> | <p>July 2021</p> <p>Four of the five cases threatened against Belton, and her publisher make it to a meaning hearing. HarperCollins decides to settle two of the cases just brought against them.</p> <p>19 Coalition members release a statement condemning the legal actions against Catherine Belton and HarperCollins.</p> | <p>August 2021</p> <p>ENRC files two cases against the journalist Tom Burgis - one with his publisher HarperCollins, and one with his employer the Financial Times. This follows a previous case initiated in the US in 2020. 22 Coalition Members <u>publish a statement</u> condemning lawsuits.</p> | <p>December 2021</p> <p>Abramovich decides to settle the case with Belton and HarperCollins, and withdraws the Australia case</p> <p>Eliot Higgins, founder of open source news agency Bellingcat, has a libel case filed against him in London by Yevgeny Prigozhin, a Russian oligarch known as 'Putin's Chef'. The claims related to tweets Higgins posted linking to investigations about Prigozhin's connections with the Wagner Group.</p> | <p>January 2022</p> <p>Coalition members monitor Carole Cadwalladr's trial at the Royal Courts of Justice.</p> <p>The National Crime Agency seizes £5.6m from the family of the Azerbaijani MP who sued journalist Paul Radu in London's libel courts between 2018-2020.</p> | <p>February 2022</p> <p>15 Anti-SLAPP Coalition members condemn an ongoing lawsuit against Forensic News, <u>deeming it a SLAPP</u>.</p> | <p>March 2022</p> <p>Yevgeny Prigozhin denies any association with Wagner Group, when it was sanctioned in March 2022. At the following hearing of <u>Eliot Higgins' case</u>, Edward Miller from Discreet Law LLP successfully applied to withdraw the law firm from representing Prigozhin.</p> | <p>May 2022</p> <p>In May, Justice Nicklin struck out the claim against Eliot Higgins from the High Court as Prigozhin repeatedly failed to comply with court orders.</p> <p>Realtid hearing judgement. Justice Knowles ruled that the courts of England and Wales do not have jurisdiction over ten of the 13 defamation claims.</p> | <p>June 2022</p> <p>Cadwalladr wins her case against Arron Banks. While the judgement was heralded as a landmark case for media freedom, having been defended on public interest, the judge also took the unprecedented step of stating she found it "neither fair nor apt" to describe the case as a SLAPP suit.</p> | <p>July 2022</p> <p>openDemocracy and TBJ received pre-action letters from Boies Schiller Flexner on behalf of Jusan Technologies and the Fund, arguing the articles were inaccurate, defamatory and damaged their reputations.</p> | <p>August 2022</p> <p>Claims are filed against openDemocracy, TBJ and the Telegraph. The outlets had reported on the link between the Nazarbayev Fund, associated with a former Kazakh president and Jusan Technologies Ltd, a UK registered company that controlled over \$7.8bn in gross asset value. 21 UK Coalition members publish a statement titled; '<u>Anti-SLAPP measures cannot come fast enough</u>'.</p> | <p>September 2022</p> <p>Eliot Higgins posted a <u>twitter thread</u> in which he pointed out that Prigozhin has now admitted his involvement with Wagner</p> |
|---|--|--|--|--|--|--|---|---|---|---|---|---|

# CASE DEVELOPMENTS



# Spotlight on Anti-SLAPP Legislative Initiatives

Despite the progress made this year, the UK is behind the curve when it comes to addressing the issue of SLAPPs. Anti-SLAPP laws already exist in a few countries, though mostly at a state level, primarily in some parts of the United States, Canada and in the Australian Capital Territory. Currently work is actively underway in the European Union to develop a solution that could be applied across the region, and an expert working group at the Council of Europe is due to deliver a recommendation for Member States in 2023. Meanwhile, a recent landmark judgment handed down by the South African Constitutional Court has recognised SLAPPs as an abuse of process, creating new legal protections.

## The United States

SLAPPs were first identified as a public threat to free expression in the United States during the 1980s and the original acronym ‘SLAPP’ was coined by two US law professors. Generally speaking the First Amendment of the US Constitution has been recognised as providing a stronger defence against challenges to freedom of expression than exists in most other countries. However, with a rise in cases taken against those speaking out in the public interest US state legislatures started to adopt specific anti-SLAPP measures.

Today, 33 states have anti-SLAPP statutes, which vary significantly in scope and protections.<sup>56</sup> The talisman of a strong anti-SLAPP statute is one that is broad in the scope of its protection and provides an early dismissal mechanism, with a stay of discovery, the right to an immediate appeal, and recovery of fees and costs to make the victim whole. Some state statutes, however, provide only limited protection for certain topics of discussion or for statements made in narrowly defined proceedings; others, do not have the procedural mechanisms that allow the court to put an end to

this form of judicial harassment.<sup>57</sup> As a result, there is a checkerboard of protection throughout the US; a problem the Uniform Law Commission recently sought to address through the passage of a model anti-SLAPP act in 2020, entitled the Uniform Public Expression Protection Act.<sup>58</sup>

In addition, there is a significant disparity in which federal courts will apply state anti-SLAPP laws in cases involving citizens from different states and no protection for lawsuits brought under federal claims.<sup>59</sup> There have been several unsuccessful attempts to push anti-SLAPP bills through Congress; however, in September 2022, Representative Jaime Raskin introduced the Strategic Lawsuits Against Public Participation (SLAPP) Protection Act into the US Congress, marking renewed progress towards a federal US law.<sup>60</sup> Notably, in December 2021, the US administration in its Strategy on Countering Corruption recognised the link with SLAPPs, particularly against investigative media.<sup>61</sup> USAID has also since launched a global Defamation Defense Fund to shield journalists from defamation lawsuits.

**“SLAPP suits are designed to inhibit ongoing investigations and prevent discussions about matters of legitimate public interest; they present a threat to democracy and strike at the core of human rights. Anti-SLAPP laws are the antidote.”**



**Laura Prather**  
Partner, Haynes and Boone, LLP, United States

**56**  
Anti-SLAPP Statutes: A Report Card - Institute For Free Speech.

**57**  
Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies, The Use of SLAPPs to Silence Journalists, NGOs and Civil Society, Study requested by the JURI committee, European Parliament, June 2021.

