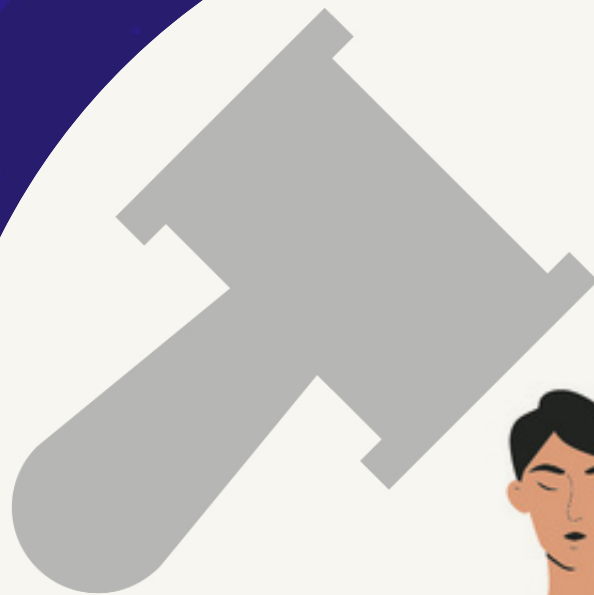


# 3rd UK Anti-SLAPP Conference

## TRACKING IMPLEMENTATION

27-28 November 2023



#SLAPPS23





# Contents

<b>1</b>	Introduction	Page 2
<b>2</b>	Conference Agenda + Evening Events	Page 6
<b>3</b>	Tracking Implementation of Anti-SLAPP Solutions in the UK	Page 12
	- Legislation	Page 14
	- Regulation	Page 18
	- Cultural Change	Page 23
<b>4</b>	Case Studies	Page 26
<b>5</b>	Tracking Key UK Anti-SLAPP Developments: A Timeline	Page 34
<b>6</b>	Implementation of the Anti-SLAPP Measures around the World	Page 36
<b>7</b>	The Cost of a SLAPP: Financially, Personally and for Society	Page 44
<b>8</b>	Practical Support and other SLAPP Resources	Page 48
<b>9</b>	Information about the Organisers, Partners and Sponsors	Page 49

**“SLAPPs undercut our most important values: the freedom to speak and the right to know. As such, we should celebrate the considerable leap forward the UK has taken to address this issue.**

The introduction of universal SLAPP protections however are essential to prevent the silencing of anyone speaking out about wrongdoing, malign influence and crimes that negatively affect our society and ultimately damage democracy, both here and abroad.

The UK Anti-SLAPP Coalition will be continuing its work, seeking further legislative and regulatory reform, as well as provoking wider conversations that will hopefully make SLAPPs an unacceptable practice once and for all.”



**Susan Coughtrie**

Director of the FPC and co-chair of the UK Anti-SLAPP Coalition

**“We are delighted at the progress that has been made to tackle SLAPPs in the UK since JFJ and FPC held the first conference in 2021. The last three years has not only seen SLAPPs soar to the top of the political agenda, but has also resulted in the implementation of concrete solutions.**

Many of these have been developed by the UK Anti-SLAPP Coalition and the subject of discussion at previous editions of the conference.

We therefore look forward to gathering together once again this year, not only to reflect back, but also focus our minds on the future next steps.”



**Maria Ordzhonikidze**

Director of the Justice for Journalists Foundation

# Introduction

We are delighted to be welcoming you to the third edition of the **UK Anti-SLAPP Conference**, and to be doing so again in partnership with the International Bar Association's Human Rights Institute (IBAHRI).

When, as co-organisers, we came together a few months ago to start discussing this year's potential theme, **'Tracking Implementation'**, at first it seemed more of an optimistic ambition as opposed to a tangible reality. Yet today, two years after our inaugural conference highlighting the problem of SLAPPs (strategic lawsuits against public participation), and a year on from the second edition **'Spotlighting Solutions'**, we are elated that there are now anti-SLAPP measures in law in the United Kingdom for the first time.

As the **UK Anti-SLAPP Coalition** noted when welcoming these new anti-SLAPP measures into the Economic Crime and Corporate Transparency Act, which received Royal Assent on 26th October 2023, this is a landmark moment, but far from the end of the journey. The new powers for courts to strike out SLAPPs at an early stage are limited to those related to economic crime and will only come into force in England and Wales. How they are implemented is also yet to be seen. Meanwhile, Scotland and Northern Ireland, as devolved nations, will have to bring forward their own legislation in order to stay in 'lock-step' with Westminster. While progress to reform the defamation law has stalled in Stormont, due to its ongoing suspension, Holyrood is currently taking evidence on the issue of SLAPPs, a crucial step towards potential change.

Over the course of the last year the **UK Anti-SLAPP Coalition**, established by FPC and Index on Censorship in January

2021, has continued its work to advance legislative and regulatory reform, as well as support those who find themselves subject to SLAPPs. In May, the Coalition launched a website - [antislapp.uk](https://antislapp.uk) - which serves as a repository for developed solutions, including the Coalition's **model UK Anti-SLAPP Law**, which has received widespread support, as well as case studies and other relevant resources.

We remain encouraged by the work of the Solicitors Regulatory Authority and await both the findings of their investigations into potential SLAPP cases as well as their current thematic review related to their **SLAPPs Warning Notice**, the publication of which happily coincided with our conference last year. This work has been bolstered by the Legal Services Board, which is currently reviewing the issue of SLAPPs through the lens of their work on professional ethics and the rule of law.

Non-legislative measures have also come into increased focus, with the UK Government launching a **SLAPPs Taskforce** in September 2023, alongside including SLAPPs into its 'refreshed' National Action Plan for the Safety of Journalists. The taskforce brings together Coalition members, regulators, as well as representatives of the media and legal communities. This is particularly important as diverging views on potential solutions make their way to the fore; thus having all stakeholders engaged in advancing SLAPP protections is vital for their effective future implementation.

It is our hope once again 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

Globally we are beginning to see a considerable cultural shift and some momentum to understand and address the ways in which SLAPP suits undermine the rule of law, democracy and human rights. In the UK and in Europe, following targeted awareness raising efforts by experts and civil society groups, there have been some positive developments to combat these meritless lawsuits, including the landmark Economic Crime and Corporate Transparency Act, which includes the first anti-SLAPP provision in UK law. Nevertheless, there is still a lot of work to be done to eliminate SLAPPs.

Our Conference last year on the theme of **'Spotlighting Solutions'** addressed how legal threats are used to suppress information on a wide range of topics and why these trends are deeply concerning from the perspectives of promoting and protecting the right to free expression, and a free press. We discussed the pernicious ways in which SLAPPs are an abuse of the legal system as they seek to target, threaten and eventually drain defendants in lengthy and expensive judicial processes.

We heard the courageous and deeply personal accounts of individuals who have been targeted, or threatened, with legal action. Their stories demonstrated the real cost of a SLAPP - personally, financially and professionally - to intimidate and/or censor those who are critical of governments, public institutions, corporations and other powerful actors. We understood how SLAPPs could have devastating impact on the media

and journalists' abilities to perform their professional duties whilst reporting in the public interest.

Reflecting on how perpetrators of SLAPPs use legal avenues to undermine democratic values and institutions, two key takeaways from the Conference were to amplify awareness raising efforts and to understand the impact of different judicial responses to SLAPPs as key to determining how to best combat them. Our agenda this year seeks to build on this further, under the theme of **'Tracking Implementation'**, with a focus on legislative and regulatory reforms in the UK, EU and across the globe to address this growing phenomenon.

I spoke on a Panel last year, which highlighted how SLAPPs are used against those reporting on sexual harassment. This year, we will continue this important discussion and I moderate an evening event **'SLAPPs and Attempts to Silence Survivors'** where my distinguished guests will explore how legal action can silence reports of sexual harassment and abuse. Speakers will include those who have been subject to violations, journalists trying to report on them, as well as lawyers and campaigners attempting to defend individuals facing legal challenges for speaking out.

Together with FPC and JFJ, we again look forward to this opportunity to brainstorm practical solutions and concrete measures we can all take to end the use of SLAPPs.



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

Director of IBAHRI and a barrister  
at Doughty Street Chambers

# A few words from our 2023 Keynote Speaker

**"We often talk about the importance of a free press - but how free are journalists when they can face life-changing legal threats? Everyone has a right to a reputation but that is really not what this is about. Time and again libel courts are being used to stop people telling stories that need to be told in the public interest."**

**"Unless the system changes, not only through legislation, and regulation, though these are important, but through a real cultural shift that makes SLAPPs an unacceptable practice - then there will be issues affecting our society that will remain in the dark."**

Investigative journalist and author Peter Geoghegan is well acquainted with the issue of SLAPPs and has been a key figure in raising awareness of this issue in the UK and elsewhere.