**58**  
National Conference of Commissions of Uniform State Law, Uniform Public Expression Protection Act, October 2020.

**59**  
Map of Applicability Federal law, antislapplawyers.com

**60**  
Chairman Raskin introduces legislation establishing federal Anti-SLAPP Statute to Protect First Amendment Rights, September 2022.

**61**  
The White House, United States Strategy on Countering Corruption, December 2021.

## Canada

It took almost a generation from when SLAPPs were first identified as a feature on the Canadian legal landscape, but now Canada’s three largest provinces all have anti-SLAPP legislation on the books. British Columbia was the first province to bring in an anti-SLAPP law in 2000, but that was quickly repealed by an incoming right-leaning government. In 2009 Quebec amended its Code of Civil Procedure to create an anti-SLAPP mechanism. While this initial BC law and its Quebec successor were important milestones their effectiveness was undermined by a requirement that the target of the suit establish that it was brought for an improper motive or purpose.

Closely following the recommendations of an Anti-SLAPP Advisory Panel (2010), in 2015 the Ontario Legislature passed the Protection of Public Participation Act. This statute allows for applications to dismiss where the impugned suit “arises from an expression...on a matter of public interest”. If this threshold test is met, the onus is reversed onto filer who must establish that their suit has “substantial merit” and that there are no “valid

defences”. The filer must also show that their private interest in proceeding with the suit outweighs the public interest in protecting the expression.

The law creates a presumption that full indemnity costs will be ordered if the suit is dismissed. Damages may also be granted if the target can show that the suit was filed in bad faith or for an improper purpose. But it is not necessary to adduce evidence of improper purpose unless damages are sought.

In 2019, a unanimous British Columbia Legislature passed a new anti-SLAPP law closely modelled on its Ontario counterpart.<sup>62</sup> Both the Ontario and BC law have spawned extensive litigation. Already the Supreme Court of Canada has rendered decisions in two Ontario anti-SLAPP cases and has heard argument in a third, this one from British Columbia.<sup>63</sup>

**“For lawyers practising in Canadian jurisdictions with anti-SLAPP legislation in force, the challenge now is to help the courts make meaningful use of the important new tool. Some courts will be unfamiliar with these laws and may approach them with some scepticism. Our job is to make sure courts understand the legislative intention behind these laws, and their importance in a rapidly changing democratic space.”**



**Professor Chris Tollefson**  
Faculty of Law, University of Victoria

**62**  
Ryan Patrick Jones, B.C. Legislature unanimously passes anti-SLAPP legislation, CBC, March 2019.

**63**  
1704604 Ontario Ltd. V. Pointes Protection Association, 2020 SCC 22 and Platnick v Bent 2020 SCC 23; decision reserved in appeal from Hansman v Neufeld 2021 BCCA 222.



## Spotlight on Anti-SLAPP Legislative Initiatives

### Australia

In 2008, the Australia Central Territory (ACT) enacted the Protection of Public Participation Act, the only law recognised as a specific anti-SLAPP initiative in Australia. As it is not a national law, its applicability is narrow, and it has also been criticised for not being sufficiently effective. It places a 'heavy' focus on the concept of 'improper purpose' of the plaintiff's suit, which is defined in the law as cases "aiming to discourage public participation, to divert the defendant's resources, and to punish the defendant's public participation."<sup>64</sup> An expert review of the law found that "the high threshold posed by this narrow definition fails to recognise the fact that the main problem with SLAPPs is that the litigation process itself, regardless of the outcome, constitutes a threat to public participation."<sup>65</sup>

However, there have been amendments to existing defamation laws, which appear to potentially reduce the success of some SLAPP cases getting off the ground, when filed by corporations.

Amendments to the Defamation Act 1974 in New South Wales (NSW) in the early 2000s removed the right of most corporations to sue for defamation, effectively limiting it to companies with fewer than ten full time or equivalent employees and not-for-profit enterprises.<sup>66</sup>

The NSW reform was later adopted nationally in the 2005 Defamation Act (that uniformed defamation laws across Australia) that came into effect on 1st January 2006. Unlike the UK, this means that very few corporations can bring actions for defamation in Australia. Companies that want to protect their reputations have to resort to less plaintiff friendly causes of action, like injurious falsehood (the equivalent of malicious falsehood in the UK). In July 2021, Australia also introduced a serious harm threshold for defamation, mirroring that in the Defamation Act 2013 (UK).<sup>67</sup> It was foreseen that this would further restrict the rights of corporations because it requires a publication to have caused, or be likely to cause, serious financial harm.

**64**

Protection of Public Participation Act 2008, section 6(a)(c).

**65**

Map of Applicability Federal law, antislapplawyers.com

**66**

New South Wales Consolidated Acts, Defamation Act 2005- SECT 9 Certain corporations do not have cause of action for defamation.

**67**

NSW, Defamation Act 2005 - Section 10A Serious harm element of cause of action for defamation.

### South Africa

In November 2022, the South African Constitutional Court handed down a watershed judgment on whether South African law recognises a SLAPP defence as a common law defence to a defamation claim. The case, *Mineral Sands Resources v Redell* concerned an Australian mining company and its executives who sued a number of environmental activists and lawyers. The defamation claims totalled over R14 million (approximately £700 000). The mining companies are involved in exploration and development of major mineral sands projects in South Africa. The activists made allegations that the companies were acting unlawfully and criticised their activities.

In response to the claim, two defences were raised: the defence of SLAPP, and the defence that trading corporations cannot sue for damages in defamation. The mining company objected to the legal validity of these defences and the stage was then set for a classic battle at the Constitutional Court.

On the trading corporation issue, the Court concluded that a trading corporation does not benefit from the constitutional right to human dignity; it has no hurt "human" feelings to assuage with a damages award. Corporations can only claim general damages in cases not involving public discourse in public interest debates. In cases involving public interest speech, courts will have a discretion whether or not to award general damages to the corporation. This was the first victory for the activists - they can now argue at the trial of the case in due course that even if successful, the mining companies should be limited in their remedy to non-monetary relief, given that the speech was on a matter of public interest.

But even more significant than the outcome on general damages was the Court's unequivocal recognition of a SLAPP defence under common law. This is imperative because South Africa does not have anti-SLAPP legislation. The Court observed that SLAPPs appear to be on the increase in South Africa and globally. A SLAPP defence ensures that the law serves its purpose and is "not to be abused for odious, ulterior purposes". The Court thus upheld a SLAPP defence based on a dual test: bad merits and bad motive. If the defendants can show that the merits of the case are poor and the lawsuit was brought for the purposes of silencing or intimidating them, the claim will fail. It is, said the Court, "for Parliament to consider whether a more comprehensive, specific SLAPP suit defence of the kind developed in Canada and the United States of America, ought to be legislated here". Unless and until that happens, truth tellers in South Africa can now turn to the common law for protection against SLAPPs.



**Professor Dario Milo**

High Level Panel of Legal Experts and partner at Webber Wentzel attorneys in Johannesburg, South Africa

## Spotlight on Anti-SLAPP Legislative Initiatives

### The EU Anti-SLAPP Directive and EU Member States

According to a 2020 study commissioned by the European Commission, SLAPPs are “increasingly used across EU member states, in an environment that is getting more and more hostile towards journalists, human rights defenders and various NGOs.”<sup>68</sup> Over the past couple of years a broad coalition of civil society organisations, known as CASE (the Coalition Against SLAPPs in Europe) have been successfully advocating for a number of complementary steps, including the adoption of an EU Directive on SLAPPs.

On 1st December 2020, over 60 organisations from across Europe endorsed CASE’s Model EU Anti-SLAPP Directive. Shortly afterwards, the European Commission committed to “take action to protect journalists and civil society against strategic lawsuits against public participation” in its 2021 work programme. A CASE report, published in March 2022, which was based on research documenting 570 cases over a 10 year period, found a rising cumulative trend of SLAPPs in Europe since 2015.<sup>69</sup> A month later, on 27th April 2022, the EU Commission proposed an EU Anti-SLAPP Directive and adopted a Recommendation to improve protection of journalists and human rights defenders from abusive court proceedings. The initiative, which focuses on cross-border cases, was welcomed by the CASE coalition as a crucial first step forward in the fight against abusive lawsuits against public watchdogs in Europe.<sup>70</sup> The proposed anti-SLAPP law includes

an early dismissal mechanism (along with reversal of burden of proof, stay of proceedings, accelerated proceedings), a regime of sanctions, and remedial and protective measures (e.g. compensation of costs). These were all aspects identified by CASE in their model Directive.

SLAPPs are often cross-border, meaning that human rights defenders resident in one jurisdiction may be threatened with a lawsuit or have legal action filed against them in another. This is done in an effort to further bleed human rights defenders of time and money, by forcing them to familiarise themselves with a foreign legal system, look for a lawyer in another country, and pay for any travel and translation costs. This is the case for UK journalist and author Oliver Bullough, who is currently being sued in Portugal in relation to his book, *Moneyland*. Bullough has never set foot in Portugal, yet the Vice President of Angola has successfully filed a lawsuit seeking more than half a million euros against him there.

The recommendation that was also published by the European Commission in April 2022 encourages EU Member States to put in place anti-SLAPP safeguards at a national level. At the moment, Malta and the Republic of Ireland are the two States taking forward initiatives at a national level, however civil society have raised concerns regarding the way the draft legislation has been developed in Malta.

**“The EU’s proposed directive is a historic first move towards fighting back cross-border SLAPPs. EU member states interested in safeguarding media freedom and the right to freedom of expression should not only support it but strengthen it. I also count on the European Parliament to ensure the proposed directive will not be watered down. Next step for the EU is to provide legislation to counter domestic SLAPPs.”**



**Flutura Kusari**

Legal Advisor at The European Centre for Press and Media Freedom

**68**

CASE, Shutting Out Criticism: How SLAPPs Threaten European Democracy, March 2022.

**69**

CASE, A Landmark step in the right direction; CASE welcomes the European Commission’s ANTI SLAPP Initiative, March 2022.

**70**

Index on Censorship, “Index on Censorship condemns lawsuit against journalist and author Oliver Bullough”, September 2021.

### Council of Europe

In January 2022, the then Parliamentary Under-Secretary of State for Justice, James Cartlidge, announced that the UK will be a member of the inaugural working group on SLAPPs at the Council of Europe (CoE). The working group, established by the CoE’s Committee of Ministers, is composed of seven representatives of Member States and six independent experts in law and media policy. They are now working to develop an anti-SLAPP recommendation due in December 2023.

Several texts already adopted at the CoE, explicitly refer to the problem of SLAPPs, and other forms of legal intimidation, including the Committee of Ministers 2018 Recommendation on the roles and responsibilities of internet intermediaries and the 2012 Declaration on the desirability of international standards dealing with forum shopping in respect of defamation, to ensure freedom of expression.

In October 2020, CoE Human Rights Commissioner Dunja Mijatovic outlined a threefold approach she argues is needed as part of a comprehensive response to effectively counter SLAPPs, including:

- Preventing the filing of SLAPPs by allowing the early dismissal of such suits;
- Introducing measures to punish abuse, particularly by reversing the costs of proceedings; and
- Minimising the consequences of SLAPPs by giving practical support to those who are sued.

Mijatovic noted that the European Court of Human Rights has already stressed that States are required to create a favourable environment for participation in public debate by all, enabling everyone to express their opinions and ideas without fear.<sup>71</sup>

In 2021, CASE launched a campaign, supported by more than 100 organisations, for a recommendation at the CoE noting that “apart from the indirect legal standards provided by the ECtHR and brief references in existing policy documents and calls by its Commissioner for Human Rights, the Council of Europe lacks a coherent set of guidelines on how national law and practice should prevent SLAPPs.”<sup>72</sup>

Meanwhile, at the Parliamentary Assembly of the Council of Europe (PACE) a motion was tabled in December 2021 that could lead to the adoption of a resolution on SLAPPs, which consists of members of the national parliaments of the 46 member States. The motion, advanced by the PACE Committee on Culture, Science, Education and Media, states that “it is high time for the European countries to put in place efficient anti-SLAPP measures.”<sup>73</sup> It is expected that a report on the problem of SLAPPs will be prepared and a rapporteur will be appointed. If adopted by the Committee, the report will be considered by the plenary Assembly, which may then issue a resolution on the topic.