In May 2021, Geoghegan and his then colleague at the independent media outlet openDemocracy, Mary Fitzgerald, were among the first journalists to lift the lid on the unseen impact that legal threats can have before ever seeing the inside of a courtroom.

In 2018, after openDemocracy published several articles into the political and business affairs of Jeffery Donaldson, the now leader of the Democratic Unionist Party in Northern Ireland, he began sending legal letters and ultimately filed defamation proceedings against the media outlet in Belfast. The case never ended up in court. Instead, the 'ordeal' was dragged out until the legal timeframe for the case to proceed eventually expired in May 2020. Writing at the time, Geoghegan and Fitzgerald stated:

"Journalists rarely like to talk publicly about the times they've been sued.

For small, non-profit media outlets like openDemocracy, the risks are even higher. Losing one court case could literally put us out of business. We had staff worrying they would lose their homes. 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>1</sup>

During his time as Editor-in-Chief of openDemocracy, 2021-2023, legal action was launched against the media outlet, as well as The Bureau for Investigative Journalism (TBII) and the Telegraph regarding their reporting on a Kazakhstan university and school endowment fund associated with the former President of Kazakhstan, and a holding company registered in the UK. The case is ongoing.

Geoghegan currently works for the investigative outlet the Organized Crime and Corruption Reporting Project (OCCRP), which is also currently facing a number of SLAPP cases both in the UK and around the world.



**Peter Geoghegan**

Investigative journalist and author of *Democracy for Sale: Dark Money and Dirty Politics*

## Agenda Monday 27th November

# Day One

**09:45** Welcome to the conference

Maria Ordzhonikidze



10:00

**10:00** Opening Keynote

Countering SLAPPs: How far have we come?

Peter Geoghegan



10:20

10min Short Break

**10:30** **Session 1**  
▼  
**11:45** Tracking Implementation  
of SLAPP Solutions  
in the UK

This session will discuss legal and regulatory developments in England and Wales since the 2nd conference, as well as look at what progress has been made in the contexts of Scotland and Northern Ireland.

Susan Coughtrie  
Caroline Kean  
Catherine Belton  
Roger Mullin  
Chaired by Lord Cromwell

15min Short Break

**12:00** **Session 2**  
▼  
**13:15** Implementation of Legal  
Measures to Address  
SLAPPs around the World

With the development of Anti-SLAPP measures being proposed into UK law, this session will explore what stage reforms are at in other countries. It will also look at what lessons can be learned from pre-existing laws and initiatives.

Corinne Vella  
Flutura Kusari  
Jessica Ní Mhainín  
Laura Prather  
Chaired by Dario Milo

60min Lunch Break

**14:15** **Session 3**  
▼  
**15:30** Regulatory Efforts to  
Address SLAPPs in the UK

This session will examine regulatory developments in England and Wales, specifically, spotlighting the work of the SRA and the LSB, as well as the view from the Bar Council. There will also be an intervention which will touch upon what wider ripple effects such efforts might have outside this jurisdiction.

Dr Susan Hawley  
Juliet Oliver  
Sam Townend KC  
Richard Orpin  
Chaired by  
Baroness Stowell

15min Short Break

**15:45** **Session 4**  
▼  
**17:00** The Cost of a SLAPP -  
Financially, Personally and  
for Society

This session will focus on the various costs of a SLAPP, both for those directly subject to them as well as more broadly for media freedom and society's right to know. It will cast light on why the UK is a particularly expensive jurisdiction.

Carole Cadwalladr  
Eliot Higgins  
Caroline Muscat  
Rupert Cowper-Coles  
Chaired by  
Mark Stephens CBE

60min Drinks Reception / Networking



## Agenda Tuesday 28th November

## Day Two

09:30 Welcome to the second day

Susan Coughtrie



09:35

09:35 'In Conversation with'



10:20

Investigative journalist and author, Tom Burgis will discuss his experience defending SLAPP actions, as well as views on the wider implications of such legal threats, with Anneke Van Woudenberg, Executive Director of RAID.

**Tom Burgis**  
**Chaired by**  
**Anneke Van Woudenberg**

10min Short Break

10:30 **Session 5**  
 11:45 **Spotlighting on SLAPP Cases: Economic Crime and Beyond**

This session will spotlight cases that go beyond just economic crime, with a particular focus on legal threats or action brought against journalists reporting on issues related to housing and the environment. Examples will be highlighted from the UK & abroad.

**Peter Apps**  
**Don Staniford**  
**Elise Perry**  
**Saba A**  
**Chaired by Nik Williams**

15min Short Break

12:00 **Session 6**  
 13:15 **SLAPPs: When the Political becomes Personal**

While many politicians have been moving to address the issue of SLAPPs, there are a number of politicians that use legal action, or the threat of them, to prevent reporting in the public interest. In this session, speakers will provide examples from a number of countries and context, and discuss the impact on our societies.

**Chutima Sidasathian**  
**Sergio Aguayo**  
**Dan Neidle**  
**Caoilfhionn Gallagher KC**  
**Pia Sarma**  
**Chaired by Dame Margaret Hodge MP**

60min Lunch Break

14:15 **Session 7**  
 15:30 **A Cultural Change: Addressing SLAPPs through Non-Legislative Measures**

This session will examine the need for a cultural change as the third prong of SLAPP solutions (after legal and regulatory reform). This relates to behavioural change both by those who bring SLAPPs or facilitate them, as well as those facing them or supporting those who might be subject to them.

**Lucy Nash**  
**Peter Noorlander**  
**Sayra Tekin**  
**David McNeill**  
**Chaired by Charlie Holt**

15min Short Break

15:45 **Session 8**  
 16:30 **What is Next for Anti-SLAPP Efforts in the UK and Globally?**

This session will explore the efforts to address SLAPPs both in the UK and around the world, as we hear from stakeholders involved in progressing change. This session will also highlight the next steps needed in order to tackle SLAPPs and provide key recommendations to effectively achieve them.

**Teresa Ribeiro**  
**Patrick Penninckx**  
**Virginia Antonelli**  
**Sarah Clarke**  
**Chaired by Mary Fitzgerald**

16:35 **Closing Address by The Rt Hon Alex Chalk KC MP**  
 17:00

Lord Chancellor and Secretary of State for Justice The Rt Hon Alex Chalk KC MP will provide the closing address, and JFJ's Vafa Fati-zade will wrap up the conference with reflections on key takeaways.

**The Rt Hon Alex Chalk KC MP**  
**Vafa Fati-zade**

60min Drinks Reception / Networking

# Evening Events

SLAPPs are frequently part of a much bigger picture. Our evening events have once again been designed to allow for a wider conversation: firstly, about how legal threats can interplay with other issues endangering the safety

of journalists and undermining media freedom; and secondly, how they can pose a significant challenge to victims who want to speak out about abuse they have suffered.

## SLAPPs in the Broader Context of the Safety of Journalists

Day 1 - Evening Event: 18:00 - 19:00 (UK time) 27th November

**Anti-SLAPP Conference**

Chaired by  
**Sarah Clarke**  
ARTICLE19



**The Rt Hon Sir John Whittingdale OBE MP**  
Minister of State for Media, Tourism and Creative Industries



**Rana Ayyub**  
The Washington Post



**Michelle Stanistreet**  
National Union of Journalists



**Peter ter Velde**  
PersVeilig



**Can Yeginsu**  
High Level Panel of Legal Experts

#SLAPPS23

Justice for Journalists  
Foundation for International Investigations of Crime against Media

The Foreign Policy Centre

International Bar Association's Human Rights Institute

The safety and security of journalists can be undermined by a variety of factors, which can interconnect and culminate to create a hostile working environment. The interplay between various types of threats and harassment – whether physical, digital or legal – can have a significant impact on a journalists' wellbeing and ultimately their ability to continue to do their job.

**Rana Ayyub is an Indian investigative journalist and a global opinions writer at the Washington Post.** In a career spanning fifteen years, working with some of the leading publications in India and internationally, Ayyub has focused on the marginalised and the oppressed, reporting about the fight against misinformation and advocating for the protection of democratic ideas. She has faced many forms of harassment, including death threats, as well as extreme persecution by the Indian government, which has

included filing multiple cases for which she is currently facing trial in India. Ayyub has said of the charges:

"The government does not like anyone who speaks the truth — unvarnished truth — that does not have the government's agenda in it."<sup>2</sup>

By contrast, there have been initiatives launched by various governments aimed at improving the situation for the safety of journalists. In the UK, **The Right Hon Sir John Whittingdale OBE MP**, oversaw the establishment of a UK National Committee on the Safety of Journalists in 2020, which then led to the publication of a National Action Plan for the Safety of Journalists (NAP) in March 2021. Sir Whittingdale had noted "The UK is not without reproach, and while we don't face the same challenges as some other countries, we must be proactive in creating a safer environment for journalists to work."<sup>3</sup>

## Note

The full survey results from the 'Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world' report can be accessed directly through the link below:

**SURVEY**

[fpc.org.uk/publications/unsafe-for-scrutiny](https://fpc.org.uk/publications/unsafe-for-scrutiny)

A 2020 global survey of 63 investigative journalists uncovering corruption in 41 countries, conducted by FPC, found that legal threats that were identified, by the more than 70% of respondents experiencing a wide range of threats, to have the most impact on their ability to continue working (48%). This was far more than psychosocial (22%) or physical and digital threats (each at 12%). Recognition of legal threats against journalists as a serious form of harassment is therefore important.

In October 2023, the 'refreshed' NAP included SLAPPs for the first time, and established a SLAPPs taskforce to examine non-legislative measures to address this issue. Members of the UK Anti-SLAPP Coalition, many of whom are also members of the national committee and the new taskforce, had advocated for SLAPPs to be part of the NAP.

This includes **Michelle Stanistreet, Secretary General of the National Union of Journalists**, who welcomed the development: "The safety of journalists is the NUJ's top priority, which is why the work of the UK's National Committee for the Safety of Journalists' and its action plan is so important. [We] will be creating a press safety tracker so journalists will be able to report incidents ranging from online abuse, problems during demonstrations caused by protestors or the police, and sexual harassment to the wider challenges posed by SLAPPs and other legal threats designed to stymie and interfere with journalistic reporting and investigations."<sup>4</sup>

In the Netherlands, a PersVeilig (PressSafe) protocol was established in 2019 to take steps towards improving the safety of journalists; it was signed by the Dutch National Association of Journalists (NVJ), the Dutch Society of Editors-in-Chief, the police and the public prosecution service.<sup>5</sup> PersVeilig conducted

a survey in 2023 to gain insight into the degree and seriousness of legal threats against journalists. Half of the 800 respondents reported facing the threats of legal action as a result of a proposed publication at least once, including 36 of 39 Editors-in-chief who took part. **Peter ter Velde, journalist and project manager of PresVeilig**, called the results of the research "shocking" and has said that it has led him to "start thinking in the Netherlands about legislation to protect Dutch journalists against this type of threat."<sup>6</sup>

As many countries around the world look to address the issue of SLAPPs, the topic has also been subject to attention by the High Level Panel of Legal Experts on Media Freedom, an independent advisory body of the Media Freedom Coalition established in 2019, comprising leading experts in the field of international law. **Deputy Chair of the High Level Panel, barrister Can Yeginsu**, has stated that: "The High Level Panel is committed to drawing attention to these sorts of misuses of the law, and to working with its partners to propose solutions to what is a growing and serious problem for journalists around the world."<sup>7</sup>

The event will be chaired by **Sarah Clarke, Director of ARTICLE 19, and member of the Steering Committee for the Coalition against SLAPPs in Europe (CASE)**.

**"SLAPPs and anti-SLAPP solutions should be understood conceptually as part of an eroding climate for media freedom and attacks on the safety of journalists. In many countries, the increasing problem of SLAPP lawsuits comes in conjunction with other threats to independent journalists. SLAPP cases can be brought in parallel with a smear campaign that seeks to undermine a journalist or media outlet's reputation and credibility or even alongside (illegal) surveillance campaigns.**

**At its worst, SLAPPs can precede far more serious action, such as the murder of journalists, as played out in the case of Daphne Caruana Galizia. Governments must therefore recognise the strategic role of SLAPPs and integrate anti-SLAPP solutions into their commitments to protect and promote journalists."**



**Sarah Clarke**  
Director of ARTICLE 19 Europe,  
November 2023

# Evening Events

Anti-SLAPP Conference

SLAPPS and Attempts to Silence Survivors

Day 2 - Evening Event: 18:00 - 19:30 (UK time) 28th November







Chaired by  
**Baroness Helena Kennedy KC**

**Nina Cresswell**  
 Freelance Writer and Journalist

**Rosamund Urwin**  
 The Sunday Times Media Editor

**Zelda Perkins**  
 Can't Buy My Silence Campaign

**Jennifer Robinson**  
 Doughty Street Chambers

#SLAPPS23


**Justice for Journalists**  
Foundation for International Investigations of Crime against Media


**The Foreign Policy Centre**


**International Bar Association's Human Rights Institute**

In April 2023, **writer and journalist Nina Cresswell** successfully defended a 'landmark' libel case brought by a tattoo artist who sexually assaulted her and then sued when she named him online. The judgment suggested for the first time that the protection of other women, and abusers' accountability for their abuse, are proper factors to be considered in a public interest defence, and that survivors sharing first-hand accounts are in a different position to journalists.

The attack had happened in 2010, but as Cresswell explained earlier this year: "In 2020, there was a series of events that led me to feel like it was urgent to name the man who had sexually assaulted me. He worked as a tattooist, so he was with half naked women a lot of the time who had to be in a position of vulnerability to be tattooed. So I named him on social media, and I wrote a blog describing what he had done, and his reaction to that was SLAPP[ing] me with a claim for defamation."<sup>8</sup>

How legal action, or the threat of it, can silence reports of sexual harassment

and abuse is a subject well known to to **Jennifer Robinson, a barrister at Doughty Street Chambers in London specialising in international law, media law and human rights.**

Together with her colleague, and fellow lawyer, Keina Yoshida, she published a book earlier this year called 'How many more women? Exposing how the law silences women', which explores the legal backlash to the #MeToo movement that had started in 2017 in response to news reports of sexual abuse by American film producer Harvey Weinstein.

In the book, the authors concluded that: "On paper, there is nothing wrong with being able to defend your reputation and your privacy. But in our opinion, which is drawn from what we have seen in our own legal practices and our work on this book, it is clear the law can be used to silence women. Women have told us how they have been silenced after being sued, sometimes for years, before winning their case, or been permanently silenced because they couldn't afford to defend their right to free

speech.”<sup>9</sup> The book also opens with a section called ‘How many disclaimers?’ which explains the book went through significant legal review, and notes that it would be “a great irony if we were to be sued and silenced for this book, which is itself about how women are sued and silenced. But irony is no protection in the law.”<sup>10</sup>

Journalists trying to tell the stories of those subject to sexual harassment and assault are also well aware of the legal risks of trying to do so. **Rosamund Urwin is the Media Editor at The Sunday Times** and led the paper’s recently published investigation into allegations about actor and presenter Russell Brand. Urwin started investigating claims about Brand in 2019, and the reaction to the reporting, particularly from the comedy community, was that it had been an ‘open secret’. Daniel Sloss was the only stand-up comic to go on record and speak about Brand; however it led to the resurfacing of comments made by fellow comedian Katherine Ryan in a 2022 interview with Louis Theroux, when she said there was a ‘predator’ in their community, but it was a “litigious minefield” to discuss it further.<sup>11</sup> It is not therefore known to whom she was referring.

Writing about the Brand investigation, Urwin noted that “It takes great strength to come forward as a victim of an alleged sexual assault. It takes even more strength when the alleged perpetrator has power or influence, such as an army of fans who will pour scorn on any accusers and sniff a conspiracy to take down their idol where there isn’t one. Despite what has been claimed in the darker corners of the internet, these women were not paid for their

contributions and they did not do it for attention; they spoke out because they believed it would help protect other women in the future.”<sup>12</sup> Urwin also credited the “brilliant team of editors and lawyers who made everything possible”. Brand has vehemently denied the allegations and insisted that his prior relationships have been “absolutely always consensual”.<sup>13</sup>

Five years on from the start of the #MeToo movement, campaigners are still trying to address underlying issues that prevent victims from speaking out about abuse. **Zelda Perkins, co-founder of the campaign Can’t Buy My Silence (CBMS)**, was the first woman to break a non-disclosure agreement (NDA) in 2017, which had been signed decades earlier with Weinstein. Since then she has been advocating for legislative and regulatory reform to end the systematic abuse of NDAs around the world. In 2023, the Higher Education (Freedom of Speech) Act became law containing an amendment, created in consultation with CBMS, which prohibits the use of NDAs in cases of sexual misconduct, bullying and discrimination between staff, students and/or visiting speakers – it is the first law of its kind in the UK.

The event will be chaired by **Baroness Helena Kennedy KC, a barrister at Doughty Street Chambers and Director of the International Bar Association’s Human Rights Institute**. Baroness Kennedy is well known as a leading advocate for women’s rights and her 1992 book ‘Eve Was Framed: Women and British Justice’ led to a number of key reforms.

**“When I first got the legal letter it was extremely threatening and terrifying. His lawyer was saying that you have to apologise, you have to take these posts down, you have to pay his legal costs and I had no money, no assets, I wasn’t entitled to legal aid. I really didn’t know what to do. For the first year I was my own lawyer. But that takes over your life...I couldn’t work anymore because I was consumed by this case.**

**We [eventually] won on a truth defence and a public interest defence, which was the first time the public interest defence had been tested in the context of an answer and survivor dispute... But it made me wonder just how many victims this had happened to.”**



**Nina Cresswell**

Freelance writer and journalist, speaking at an event organised by UK Anti-SLAPP Coalition members in July 2023



# Tracking Implementation of Anti-SLAPP Solutions 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. These have fallen into three main areas: **legislation**, **regulation** and **cultural change**.