**“We can no longer allow those with wealth and power to evade public scrutiny. ARTICLE 19 is calling on governments across the Council of Europe to urgently implement legislative reforms to protect journalists from abusive legal action and ensure public interest reporting can continue”**



**Sarah Clarke**

Head of Europe and Central Asia at ARTICLE 19.

**71**

Dunja Mijatovic, Time to take action against SLAPPs, 27 October 2020.

**72**

The Coalition Against SLAPPs in Europe, The need for a Council of Europe Recommendation SLAPPs, September 2022.

**73**

Parliamentary Assembly, Countering SLAPPs: an imperative for a democratic society, December 2021.

## Spotlight on Anti-SLAPP Legislative Initiatives

### UK Government Proposals and the Model UK Anti-SLAPP Law

In July 2022, the UK Government committed to legislative reforms to address SLAPPs in both primary and secondary legislation.<sup>74</sup>

The UK Anti-SLAPP Coalition welcomed the proposals set out by the MoJ noting that they reflected many of the Coalition’s recommendations, as submitted to the SLAPPs consultation in May.<sup>75</sup> Crucially, the Government recognised that it is a priority to filter SLAPPs out of the court process as quickly as possible, regardless of the law weaponised by the SLAPP litigant. The co-chairs of the Coalition released a statement recognising this step forward, but also urging the Government to be “bolder in the measures aimed at tackling SLAPPs.”<sup>76</sup>

The framework proposed by the MoJ involves a three part test:

1. First, it will assess if the case is against activity in the public interest – for example investigating financial misconduct by a company or individual.
2. Then, it will examine if there’s evidence of abuse of process, such as whether the claimant has sent a barrage of highly aggressive letters on a trivial matter.
3. Finally, it will review whether the case has sufficient merit – specifically if it has a realistic prospect of success. Where relevant cases are identified and do not meet the merit test, they will be thrown out.

Justice Minister Dominic Raab, also stated “Our Call for Evidence shows that huge costs are the single greatest factor in intimidating and silencing opponents in SLAPPs cases – especially when cynically targeted at individual journalists and campaigners, rather than the organisations they work for. So, we are also moving to cap costs. Working with

the Civil Procedure Rule Committee, we will introduce a formal costs protection scheme, to stop costs from racking up and address the stark inequality of arms in SLAPPs cases. These reforms are just the opening salvo against SLAPPs.”

The MoJ’s proposals have the potential to provide meaningful protections against SLAPPs, but their effectiveness will depend on how this is fleshed out. There are three conditions in particular that the Coalition believe any effective law must meet:

**Condition 1 – SLAPPs are disposed of as quickly as possible in court:**

in order to achieve this we need a new statutory mechanism that will require claims targeting public participation to meet a higher threshold in order to advance to trial. Such a threshold must be high enough to prevent such abusive lawsuits being stretched out to trial. Judges should also have discretion to filter out cases that exhibit abusive qualities or would otherwise have a disproportionate impact on freedom of expression.

**Condition 2 – Costs for SLAPP targets are kept to an absolute minimum:**

costs must be awarded to targets of SLAPPs on a full indemnity basis. Since SLAPPs operate through the litigation process, however, it is important that SLAPP targets are able to see that process through to a resolution. While we recognise that the Government has no plans to expand legal aid, there are other ways the costs can be minimised for those targeted by such lawsuits - including by reducing the burden of disclosure.

**Condition 3 – Costs for SLAPP filers are sufficiently high to deter further SLAPPs:**

in addition to costs being made available on a full indemnity basis, exemplary damages should be available

**“The Ministry of Justice’s proposals provide a solid foundation for tackling the problem of SLAPPs, but the Government must now ensure its proposed law is sufficiently ambitious to decisively tackle the problem of SLAPPs. This is a once-in-a-generation opportunity to protect public watchdogs from abusive lawsuits – it’s crucial the adopted measures do not fall short of what is needed.”**



**Charlie Holt**  
English PEN and co-chair of the UK Anti-SLAPP Coalition.

**74**  
MoJ, Strategic Lawsuits Against Public Participation (SLAPPs): Government response to call for evidence, 20 July 2022.

**75**  
Joint Submission by the UK Anti-SLAPP Coalition, Response to the Ministry of Justice’s SLAPPs Consultation, May 2022.

**76**  
Co-chairs of UK Anti-SLAPP Coalition welcome Government’s action on SLAPPs, July 2022.

for cases where the claimant has exhibited particularly egregious conduct, and where the time and psychological harm caused to the defendant needs to be compensated. This must be proportionate to the resources available to the claimant so as to provide an effective deterrent to those using such tactics.

To achieve the above, the Coalition developed a UK Model Anti-SLAPP Law in consultation with senior lawyers from across the sector. The aim of the draft law is to guide the proposals currently being developed by the MoJ, with the hope that this model would also be discussed and adopted by the devolved governments in the UK. The model law places importance on the following three features:

- A Higher Merits Threshold: it is emphatically not enough to simply bring forward a test for summary judgement (i.e. a “real” or “realistic” prospect of success). Since a motion for summary judgement can already be filed at an early stage in proceedings, an early dismissal mechanism that uses the same test will be redundant. The problem is that the summary judgement threshold is too low to filter out SLAPPs and provide meaningful protection for those targeted. Given ambiguities in laws such as defamation, it is simply too easy for a SLAPP claimants to show they have a “real” prospect of succeeding at trial. We have therefore proposed that SLAPP claimants must show a likelihood of prevailing at trial.
- Wide and Robust Criteria for Identifying Abuse: under the three-part test proposed by the MOJ (fleshed out

in the model law), the early dismissal mechanism will only be triggered when a case has been identified as showing “hallmarks of abuse”. This should embolden those drafting the law to provide for a more rigorous merits test (see above), since only abusive claims will be subject to such a test. It is crucial, however, that these “hallmarks” are wide enough to cover all qualities that are indicative of an improper purpose. We have therefore proposed ten specific criteria that capture common features of SLAPPs.

- An Objective Test for Dismissal: the MoJ’s framework requires that only cases identified as having features of abuse are subject to an early dismissal mechanism. This does not require courts to identify the purpose of the lawsuit. Lawsuits filed with an improper purpose can in theory already be dismissed and made subject to sanctions: the problem is that courts are too reluctant to infer such a purpose where doing so would lead to dismissal. Our objective test - requiring the court to identify abusive lawsuits (i.e. those with features of abuse) as opposed to strategic lawsuits - would avoid the problems associated with such a subjective inquiry.

The model UK Anti-SLAPP model law was launched in Parliament on 22 November 2022, at an event co-hosted by MPs David Davis and Liam Byrne. The model law has already garnered significant support from editors, journalists, lawyers, NGOs and other civil society members, who have co-signed an open letter to the Justice Minister Dominic Raab, urging him to move swiftly to enshrine these proposals in law.

**Note**  
The full text of the model UK Anti-SLAPP Law can be found on the resource section of the conference website or directly through the link below:

[UK ANTI-SLAPP CONFERENCE](https://anti-slappconference.info/resources/)

<https://anti-slappconference.info/resources/>



# Spotlight on the Role of Lawyers

The increased interest in SLAPPs has also brought significant attention to the role of lawyers when it comes to ‘enabling’ legal threats and has not been without controversy. There was significant outcry from the legal community in March, after MP Bob Seely referred to lawyers representing oligarchs as ‘amoral’ and named a number of individuals.<sup>77</sup> Afterwards, the Law Society President I. Stephanie Boyce stated: ‘It’s the job of solicitors to represent their clients, whoever they may be, so that the courts act fairly. This is how the public can be confident they live in a country that respects the rule of law – unlike Putin’s tyrannical regime.’<sup>78</sup>

In its outcome document to the SLAPPs consultation in July, the MoJ noted that “A number of law firms and barristers questioned this claimed increase in SLAPPs behaviour and the existence of SLAPPs at all. Their view was that lawyers do not tend to bring spurious or meritless claims and, on the rare occasions where these types of cases do arise, there already exist legislative and procedural mechanisms to stop them from reaching the courts.” The MoJ nevertheless concluded that on balance the evidence, including from the 120 submissions to their consultation, made a case for reform to address SLAPPs. Meanwhile, Solicitors Regulatory Authority (SRA), has also taken a number of proactive measures in recent months, including instigating a thematic review, identifying almost 30 cases where a firm may have been involved in a SLAPP and developing more specific guidance.<sup>79</sup> There have also been a number of lawyers, particularly those defending the media, who have been outspoken regarding the issue of SLAPPs.

## Views on SLAPPs from a legal perspective

Over the course of 2022, several committees in the Houses of Parliament have held one off evidence sessions and invited media lawyers to provide their perspectives on the issue of SLAPPs:

**“[A SLAPP] is not a lawsuit just between the parties, unlike any other lawsuit where you might have a contract dispute or a boundary dispute. What happens is that the action between the two who are engaged has a chilling effect on other people. They will hear that such and such a publisher has apologised for something, for example, and they know that if they try to publish that story themselves the fact that an apology has been published or that there has been a settlement will be prayed against them as further evidence that they could not have believed in what they published.**

**This cause of action has a much wider effect on society and the ability of people to participate in public interest journalism than might superficially appear.”**



**Caroline Kean**

Founding Partner at the law firm Wiggan, to the Joint Committee on Human Rights, 2 November 2022.

**77**

HoC, Sanctions Debate, 01 March 2022.

**78**

The Law Gazette, Ukraine backlash - profession hits back over ‘amoral’ allegation, March 2022.

**79**

Paul Philpl, Solicitors regulator is committed to cracking down on Slapps | Law | The Times September 2022.

**“Speaking from practical experience of acting for clients such as Global Witness, and a couple of years ago for a journalist who exposed the 1MDB fraud in Malaysia, there are people around the world—globally wealthy people—who are subject to sanctions or are possibly fugitives from US justice, and can easily access legal representation in London and pay for lawyers to threaten defamation claims in this jurisdiction. People whose alleged frauds are well documented in Department of Justice papers or who are actually fleeing from frauds and hiding in China are still able to hire reputation lawyers to threaten booksellers and journalists.**

**There is an underlying issue. You can accept that there are fraudsters around the world, but they can come to England and—through what must be a lack of effective or not rigorous enough anti-money laundering processes—they can effectively use the swag that they have defrauded from their country or a person to spend on reputation lawyers to stop people writing about it.”**



**Rupert Cowper-Coles**

Partner at the law firm RPC, to the House of Commons Justice Committee, 10 May 2022.

**“There is a very good defence in the Defamation Act 2013, which Parliament brought in, of public interest, but that has become turned around and is used against the journalist, who has to show all their workings. It has become an enormously expensive exercise. That has also somehow moved from being a very good thing to being just deployed against journalists all the time...”**

**Damages awards here are generally much more than they are in Europe, again, so [the UK] becomes a more attractive place. Feed into that the burden of proof issue and the issue of people being able to use not just defamation now, but privacy and data protection and you have a very toxic mix.”**



**Gill Phillips**

Director of Editorial Legal Services, Guardian News & Media Limited, to the House of Lords Communications Digital and Committee, 31 March 2022.



## Spotlight on the Role of Lawyers

### Statement by the Solicitors Regulatory Authority on SLAPPs

**“SLAPPs pose a significant threat to the rule of law, free speech and a free press. The public rightly expects that solicitors should act with integrity. They should not be misusing litigation to prevent legitimate scrutiny from journalists, academics and campaigners. The right for claimants to bring legitimate claims and for solicitors to act fearlessly in their interest is important. Yet when this crosses the line into SLAPPS, we will take action.”**



**Juliet Oliver**  
General Counsel, Solicitors Regulatory Authority



The Solicitors Regulation Authority (SRA) regulates some 215,000 solicitors and just under 10,000 law firms providing legal services in England and Wales. We are aware of increased public concern about solicitors being involved in bringing SLAPPs and the chilling impact on free speech and investigative journalism. If we find that a solicitor or law firm has engaged in a SLAPP, we can and will take action.

Solicitors and firms are required to follow our Codes of Conduct and meet professional obligations, including acting with honesty and integrity, and upholding the rule of law and confidence in the profession. While claimants, however unpopular, have the right to bring legitimate claims and solicitors to act fearlessly in their clients' best interests, these public interest obligations take precedence.