Less than three years later, there has been tangible progress in all of these aspects: there are now anti-SLAPP measures in law for the first time; regulators have taken action to investigate SLAPPs, review the behaviour of those that enable them and provide additional guidance; policies regarding sanctioned individuals being able to pursue SLAPPs in the UK have been amended; the Government has established a SLAPPs taskforce to look at non-legislative measures to tackle this issue and support those affected by it, and included SLAPPs in the country's National Action Plan on the Safety of Journalists.

**More than anything, this is evidence of a cultural shift.** SLAPPs – a term often criticised for being inelegant – is now an acronym that is recognised readily in the parlance of UK political, media and legal circles. The topic is not without its detractors: there are those who have been slow to recognise this as an issue, or even at all; there have also been diverging debates over the right approach to tackle the problem.

However, the increased amount of conversations around SLAPPs, and their impact, have had one important consequence above all: they have taken something happening largely out of sight, which often thrived exactly because of that, and put it squarely in the spotlight. This can only be a good thing for the implementation of considered and comprehensive anti-SLAPP solutions moving forward.

The next few pages aim to provide a summary of the current progress towards the implementation of SLAPP solutions, as well as the background as to their development and explain why more action is needed.

## Development of SLAPP Solutions

In July 2021, 22 members of the UK Anti-SLAPP Coalition published a policy paper '**On Countering Legal Intimidation and SLAPPs in the UK**', which 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. 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

**"The adoption of the new Economic Crime and Corporate Transparency Act is a crucial development in the fight against both economic crime and threats to freedom of expression. The dual role that the UK has played as a hub for the facilitation of global financial crime and corruption, as well as for services that can be utilised against journalists trying to shine a light on this topic has gone on for far too long.**

**Over 70% of the cases referenced in our April 2022 report on SLAPPs 'London Calling,' published with ARTICLE 19, were linked to economic crime. We hope that the new law will serve to help break this cycle."**



**Susan Coughtrie**

Director of the FPC and co-chair of the UK Anti-SLAPP Coalition

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 2022.<sup>14</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.

## The Model UK Anti-SLAPP Law

When, in July 2022, the UK Government committed to legislative reforms to address SLAPPs in both primary and secondary legislation, the UK Anti-SLAPP Coalition welcomed the proposals as announced by the Ministry of Justice (MoJ), noting that they reflected many of the Coalition's recommendations.<sup>15</sup> Crucially, they 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 MoJ proposed a framework, involving 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.

The co-chairs of the Coalition released a statement recognising that this approach had potential to provide meaningful protections against SLAPPs, but its effectiveness would depend on how it was fleshed out, and urged the Government to be "bolder in the measures aimed at tackling SLAPPs."<sup>16</sup>

In November 2022, the UK Anti-SLAPP Coalition published its **Model UK Anti-SLAPP Law**, drafted in consultation with leading media lawyers and industry experts.

Building on the framework proposed by the MoJ, the model law aims to provide robust protection against SLAPPs. It sets out the three conditions any effective law must meet, aligning with the principles first set out in the 2021 policy paper, i.e. that SLAPPs are disposed of as quickly as possible in court, costs for SLAPP targets are kept to an absolute minimum, and costs for SLAPP filers are sufficiently high to deter further SLAPPs.

The **Model UK Anti-SLAPP Law** also places particular 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). 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. The model law therefore proposes 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". It is crucial, however, that these "hallmarks" are wide enough to cover all qualities that are indicative of an improper purpose. The model law outlines ten specific criteria that capture common features of SLAPPs.

**"SLAPPs are an abuse of the UK legal system. Having defended journalists, broadcasters and publishers from SLAPPs brought by those seeking to escape accountability and scrutiny, we need to make sure the law works for everyone, not just those with the money and power to intimidate those who seek to expose suspected wrongdoing from defending themselves and to force others to refrain from publishing at all. The model law will give the court the power it needs to protect those who work to hold the powerful to account and deter those who seek to bully them into silence."**



**Caroline Kean**

Consultant Partner at the law firm Wiggin. Speaking in November 2022

### Note

The full text of the model UK Anti-SLAPP Law can be found on the Coalition's website or directly through the link below:

**UK ANTI-SLAPP COALITION**

[antislapp.uk/solutions/legislation](https://antislapp.uk/solutions/legislation)

- **An Objective Test for Dismissal:** 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. The model law's 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 law was publicly launched with an event in Parliament, organised by FPC and TBJJ, co-hosted by MPs David Davis and Liam Byrne just ahead of the second UK Anti-SLAPP Conference in November 2022. Since then, the model law has garnered widespread support across the media and civil society.

In September 2023, over 60 editors, journalists, writers, publishers, academics and experts, including the CEOs of ITN and Pan Macmillan, as well as the editors of The Guardian, The Telegraph, The Sun, The Times and The Sunday Times, the Financial Times, Bloomberg, Private Eye, Tortoise and The Mirror wrote to the current Justice Secretary Alex Chalk KC MP to request that a standalone anti-SLAPP Bill is included in the King's Speech.<sup>17</sup>

The absence of standalone legislation, when the King's Speech was delivered on 7th November, means a Government bill cannot be expected in the next parliamentary session, the last before an anticipated General Election. This is a significant disappointment for members of the UK Anti-SLAPP Coalition and the public watchdogs they support.

## LEGISLATION: The Economic Crime and Corporate Transparency Act and beyond

On 26th November 2023, the Economic Crime and Corporate Transparency Act (ECCTA) received Royal Assent. With this, the UK's first anti-SLAPP provisions were made law. This marked just two and a half years since SLAPPs were first mentioned in Parliament on 27th May 2021, during a Westminster Hall debate held to mark World Press Freedom Day.

Damian Collins MP had raised the issue of SLAPPs while referencing the then ongoing legal action against the journalist and author Catherine Belton, brought by Russian oligarch Roman Abramovich, among others. In January 2022, MPs David Davis and Liam Byrne went on to co-sponsored a backbench Parliamentary debate specifically on 'Lawfare and the UK Court System', which had cross-party support from more than 30 MPs.<sup>18</sup> As well as raising individual cases of those subject to SLAPPs, almost all participating spoke in support of reform, with some signalling the potential for a UK Anti-SLAPP law.

Without question the issue of SLAPPs came into sharper focus in light of the Russian 'full-scale' invasion into Ukraine in February 2022. The most significant development was the launch, that March, of the 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>19</sup> During the course of the next few months, several MPs continued to raise the issue in Parliament, particularly during debates about the war in Ukraine, sanctions against Russian individuals and proposed reforms to tackle economic crime.

In July 2021, 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>20</sup>

**"The passage of the Economic Crime and Corporate Transparency Bill is a welcome first step towards anti-SLAPP protection in the UK. But it is just this: a first step. The new law offers a promising framework for tackling the problem, but is undermined by an excessively restrictive definition of SLAPP – one that, by requiring the court to identify the intent of the filer, introduces an unnecessary element of uncertainty into the process. We will monitor the impact of the new law carefully and continue to push the government for a comprehensive and meaningful legislative solution, as laid out in our Model UK Anti-SLAPP Law."**



**Charlie Holt**

Lawyer, co-chair of the UK Anti-SLAPP Coalition



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 then Justice Secretary Raab announcing that this would involve both primary and secondary legislation.<sup>21</sup> However, it was not clear when the legislation would be tabled nor in what form that would take for almost another year.

In June 2023, the UK Government introduced anti-SLAPP amendments to the Economic Crime and Corporate Transparency Bill, then under review in the House of Lords.<sup>22</sup> Many Parliamentarians, in both Houses, working on the Bill had pushed for these measures to be introduced given the strong link many of the known SLAPP cases had with economic crime.

For example, over 70% of the cases referenced in the April 2022 report on SLAPPs ‘London Calling,’ published by FPC and ARTICLE 19, were linked to economic crime.

The UK Anti-SLAPP Coalition has welcomed the new anti-SLAPP measures in ECCTA, as a ‘landmark moment,’ but reiterated the need for a standalone law that would provide universal SLAPP protections regardless of the subject matter being raised in the public interest. Some of the most notable recent SLAPP cases, for example the action brought by Russian oligarch Yevgeny Prigozhin against Bellingcat founder Eliot Higgins, or the ENRC cases against Tom Burgis, his publisher and his employer, would not have been covered by these new measures as the claims brought against them were not related to economic crime. There are also concerns that the measures in ECCTA could be undermined by an excessively restrictive definition of SLAPP, and how they will be interpreted by the courts remains to be seen.