In March, we published our 'conduct in disputes' guidance for solicitors and law firms to clarify their obligations and make our expectations in this area clear. This is being followed shortly by the publication of a warning notice on SLAPPs. This will put firms on notice of the behaviours that are unacceptable, and which will amount to a breach of our standards. Together these highlight tactics such as making unmeritorious or exaggerated claims and sending excessive, intimidating or aggressive correspondence.

We receive very few reports from those who believe they have been a victim of a SLAPP and we are keen that more people feel able to come forward so that we can investigate and take any necessary action. We are therefore publishing some guidance to help those concerned about a SLAPP to identify the types of conduct that we can act upon and how to report this to us. We are also planning to seek statutory designation as a 'prescribed person' under the Public Interest Disclosure Act, to encourage reporting of SLAPPs and other concerns, by giving enhanced employment law rights to whistleblowers who disclose wrongdoing to us.

We are taking proactive action in this area, working with organisations such as the Foreign Policy Centre and the Coalition Against SLAPPs in Europe. We are also using intelligence gained from reports in the media or in parliamentary debates to open investigations where firms may have been involved in SLAPPs. We are currently conducting a thematic review of a targeted sample of firms to help us identify any themes, risks and good practice. We will use the results to help us consider any next steps we should take.

In May 2022, we responded to the government's call for evidence on SLAPPs, making suggestions for changes to the legislative framework that would help to prevent SLAPPs and also would help us to take action. The government's response adopts a key recommendation we made in our submission: to introduce legislation enabling the early identification and strike out of SLAPPs, and we were pleased that it increased our fining powers in July.

To report a concern to the SRA, visit our website [www.sra.org.uk/consumers/problems/report-solicitor](http://www.sra.org.uk/consumers/problems/report-solicitor). For further guidance, please call our contact centre on 0370 606 2555.

### A case in action - breaking the secrecy around threatening legal letters

In July 2022, the issue of legal threats being sent in letters marked 'private and confidential' 'without prejudice' and 'not for publication', was publicly raised by Dan Neidle, founder of Tax Policy Associates. Neidle, a British tax lawyer, researcher and commentator, had been investigating the then Chancellor of the Exchequer Nadhim Zahawi's financial ties to YouGov. There were concerns as to whether Zahawi was benefiting from tax codes he had a hand in shaping.<sup>81</sup> In a lengthy and detailed Twitter thread, setting out his evidence, Neidle alleged that Zahawi had avoided almost £4m of capital gains tax.<sup>82</sup>

In response, Neidle received a Twitter DM from Zahawi's lawyers, Osborne Clarke asking for a phone call. Neidle instead requested that he be contacted in writing, but noted that he would not accept 'without prejudice' correspondence. 'Without prejudice' is a longstanding rule which aims to support the negotiations of settlements, and avoid a court hearing "which means that the circumstances in which the content of those negotiations may be revealed to the court are very restricted."<sup>83</sup>

Osborne Clarke nevertheless sent Neidle two letters. The first was marked 'confidential and without prejudice' and the second 'not for publication' and asked him not only to retract his accusation by the end of the day, but suggested that it would be a "serious matter" if he published the legal letters. Neidle noted that the second letter "says, rather artfully, that it's not actually a threat to sue for libel. But it comes from a libel lawyer, and tries to prevent me

publishing it. Similar letters have been sent to others in recent weeks, and I understand Zahawi has done this before – using lawyers to silence people writing about his tax affairs."<sup>84</sup>

Neidle did not submit to these threats. Instead, he set out his research findings, and the conclusions he drew, in more detail. Moreover, believing that the assertions of confidentiality were false, and that the letters were rather an attempt to intimidate him, Neidle chose to publish the letters, and draw the public's attention to the use of SLAPPs to silence researchers.<sup>85</sup> After he went public, Neidle reported hearing from many others who had also been legally intimidated: "Silence is integral to the SLAPP strategy. A small-time blogger says something you don't like. You get your lawyers to write them a letter warning them off. The blogger deletes their blog, and nobody has any idea what happened."<sup>86</sup>

In August, having raised a complaint with the SRA, Neidle received a response from the regulator, which stated that they planned "to address the practice of labelling correspondence as "private and confidential" and / or "without prejudice", and to address the conditions under which doing so may be a breach of our requirements. We think that this approach will help solicitors to comply with our existing standards and regulations and to use those labels only when appropriate." In November 2022, the SRA announced that it would be publishing a warning notice on SLAPPs, a key recommendation by the UK Anti-SLAPP Coalition.

**“I told the Chancellor's lawyers I'd only accept open correspondence. They persisted in sending me letters that claim to be confidential. They aren't. They contain no confidential information, and I never accepted a duty of confidence – indeed I explicitly rejected it. I don't believe the Chancellor ever really intended to pursue a claim. The public interest is so obvious, and so strong, any libel claim would be farcical.”<sup>80</sup>**



**Dan Neidle**  
Founder, Tax Policy Associates

**80**  
Dan Neidle, The Chancellor's secret libel letters, July 2022.

**81**  
Did Nadhim Zahawi use an offshore trust to avoid almost £4m of capital gains tax?, Tax Policy Associates, July 2022.

**82**  
Dan Neidle, Twitter post, Twitter, July 2022.

**83**  
Civil Procedure Rules - Glossary, justice.gov.uk.

**84**  
Dan Neidle, The Chancellor's secret libel letters, July 2022.

**85**  
Dan Neidle, Ending secret libel letters, Tax Policy Associates, July 2022.

**86**  
Dan Neidle, The end of secret libel letters?, Tax Policy Associates, August 2022.

## Recommendations

Recommendations for the UK's legal community:

- Law firms should ensure they have, and comply with, publicly available commitments to use high ethical standards when writing to journalists and media outlets threatening legal action, including being mindful of the position of the recipient (especially if an individual journalist and/or media based overseas) and avoid the use of language or tactics that could intentionally or otherwise be perceived to intimidate or harass.
- Strengthen internal due diligence checks on clients regarding their source of wealth and refrain from accepting funds to pay for legal services, including legal advice, where the origin of is unexplained.
- Encourage the provision of pro bono legal support to journalists and media outlets facing legal intimidation and SLAPPs.