**“The anti-SLAPP measures introduced through ECCTA built on proposals put forward in both Houses with strong cross-party support – a refreshing example of our parliamentary system with a revising chamber working well. This is a truly significant step forward in preventing the abuse of wealth, in some cases dubiously acquired, to suppress the exposure of economic crime and publication of matters in the public interest. The government has declared that it will broaden beyond economic crime when parliamentary time allows – a phrase that, with an election coming up, is questionable, but nevertheless positive.”**

#### UK Anti-SLAPP Coalition Analysis of the anti-SLAPP provisions in ECCTA

##### Positives:

- Robust threshold test with the burden on the claimant to show that the claim is more likely than not to succeed at trial.
- Profile of the defendant is not prescribed - so can be used by anyone - journalists, whistleblower, activist, academic, etc - who is disclosing information in the public interest relating to economic crime and corruption.
- Recognises need to defer to courts to determine rules of admissibility as means of managing costs.
- Cost protections in place for SLAPP defendants if they lose the case.

##### Negatives:

- The scope of the amendment is limited by a restrictive definition of ‘SLAPPs’. Specifically it:
  - Restricts the application of the amendment to claims relating to the “public interest in combating economic crime.
  - Introduces an unnecessary element of uncertainty by making the operations of the law contingent on the belief of the defendant and the purpose of the disclosure.
  - Requires the court to identify the intent of the filer - a notoriously difficult, time consuming, and costly task. While this is given shape by illustrative examples of SLAPP conduct provided in the amendment, these examples only scratch the surface of known SLAPP tactics and would not cover many cases widely recognised as SLAPPs.
- Lacks any means of compensating the defendant or punishing the claimant.
- No provisions to suspend proceedings, needed to avoid abuse pending resolution of an anti-SLAPP motion.



**Lord Cromwell**

An independent peer and Vice Chair of the All-Party Parliamentary Group for Fair Business Banking

## A view on SLAPPs from Scotland

There have been encouraging developments in Scotland over the past year regarding SLAPPs, following the filing of a petition to the Scottish Parliament by Roger Mullin, a former Scottish National Party politician in September 2022. The petition, which garnered 130 signatures, urged the Scottish Government to review and amend the law to prevent SLAPPs. The following month it was taken 'under consideration' by the Citizen Participation and Public Petitions Committee.<sup>23</sup> Since then, the Committee has received 18 written submissions from a variety of stakeholders, including the UK Anti-SLAPP Coalition.

At the start of the year, the Coalition initiated a Scotland working group, convened by Nik Williams at Index on Censorship, to coordinate civil society response and press for further action. Its membership includes the National Union of Journalists Scotland, Transparency International-UK, Campaign for Freedom of Information in Scotland (CFoIS) as well as individual researchers, lawyers and other experts.

In June 2023, academics at the Anti-SLAPP Research Hub at the University of Aberdeen organised a one day workshop with a view to developing a model Anti-SLAPP law for Scotland, with participants noting that such an initiative will involve a multifaceted approach and that there is a need for more data as well as engagement with the legal community.<sup>24</sup>

As of October 2023, the Citizen Participation and Public Petitions Committee has agreed to take further

evidence at future meetings, including oral evidence from experts and stakeholders in the field. Nevertheless, thus far the Scottish Government has not updated its stated position, as of October 2022, that it "does not plan to undertake a review of SLAPPs" largely due to the relatively recent reform of the country's libel law.<sup>25</sup> Although it also noted at the time that it was "closely monitoring" the UK Government's actions and EU-level draft Directive concerning SLAPPs.

The Defamation and Malicious Publication (Scotland) Act entered into force in April 2021, after many years in development, in part driven by concerns of how defamation is applied online in the age of ever-present social media. The process of reform followed a Scottish Government Public Consultation, to which a number of respondents, comprising media outlets, media lawyers and free expression groups, particularly picked up on the issue of unjustified legal threats and the potential for legal intimidation to result in the suppression of information.<sup>26</sup>

While there have been far less known cases of cross border SLAPPs emanating from Scotland, in March 2021, the journalist and author Oliver Bullough received communication from the Scottish law firm Bannatyne Kirkwood France & Co, objecting to the inclusion of Vice-President of Angola, Bornito de Sousa, in Bullough's 2018 award winning book *Moneyland* and demanding the book be withdrawn.<sup>27</sup> After Bullough's lawyer replied that the complaint had no merit, he received no further communication from lawyers in the UK.

**"Reforming laws only when abuse emerges, as opposed to establishing structural protections against abuse, is akin to whack-a-mole. Eventually our arm will tire. An anti-Slapp bill will allow Scottish courts to dismiss Slapp threats at an early stage, limit costs for defenders and increase costs for those abusing Scottish law. The impact this would have on the people of Scotland to realise their right to free expression is immeasurable."**



**Nik Williams**

Policy and Campaigns Officer,  
Index on Censorship and UK  
Anti-SLAPP co-chair, writing in The  
Times, November 2023

**“SLAPPs are a fundamental threat to democratic values such as free speech. The law is intended to help protect the innocent, not give cover to some of the most evil actors in society. As such we must ensure that the law is reformed in all jurisdictions in the UK. If not, it will merely encourage so-called defamation tourism. There is no time to waste.”**

When I was a Member of Parliament I was heavily influenced by investigative journalists David Leask and Richard Smith and their exposure of the role of Scottish Limited Partnerships in being the opaque business vehicles at the heart of large scale corruption and money laundering. This included using Scottish registered companies and limited partnerships to funnel £4 billion out of Russia as a part of the Russian Laundromat scandal. Their work enabled me to pursue the need for legislative reform. It is such investigative journalism that is under increasing threat.

Through time, I become aware of another problem. Not every case was being exposed. Those mega-rich individuals involved in corrupt behaviour could hire KCs, private eyes and others to harass those investigating in the public interest, often using defamation or privacy laws to do so. It was never the intention of the authors of defamation and privacy laws to protect the corrupt but that is increasingly an unintended consequence.

I have raised a petition in the Scottish Parliament seeking a review of the law of Scotland as, along with others, I have a fear that if only the law of England and Wales is reformed it will have a displacement effect, simply pushing oligarchs to pursue journalists and others through Scottish courts. Defamation tourism must not be allowed to happen.



**Roger Mullin**

Former Scottish National Party politician

## Recommendations

For the UK Government:

- Adopt a UK Anti-SLAPP Law, as standalone legislation, in the earliest possible time frame to strengthen procedural protections, encompassing:
  - Accelerated procedures to dispose of SLAPPs at the earliest possible stage in proceedings, including a higher pretrial threshold burden for claims targeting public participation;
  - Sanctions to deter and delegitimise the use of SLAPPs and ensure they are no longer considered a viable means of responding to criticism;
  - Protective measures to safeguard public watchdogs from the worst impacts of SLAPPs and to ensure they are in a position to fight them off.

- 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.

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 in line with initiatives outlined above.

## **REGULATION: The Role of Lawyers and Professional Ethics**

The increased interest in SLAPPs has also brought significant attention to the role of lawyers.

This topic has not been without controversy. There was significant outcry from the legal community when, in March 2021, when MP Bob Seely referred to lawyers representing oligarchs as ‘amoral’ and named a number of individuals in Parliament.<sup>28</sup> Afterwards, the then 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>29</sup>

Nevertheless, there have continued to be concerns regarding the role that some lawyers are perceived to have played in ‘enabling’ legal threats. This goes beyond the choice of client represented, to the tactics deployed by lawyers on their client’s behalf.

A number of lawyers, particularly those working in media defence, have been outspoken on this issue. One of the most notable has been Dan Neidle, founder of Tax Policy Associates. Last year, Neidle went public with the legal letters he received from the lawyers of the Chancellor of the Exchequer, Nadhim Zahawi, whose tax affairs he had been investigating. In particular, Neidle objected to the lawyer’s

assertions that their letters were “without prejudice” and “confidential”, and cannot be published, which he argued was plainly incorrect as a matter of law.<sup>30</sup>

The Solicitors Regulation Authority (SRA) addressed the potential ‘mislabelling’ of communication in their warning notice on SLAPPs, published in November 2022. The SRA has been taking a proactive approach to address SLAPPs since early 2022, when it introduced the term to its updated ‘conduct in disputes’ guidance. It has already conducted a thematic review on this guidance, and is currently undertaking a second review related to the warning notice. Meanwhile the regulator has upwards of forty ongoing investigations into SLAPP related complaints.

The newly enacted ECCTA also created new powers for the SRA, including unlimited fining powers for economic crime related wrongdoing and the ability to demand information from regulated firms for the purposes of detecting and preventing economic crime.<sup>31</sup> Furthermore, all legal sector regulators have a new regulatory objective to promote the prevention and detection of economic crime. Given the number of known SLAPP cases linked to economic crime, it is hoped that such powers will serve to limit those enriching themselves with dirty money from being able to shut down reporting into their wrongdoing.

**“Many SLAPP cases never make it to court. They succeed by intimidating critics into dropping investigations or reports at an early stage. In these circumstances the new legislative measures may not come into play. One of the best defences against early-stage intimidation therefore lies with the SRA as the regulator.”**



**Baroness Stowell**

Chair of the House of Lords Communications and Digital Committee, July 2023

**“I was shocked to discover that it is in fact standard practice in the liberal solicitor world to send letters which assert ‘without prejudice’ and ‘private and confidential’ and cannot be published, and that many people who corresponded with me - bloggers, tweeters, non-lawyers, normal people - receive letters like that, believe them and shut up. And then I discovered that even in-house lawyers in large media organisations would often assent and not publish these letters, and I thought - that’s not right.**

**Lawyers have an incredibly important and largely unsung role in being the policeman of many of the laws that bind society together. Except in libel - where it seems that lawyers do not do that at all or in fact are worse, and it’s the lawyers who are encouraging their clients to be more aggressive and be more abusive. The only solution for this is not a hard law that cannot possibly define behaviour - that is utterly unrealistic. The solution is giving the lawyers something to be scared about, and that has to be the regulator.”**



**Dan Neidle**

Founder, Tax Policy Associates  
Speaking at the 2022 UK Anti-SLAPP Conference about the legal threats he received while investigating the then Chancellor Nadhim Zahawi’s tax affairs.

A full case study is available on [antislapp.uk](https://antislapp.uk)

## Statement by the Solicitors Regulatory Authority

**“SLAPPs are a threat to free speech and the rule of the law. Solicitors should act fearlessly in their client’s interest when bringing legitimate claims. They are, however, officers of the court. They must act with integrity and should never abuse the litigation process. This damages our society and public trust in the profession.”**



**Juliet Oliver**  
Deputy Director and  
General Counsel, SRA



The Solicitors Regulation Authority (SRA) regulates more than 200,000 solicitors and around 9,500 law firms providing legal services in England and Wales. We recognise the 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.

### High professional standards

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.

### Clear expectations

In March last year, we published guidance for solicitors and law firms to clarify their obligations when conducting litigation or handling disputes and make our expectations in this area clear. This was followed last November by a warning notice on SLAPPs. This highlights red flags to look out for so that firms can identify when they may be being asked to bring a SLAPP, and puts firms on notice of the behaviours that are unacceptable. Behaviours that would breach our standards include tactics such as making unmeritorious or exaggerated claims and sending excessive, intimidating or aggressive correspondence.

Alongside that we published 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; flagging that people can speak to us confidentially and talk through what they feel able to share. We have also sought 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 whistle-blowers who disclose wrongdoing to us.

### A proactive approach

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 responded to the government’s call for evidence on SLAPPs and sit on its SLAPPs Taskforce. The Economic Crime and Transparency Act, which passed into law this month, enables the early identification of, and measures for the courts to address, SLAPPs in relation to economic crime, and we were pleased that it increased our fining powers in response to such matters.

### Reviewing firms

We completed a thematic review earlier in the year to assess how well firms understand and manage their risks around abusive litigation. That showed some good practice but areas where firms needed to do better. We are now following that up with another such review of a targeted sample of firms. This will help us gain feedback on our warning notice from both claimant and defendant firms and lawyers within media organisations. It will help us understand the approach firms have taken to the issues raised. We will use the results to update our materials and resources and to help us consider any additional steps we should take.

### Reporting concerns to us

To report a concern to us, visit our website - [www.sra.org.uk/consumers/problems/report-solicitor](http://www.sra.org.uk/consumers/problems/report-solicitor). We will deal with your report sensitively and, although information is often provided to us openly, you can provide the information anonymously or on a confidential basis if you wish. For further guidance, please call our contact centre on 0370 606 2555.



The SRA is not the only regulator examining SLAPPs. The Legal Services Board (LSB) is currently looking at the issue through the lens of their wider work on professional ethics and the rule of law. In April 2023, at a Parliamentary event on SLAPPs, Mathew Hill, the LSB's Chief Executive stated that "In our view, much of what we see in SLAPPs are questions of conduct and conduct falls squarely into regulatory territory. Regulation has a role to play and the time is right for it to step up onto the plate."<sup>32</sup>

The Bar Council, which represents barristers in England and Wales, have responded positively to the government's action on SLAPPs and the new measures with the ECCTA, however the community in general has been less receptive to the potential for additional regulation. When the anti-SLAPP amendments were announced in July 2023, Nick Vineall KC, Chair of the Bar Council, stated that this was "one for Parliament, not for regulators."<sup>33</sup>

Barristers in England and Wales are regulated by the Bar Standards Board (BSB). Writing in April 2023, the BSB Director General Mark Neale explored whether regulators should "step in with rules" to prevent barristers from being involved in "lawsuits which are not in the public interest." He argued that access to justice and the 'cab rank rule' means that "barristers cannot turn down a case because they find it objectionable, or turn away a client because they don't like that client's views."<sup>34</sup>

In October 2023, however, the LSB noted that "anecdotal evidence would suggest that it is a relatively straightforward matter for a barrister who does not wish to represent a particular client for any particular reason to avoid doing so by invoking one or more of the exemptions. It is perhaps not surprising that the cab rank rule has rarely, if ever, been enforced."<sup>35</sup>

**"In our view, there is a very clear role for regulation to play in helping legal professionals navigate these tensions and to ensure that professional ethical decision-making is fully embedded in workplace culture."**



**Richard Orpin**

Director of Regulation and Policy, LSB

**"The Bar Council welcomed the changes to the Economic Crime Act earlier this year aimed to address SLAPPs. Parliament creates and amends the laws, and it is the job of lawyers to operate within the legal framework. We should allow the legislative changes to bed in through the Civil Procedure Rules Committee's work and now turn to the concerns in relation to SLAPPs in the sphere of investigative journalism and other non-economic crime.**

**"Effective and additional reforms will need to be practical and workable and strike an appropriate balance between freedom of speech and the protection of reputation. It is already an abuse of process to pursue a claim for an improper collateral purpose, and so perhaps the next viable route to tackle outstanding problems would be to address the undertakings around injunction applications and the associated costs regime. This would force clients and their advisors to consider more closely whether their claim has merits.**

**There is no evidence that background regulatory obligations requiring heavy compliance activity and placing gate-keeping obligations upon individual lawyers in receipt of limited information at instruction will stop the mischief or protect those suffering from SLAPPs. The solution needs to get at the problem, not the lawyers."**



**Sam Townend KC**

Vice-Chair of the Bar Council, November 2022

## Statement by The Legal Services Board



Lawyers have a privileged role in our society. We collectively place our trust in them to act with honesty and integrity and to act in a way that serves the interests of justice and upholds the rule of law. However, concerns about the extent to which this always happens in practice have been brought into focus recently through some high-profile examples of professional ethical failures, including the misuse of non-disclosure agreements and the use of SLAPPs.

As the oversight regulator for legal services in England and Wales, the Legal Services Board has a duty to promote nine regulatory objectives. This includes supporting the constitutional principle of the rule of law, promoting and maintaining adherence to the professional principles, and, as of October 2023, promoting the prevention and detection of economic crime.

In light of these objectives, and in recognition of growing public and professional concerns, we are leading a programme of work on professional ethics and the rule of law. As part of this programme, we want to establish consensus on the range of conduct that may be falling short of professional ethical practices and consider the best way to address this.

We recognise the difficult professional ethical questions lawyers may face when balancing the tensions between their professional obligations, such as acting in the best interest of the client and upholding the rule of law. In our view, there is a very clear role for regulation to play in helping legal professionals navigate these tensions and to ensure that professional ethical decision-making is fully embedded in workplace culture.

As we progress our thinking in this area, we want to hear from those who have insight into the culture and behaviours that have contributed to the use of aggressive litigation tactics, perhaps best exemplified by SLAPPs. We're already working with government, regulators, legal professionals, civil society groups, academics and others to explore how regulation can best support lawyers to uphold the highest standards of conduct. We anticipate that this will lead to regulators needing to adapt their regulatory infrastructure to address any weaknesses in regulation and to clarify, support and incentivise professional ethical practices to uphold the rule of law.

It is clear that there are enormous opportunities to strengthen and underpin professional ethical conduct in legal practice. It is equally clear, however, that the issues are complex and require a sophisticated response. The LSB will continue to bring voices together to create a legal sector that better serves the needs of society.

For more information about the  
Legal Services Board:  
[legalservicesboard.org.uk](https://legalservicesboard.org.uk)

## Recommendations

For the UK Government:

- Ensure, where appropriate and where determined by statute, that the relevant regulators have sufficient resources, powers and enforcement actions at their disposal to ensure regulated parties do not facilitate SLAPP actions.
- Expand anti-money laundering (AML) regulations to cover legal advice provided by law firms when acting for claimants pursuing civil cases against the media.

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 SRA has already progressed this with the adoption of a specific warning notice on SLAPPs.

- Monitor complaints regarding behaviour that bears the hallmarks of SLAPPs and publish data about this annually.