Recommendations for legal regulators, including the Solicitors Regulatory Authority and Bar Council:

- Prioritise the issue of legal intimidation and SLAPPs as one of serious concern undermining the reputation of the UK legal community and, as part of efforts to limit their use, engage in awareness raising initiatives highlighting the impact on journalists and the broader media freedom environment.
- Provide guidance to lawyers and law firms on how to identify potential SLAPP cases and expand regulatory frameworks to ensure that UK law firms are not complicit in facilitating SLAPPs and that intimidatory and inappropriate behaviour in legal communication is effectively sanctioned. For example, the Solicitors Regulatory Authority has already progressed this with the development of a specific warning notice on SLAPPs.
- Monitor complaints regarding behaviour that bears the hallmarks of legal intimidation and SLAPPs and publish data about this annually.

# Spotlight on the Impact of SLAPPs

The impact on journalists and media outlets subject to legal intimidation and SLAPPs can be devastating. The often debilitating cost of defending a SLAPP case is further amplified by the amount of time and energy it takes to fight back. These factors combined can also bring to bear psychological pressure, particularly if journalists are also subject to other forms of harassment, including smear campaigns, surveillance and online trolling.

The knock on effects can be twofold. Firstly, if the threat, or potential threat, of being subjected to the legal process is enough to have a chilling effect on reporting, the way articles are presented, or even the complete removal of them from the public domain, then the media's ability to carry out their role as a public watchdog is impaired. Ultimately, this

means our societal right to information is also affected, and can lead to a 'vacuum of information' on a wide range of matters in public interest, whether its financial crime, environmental issues, human rights abuse or sexual harassment and abuse. This creates the potential for the exposure of wrongdoing to take years to come to light – if it does at all.

Therefore one of the most positive developments over the past couple of years has been the greater interest in SLAPPs has also created space for journalists and others to be more outspoken about their experiences and bring into the public domain issues that were previously largely discussed behind closed doors. Understanding the problem, and its impact, is key to developing and advancing the right solutions.

---

**"I have spent quite a long time trying to realise why so many journalists – even really courageous ones – will recoil and walk away from a story when a letter from one of these firms comes in. It is because you risk humiliation in the public square. The letters go to your editors, publishers and lawyers, and you are cast as the most monstrous, shaming and corrupt version of yourself. That is how it works, quite apart from the massive threat of costs."**

---



**Tom Burgis**

Journalist and author, sued for his book *Kleptopia* Speaking to the Foreign Affairs Select Committee on 15 March 2022

In an article published in May 2021, OpenDemocracy's then Editor Mary Fitzgerald and Investigations Editor Peter Geoghegan (now Editor), wrote about the libel challenge brought against them in 2018 by Jeffery Donaldson, now leader of the DUP, which eventually became time expired before reaching court:

**"We were advised that if we went to court to defend our reporting, we risked bankrupting openDemocracy. We had staff worrying they would lose their homes. [The claimant] dragged the ordeal out over two years [which] cost us a lot. We spent months dealing with legal letters, burning through thousands of pounds and precious time that would otherwise have been spent on our journalism. The psychological toll was even higher....."**<sup>87</sup>

**"I wasn't on trial for my life. But I was. My professional reputation, my career, potentially my home. I survived because I had to. And because I was lifted & supported by so many others who understood this was about something much bigger than me. And that I couldn't do it alone. The last [two] years & [especially] the last year, last months, last weeks & last days have taken a massive toll on my physical & psychological health & every other aspect of my life. I have felt under assault. Because I have been."**<sup>89</sup>



**Carole Cadwalladr**

Remarking on Twitter about her experience after the conclusion of proceedings in her trial with Arron Banks in January 2022.

**"In the last couple weeks I've had a dozen editors ask me to write about Roman Abramovich, and I've had to reply that I have never looked at him because it's never occurred to me that I'd get anything published about him... You become quite good at navigating the rules. It's a very effective form of censorship."**<sup>90</sup>



**Oliver Bullough**

Journalist and author, in comments to the New York Times in March 2022, giving insights into the chilling effect those with reputations to be litigious could have and how that has in some cases shifted after Russian invasion into Ukraine.

**87**

Peter Geoghegan and Mary Fitzgerald, Jeffrey Donaldson sued us. Here's why we're going public, openDemocracy, May 2021.

**88**

Carole Cadwalladr, Twitter posts, Twitter, January 2022.

**89**

Meirion Jones, Outrageous libel laws protected Jimmy Savile. At last, change is on the cards, The Guardian, April 2022.

**90**

New York Times, Do Russian Oligarchs Have a Secret Weapon in London's Libel Lawyers?, published on March 2022.



**Meirion Jones**

Editor at TBII, in an op-Ed for The Guardian in April 2022. Jones was instrumental in the allegations against Saville coming to light.

# Spotlight on Practical Support and other SLAPP Resources

## Practical Support

If you are facing a SLAPP suit, or concerned about potentially facing one in the future, you may find the following tools and resources helpful:

### Index on Censorship's Am I facing a SLAPP? Tool

Index on Censorship has created a tool which is specifically aimed at helping journalists to understand whether the legal threat or action they are facing might be classified as a SLAPP. The questions asked in this assessment are based on research carried out by Index on Censorship into how SLAPPs against journalists most commonly manifest themselves. If your answers coincide with the most common symptoms of a SLAPP, then you are more likely to be told that you are facing a SLAPP. This assessment is intended as a helpful tool and not as legal advice.

[FIND OUT MORE](https://www.indexoncensorship.org/am-i-facing-a-slapps-lawsuit)

[www.indexoncensorship.org/am-i-facing-a-slapps-lawsuit](https://www.indexoncensorship.org/am-i-facing-a-slapps-lawsuit)

### The European Centre for Press and Media Freedom (ECPMF)

ECPMF offers and coordinates legal support on matters related to free speech for individuals and organisations working in countries located geographically in Europe. Support will be available for, but not limited to, issues such as defamation, access to public documents, protection of sources, and whistleblowing.

[FIND OUT MORE](https://www.ecpmf.eu/support/legal-support)

[www.ecpmf.eu/support/legal-support](https://www.ecpmf.eu/support/legal-support)

### Media Defence

Media Defence supports journalists – including citizen journalists, bloggers, broadcasters, photojournalists, cartoonists or fact-checkers – and news outlets when they are confronted with legal action as a result of their reporting. They can provide funding for your legal defence, help you find a lawyer or provide technical legal support to your lawyer. Media Defence can also help you bring legal action to compel the state to protect your rights if they have been violated. 73% of the cases Media Defence have supported have had a successful or partially successful outcome.