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 individual journalists 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.



## **CULTURAL CHANGE: Addressing SLAPPs through Non-Legislative Measures**

While legislative and regulatory reform are important, in order to comprehensively address SLAPPs, a cultural change within our society is arguably just as crucial, if not more so.

To shift towards an environment in which SLAPPs are delegitimised and/or rendered ineffectual as a means to responding to criticism, it will require behavioural change by a variety of stakeholders. This ranges from those that bring SLAPPs (e.g. politicians, business people, companies) or facilitate them (e.g. lawyers) to those potentially subject to them (e.g. journalists, academics, whistleblowers,

activists) and/or might be in a position to provide structural support (e.g. publishers, universities, NGOs).

Increased public awareness, along with greater understanding of the impact that SLAPPs can have not only directly on those targeted, but also the wider societal implications, is a foundational step. Since its establishment in January 2021, the UK Anti-SLAPP Coalition has supported those subject SLAPPs to speak out about their experiences, as well as encouraged others to report on SLAPPs - not only their own, but also those facing others.

**“It is not just about what is on the books, or what regulators enforce, it is about culture: inside newsrooms, inside politics, inside the law and judiciary ... traditionally there has been a real caution about speaking out on this issue, and I understand where it comes from. However, fundamentally there is a culture change that needs to happen in all of these spheres.”**



**Mary Fitzgerald**  
Director of Expression,  
Open Society Foundations,  
November 2023



The increased amount of conversations happening now about SLAPPs, and their impact, compared to a few years ago, both in the UK and across Europe, has already had a positive consequence: something that was happening largely out of sight, and thriving largely because of it, is increasingly now in the spotlight. This could drive those utilising or facilitating SLAPPs to reconsider their approach, as attempts to silence criticism using vexatious legal threats may in the end have the opposite result in that it actually generates more attention, in what is sometimes referred to as the ‘Streisand’ effect.

Beyond solidarity with SLAPP victims, it is also critical to equip those who might face legal threats in the future preemptively with the skills and knowledge on how to push back and defend themselves. This can come in many forms, but one recently launched initiative is Reporters Shield which will provide greater legal defence for investigative reporting. More practical, robust protections like this are needed to prevent media outlets and publishers from undue self-censorship or not even investigating certain topics out of fear.

### **Note**

The UK Anti-SLAPP Coalition's website:

**UK ANTI-SLAPP COALITION**

[antislapp.uk](https://antislapp.uk)



**Reporters Shield** is a new membership organisation, launched in 2023, that provides investigative journalism and other public interest reporting organisations worldwide with the legal support and services needed to defend SLAPP threats and claims. Reporters Shield works to prevent SLAPPs by providing pre-publication legal advice for high-risk reports and responding to threats. In the event of a lawsuit covers legal representation up to a pre-agreed limit.

Membership is open to all independent, public interest reporting organisations, with a focus on those that engage in

investigative reporting. This means that not only media organisations can join: membership is also open to environmental organisations, human rights organisations, and other organisations that publish reports that are of an investigative nature. Eligibility requirements include editorial independence and adherence to generally accepted standards of professional journalism. Individual journalists cannot join but are covered when they publish through an outlet that is a member.

For more information:  
[www.reporters-shield.org](http://www.reporters-shield.org)

**“Reporters Shield is a coordinated global solution that will counter SLAPP threats and work to support press freedom, democracy, and the free flow of information that the public needs to make decisions. It operates as a defense fund, which is paid into by its members. The more members there are, the stronger that fund will be. There’s an element of solidarity in that. You’re protecting the entire journalism community and everybody else, and you’re also insuring against future threats and lawsuits.”**



**Peter Noorlander**  
Director, Reporters Shield

In September 2023, the UK Government recognised the need for non-legislative solutions to accompany the legislative ones by establishing a UK SLAPPs Taskforce.<sup>36</sup>

Sitting within the framework of the National Committee for Safety of Journalists (NCSJ), the taskforce brings together government, civil society groups (including members of the UK Anti-SLAPP Coalition), representative bodies for journalists and legal services stakeholders to work in collaboration. It’s objectives include:

- Increasing understanding of the prevalence of SLAPPs actions launched in the UK against journalists and the characteristics of such cases;

- Exploring ways to increase journalists’ confidence in pre-empting and recognising when action taken against them should be treated as a SLAPP and where they can access support; as well as
- Considering measures to ensure that judges, legal services professionals and regulators are confident in recognising and handling SLAPPs cases.<sup>37</sup>

Meetings will be taking place bi-monthly over the course of the next year, and the outcomes are expected to feed into the National Action Plan of the Safety of Journalists, which as of October 2023 includes SLAPPs.

"From time to time I've been contacted by other journalists in my career at other news rooms that have said 'I wanted to write this news story but I couldn't because the editors were too scared about legal, do you want it?' It is very unusual for journalists to give other journalists their stories, but they just wanted to get it into the public domain and they didn't think that their editors would let them. Because media training for editors is okay, but it's not that detailed - you are not a lawyer - and so it is much easier to just go 'You can always fill a newspaper with something' and it's much easier to fill a newspaper with something that's not going to get you into a fight.

Even stories that your lawyers tell you 'you can win' or that 'you have a good chance of winning' - I have been advised I have a 75% chance of winning - that is just not going to be good enough for some editors, because the 25% is a risk that is potentially fatal to the future of the publication. So it is good if you have someone who is bullish, but I understand why people are not reckless especially when you understand how small local media organisations are, they cannot afford insurance so how are they going to survive? So they just back down - that's what gives SLAPPs the power that they haven't there is no equality of arms."



**Peter Apps**

Contributing Editor for Inside Housing & author of Show Me the Bodies: How We Let Grenfell Happen. Speaking at a SLAPPs event in July 2023

## 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.

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.

# Case Studies

Over the next few pages are descriptions of the legal actions bearing the hallmarks of SLAPPs experienced by our conference speakers, past and present, both in the UK and abroad.

Below is a snapshot of some of the cases featured in **‘London Calling’: The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom**, first published in April 2022 by FPC and ARTICLE 19:



**Carole Cadwalladr**,  
Investigative journalist

In July 2019, Arron Banks, the businessman who co-founded the pro-Brexit Leave.EU campaign, launched legal proceedings against Cadwalladr for comments made as part of two public talks and two tweets. In December 2019, a preliminary judgement noted that aspects of the claimant’s argument for two claims were “far-fetched and divorced from the specific context in which those words were used”. In January 2020, Banks dropped these two claims, but pursued the rest of the case to trial, which took place in January 2022. While the judgement handed down by Justice Steyn in June 2022 in favour of Cadwalladr was heralded as a landmark case for media freedom, 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 Anti-SLAPP Coalition, but highlighted the continued confusion surrounding the term. Isolated from institutional support and funding, Cadwalladr was only able to defend the case thanks to a successful crowdfunding campaign. Banks appealed and, in February 2023, the Court of Appeal ruled in his favour in one of the three grounds, and declared him the overall winner. Cadwalladr was subsequently ordered to pay Banks £35,000 in damages, 60% of Banks’ High Court costs and 30% of his Court of Appeal costs, amounting to a total of over £1 million. Having been denied permission to appeal the case at the Supreme Court, Cadwalladr is now planning to take the case to the European Court of Human Rights. Banks has always strongly refuted the case is a SLAPP.



**Eliot Higgins**, Founder  
of Bellingcat, an open  
source news agency

A libel case was filed in London against Higgins in December 2021 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 Higgins had linked to media reports on Prigozhin’s connections with the Wagner Group. None of the media outlets were sued. At an early hearing, in March 2022, Prigozhin’s lawyer successfully applied to withdraw the law firm from representing Prigozhin. In May 2022, Justice Nicklin struck out the claim from the High Court as Prigozhin repeatedly failed to comply with court orders. In September 2022, Higgins posted a twitter thread in which he pointed out that Prigozhin had since 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.” Higgins was left £70,000 out of pocket defending the legal action.



**Catherine Belton**,  
Investigative Journalist &  
author of Putin’s People

Belton and her publisher HarperCollins were subject to several legal cases in connection to Belton’s book ‘Putin’s People’, published in 2020. Four Russian oligarchs and the Russian state owned oil company, Rosneft, stated their intention to sue. Of these five, four made it to a preliminary hearing held in July 2021. During the hearing, HarperCollins settled two cases (which were only against them). In November 2021, the judgments regarding the ‘legal meaning’ in the cases brought by

Roman Abramovich and Rosneft were handed down. Two days later Rosneft decided to discontinue its claim. 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 as the lawyers for HarperCollins and Belton had argued. In December 2021, it was announced that Abramovich had decided to settle the case. In a statement the publisher stated: "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." 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. Abramovich had also lodged a defamation action against HarperCollins in Australia which was withdrawn.