[FIND OUT MORE](https://www.mediadefence.org/get-help)

[www.mediadefence.org/get-help](https://www.mediadefence.org/get-help)

### The Coalition Against SLAPPs in Europe (CASE) - Legal Support Map

CASE provides a map with an overview of the lawyers, law firms, legal organisations and funds across Europe that are able to support SLAPP victims on a pro bono (i.e. without charge) or reduced fee basis. These legal services have indicated to CASE their willingness and capacity to deal with SLAPPs. They have an expertise in a range of relevant areas of law that may be relevant when dealing with SLAPPs, including media law, intellectual property law, criminal law, corporate law and fundamental rights.

[FIND OUT MORE](https://www.the-case.eu/legal-support)

[www.the-case.eu/legal-support](https://www.the-case.eu/legal-support)



### Reporter's Shield

With funding from USAID and other sources, the Organized Crime and Corruption Project and The Cyrus R. Vance Center for International Justice are launching Reporter's Shield, an independent nonprofit program to provide journalism and other public interest reporting organisations worldwide with the legal support and services needed to defend SLAPP

threats and claims. The services include payment of legal costs to defend against claims, working with qualified lawyers representing program participants in legal proceedings. All independent, public interest reporting organisations can participate, paying affordable annual rates and meeting reasonable requirements for eligible legal costs.

**Launching soon.**

## Reports about SLAPPs

'London Calling': The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom  
An in depth examination, published by FPC and ARTICLE 19, into how and why cases of legal intimidation and SLAPPs deployed from the UK against media global work (April 2022).

SLAPPs against journalists across Europe

A report by ARTICLE 19 based on in-depth research on SLAPP litigation against journalists in 11 countries across Europe over the last four years: Belgium, Bulgaria, Croatia, France, Hungary, Ireland, Italy, Malta, Poland, Slovenia, and the UK (March 2022).

SLAPPed but not silenced

Defending human rights in the face of legal risks, the Business and Human Rights Resource Centre's global analysis of lawsuits which bear the hallmarks of SLAPPs brought or initiated by business actors has revealed this tactic is used in every region of the world to intimidate people into silence (June 2021).

The Use of SLAPPs to Silence Journalists, NGOs and Civil Society

A study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs (June 2021).

Unsafe for Scrutiny: How the misuse of the UK's financial and legal systems to facilitate corruption undermines the freedom and safety of investigative journalists around the world

A FPC collection essays by journalists from five countries, as well as anti-corruption and media freedom experts, including a chapter specifically on SLAPPs (December 2020).

Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world

Findings of FPC's global survey conducted with the participation of 63 journalists in 41 countries (November 2020).

Slapped down: Six journalists on the legal efforts to silence them

A report by Index on Censorship. Journalists from Finland, Estonia, Italy and Cyprus recount their experience of facing lawsuits after having published public interest investigations (December 2020).

A gathering storm: The laws being used to silence the media

A report by Index on Censorship, reviewing how laws are being used in Europe to bring actions against journalists (June 2020).

# Information about the Organisers



The Justice for Journalists Foundation (JFJ) is a London-based charity whose mission is to fight impunity for attacks against the media. JFJ monitors attacks against media workers and funds investigations worldwide into violence and abuse against professional and citizen journalists. JFJ also organises media

security training and creates educational materials to raise awareness about the dangers to media freedom and methods of protection from them. Since 2020, JFJ has funded a number of SLAPP related projects, including FPC's Unsafe for Scrutiny project.

[www.jfj.fund](http://www.jfj.fund)  
 [@jfjfund](https://twitter.com/jfjfund)



The Foreign Policy Centre (FPC) is an independent, non-partisan international affairs think tank based in the UK. FPC's mission is to inform both the British and global debate, seeking sustainable solutions for the world's most pressing challenges. FPC takes a global perspective, informed by the values of democracy, human rights, good governance and conflict resolution.

Through its Unsafe for Scrutiny project, which examines issues at the nexus of safety of journalists and anti-corruption with a particular focus on the UK, FPC has produced a number of publications on SLAPPs. Most recently 'London Calling': The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom', published in April 2022 together with ARTICLE 19.

[www.fpc.org.uk](http://www.fpc.org.uk)  
 [@fpcthinktank](https://twitter.com/fpcthinktank)



The International Bar Association's Human Rights Institute (IBAHRI) works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide. Since 2019, IBAHRI has acted as the Secretariat to the High Level Panel of Legal Experts on Media

Freedom, the independent advisory body of the Media Freedom Coalition. The High Level Panel comprises a diverse group of leading international lawyers tasked with providing legal advice for the purposes of promoting and protecting a vibrant, free, and independent media.

[www.ibanet.org/IBAHRI](http://www.ibanet.org/IBAHRI)  
 [@IBAHRI](https://twitter.com/IBAHRI)



# Our Partners

We are grateful for the continued support of our partners to organise the conference for a second year:



 [www.indexoncensorship.org](http://www.indexoncensorship.org)  
 [@IndexCensorship](https://twitter.com/IndexCensorship)



 [www.mediadefence.org](http://www.mediadefence.org)  
 [@mediadefence](https://twitter.com/mediadefence)



 [www.englishpen.org](http://www.englishpen.org)  
 [@englishpen](https://twitter.com/englishpen)



 [www.ecpmf.eu](http://www.ecpmf.eu)  
 [@ECPMF](https://twitter.com/ECPMF)



 [www.article19.org](http://www.article19.org)  
 [@article19org](https://twitter.com/article19org)

## Acknowledgements

This conference booklet was prepared by the Foreign Policy Centre (FPC) to tie in with the second UK Anti-SLAPP Conference, organised as part of FPC's Unsafe for Scrutiny project, which is kindly funded by the Justice for Journalists Foundation (JJF).

To note, the information provided in this booklet, including the recommendations, has been drawn from the report 'London Calling: The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom,' published in April 2022 by FPC and ARTICLE 19. Unless otherwise indicated any views expressed are those of FPC's Deputy Director Susan Coughtrie, based on the findings from the Unsafe for Scrutiny project.

# UK Anti-SLAPP Conference

28-29 November 2022

#SLAPPS22