**Tom Burgis,**  
Investigative Journalist &  
author of *Kleptopia*

Burgis was subject to two legal cases relating to the publication of his book, *Kleptopia*, and related newspaper articles published in the Financial Times. Filed in August 2021, they follow a previous case initiated in US courts in September 2020 against Burgis' publisher HarperCollins seeking disclosure of wide-ranging information relating to the book. ENRC has initiated more than 18 legal proceedings in the US and the UK, against journalists, lawyers, investigators and the Serious Fraud Office. At a meaning hearing held in 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. Less than two weeks later ENRC withdrew its remaining case against Burgis and the FT.

**Realtid**, a Swedish business publication, its editor and two of its journalists

Initiated in November 2020, in London for their investigations into the business affairs of the Monaco-based Swedish businessman, Svante Kumlin and his company Eco Energy World (EEW). Although Realtid's public interest investigation was published in Swedish for a Swedish readership, the case was filed in the UK. A jurisdictional hearing was held in March 2021, but the judgement was not handed down until May 2022, 15 months later. Justice Knowles ruled that the courts of England and Wales did not have jurisdiction over ten of the 13 defamation claims. EEW was precluded on the basis that it did not show it suffered serious financial loss. Kumlin was allowed to proceed with three of the original eight articles he sued over, but restricted to claiming for any harm he suffered in England and Wales. In January 2023, a settlement was reached with Kumlin paying part of Realtid's legal fees and Realtid adding an apology to three of the articles about him and EEW.

**Forensic News**, an investigative news website based in California, its founder and individual journalists

Legal action was brought in the UK by Israeli businessman Walter Soriano, for articles published about him between 2019-20, after Soriano was summoned by the US Senate Intelligence Committee. In what is believed to be the first appellate decision on the territorial reach of the UK GDPR, in December 2021, the Court of Appeal gave Soriano, who is a UK citizen, permission to bring a data protection claim, together with libel and misuse of private data claims. The court held that 6 subscriptions to the news site – paid in sterling or euros – amounted to 'stable arrangements' to satisfy article 3(1) of the GDPR. On 1 March 2023, the Court of Appeals (Civil Division) rejected Soriano's appeal to prevent the defendants obtaining evidence through a US court for use in English civil proceedings. The next day, ahead of a scheduled court hearing, it was confirmed that the case had been settled, with the materials under claim taken down and no longer publicly available.

#### Note

The full case studies can be found FPC's website - as part of its 'Unsafe for Scrutiny' programme.

#### CASE STUDIES

[fpc.org.uk/publications/london-calling-the-issue-of-legal-intimidation-and-slapps-against-media-emanating-from-the-united-kingdom](https://fpc.org.uk/publications/london-calling-the-issue-of-legal-intimidation-and-slapps-against-media-emanating-from-the-united-kingdom)



# Nina Cresswell

Freelance writer and journalist, England

## STATUS

Concluded – The case was initiated in 2020. On 26 April 2023, the High Court passed down its judgment in favour of Nina Cresswell.

In 2010, Nina Cresswell was sexually assaulted by tattoo artist Billy Hay walking home from a nightclub in Sunderland.<sup>38</sup> Following the incident, she reported it to the police. According to the Good Law Project, who supported Cresswell: “At 6am the next morning she reported the matter to the police, who interviewed her at home and quickly closed the investigation.<sup>39</sup> They recorded that no crime had been committed.”

In Cresswell’s own words, “I feel cloaked in guilt at the thought of another woman going through the terror I went through”.<sup>40</sup> As a result, Cresswell decided to post her story to the anonymous blogging platform, Telegraph, which she sent to a few friends, as well as Hay’s business partner. Later on, she published the story publicly via the social media platforms, Instagram, Facebook and Twitter. Her primary intention in publishing these materials, according to the High Court judgment “was to alert women who could otherwise become victims of sexual assault at the hands of the claimant, in particular in the context of his work as a tattooist”.<sup>41</sup>

A few days later, she received a legal letter from lawyers instructed by Billy Hay threatening to sue her for defamation based on the publication of her story on the online platforms and the contact with Hay’s partner. The letter claimed: “Our client has met you once in his life. You danced and chatted in groups but that was all that happened between you. Your account of what supposedly happened on your way home is neither credible nor true”.<sup>42</sup>

The hearing in the High Court commenced in February 2023, where Cresswell relied on the truth and public interest defences set out in the Defamation Act 2013. The truth defence was a late addition to Cresswell’s defence strategy and was further supported by the changing testimony provided by Billy Hay throughout the process, who eventually confirmed that he had left the club with Cresswell and had attempted to kiss her.<sup>43</sup> This was a departure from his initial retelling, which labelled Cresswell as a fantasist and that “nothing happened at all”.

On 26 April 2023, the High Court passed down its judgment in favour of Cresswell.<sup>44</sup> In a landmark ruling for victims of sexual abuse and violence who choose to speak out, the judge stated that Cresswell’s imputation that Hay had “violently sexually assaulted her” was “substantially true” and that she “established the defence in Section 4 of the 2013 Act as she has shown that: the statements complained of were on a matter of public interest; that she believed this to be the case at the time of publishing them; and that her belief was reasonable”.

In the words of Tasmin Allen, who represented Cresswell, alongside Jonathan Price, and who has described the case as a SLAPP, “It is a judgment that will give huge strength to others in the same position as Nina”.<sup>45</sup>

**“Many victims of sexual violence already go through immense amounts of internalised shame, especially when failed by the justice system. As a result, social media is now often sadly our last hope to protect others from abuse. But now, when we finally dare speak, we’re punished by SLAPP threats that are designed to destroy. It’s not a fair fight.”**



Nina Cresswell

July 2023

# Don Staniford

## Environmental blogger and fish farming activist, Scotland

### STATUS

Ongoing. After an interdict was first issued in September 2021, a Scottish court ruled in MOWI's favour in June 2023, with Staniford filing an appeal in October.

Don Staniford is an "Extreme Activist" who has campaigned against toxic salmon pharms for 25 years - he is currently Director of \$camon \$cotland, previously known as Scottish Salmon Watch and Global Director of the Real Salmon Farming Resistance. Staniford regularly uploads videos and blogs onto his website, with leading newspapers using his resources in articles. He also featured on the Netflix documentary film *Seaspiracy*.<sup>46</sup>

Staniford is being sued by a company called MOWI (previously called Marine Harvest), one of the largest seafood companies in the world.<sup>47</sup> In response to Staniford's blogs and videos, in 2017, MOWI began sending threatening emails across a five year period requesting the removal of content which Staniford had created about the company's salmon fish farms within 48 hours or risk legal proceedings. Staniford, however, refused to take down the majority of the material he had created.

In September 2021 MOWI responded by issuing Staniford with an interdict (injunction) to stop him from going within 15 metres of any MOWI-owned vessel or structure, flying a drone within 50m of the fish farms, and harassing staff members.<sup>48</sup> The lawsuit launched is aimed at banning Staniford from

approaching their farms.<sup>49</sup> However, Staniford believes the case is really being proposed so as to "fence off the Scottish environment, they're trying to fence off public waters to stop people like myself and others from telling the public what's really going on inside salmon farms".<sup>50</sup>

The court proceedings were heard in Oban Sheriff Court in June 2023. Acting for the defender, advocate Simon Crabb called for the "ridiculously extravagant" action against Staniford to be dismissed.<sup>51</sup> Acting for the pursuer, Mowi Scotland Ltd, Jonathan Barne KC insisted his client was not trying to gag Staniford, though Mr Crabb responded by saying "whether they intend it or not, that is the outcome".<sup>52</sup> Without requiring to hear any evidence Sheriff Andrew Berry ruled that "although Mr Staniford is well-meaning, he is not permitted, as a member of the public, to assume the role of fish farm watchdog".<sup>53</sup>

In the final ruling Mr Staniford was banned from using drones on MOWI property, scaling their structures or asking others to exercise surveillance on his behalf. An appeal to the decision was filed in October, and since the judgment he has received new letters threatening legal action for allegedly trespassing on their property from another salmon farm; 'Scottish Sea Farms'.

**"This lawsuit has been very taxing, it's been very threatening, intimidating - it's cost me a lot of time and effort and money to defend myself... They are not trying to just silence public criticism of salmon farming operations, they're trying to fence off the Scottish environment, they're trying to fence off public waters to stop people like myself and others from telling the public what's really going on inside salmon farms."**<sup>54</sup>



Don Staniford

May 2023

# Chutima Sidasathian

Investigative reporter and community advocate, Thailand

## STATUS

Sidasathian will stand trial in February 2024 in Thailand on charges for criminal defamation over three Facebook posts. Further charges have been added, with more likely as she continues to post on Facebook. If sentenced, she faces a long jail term.

Chutima Sidasathian has been an investigative reporter and community advocate for over a decade, reporting extensively on Thai law, human rights at sea and the Rohingya community. In 2013, Sidasathian, along with an Australian colleague, were sued by the Royal Thai Navy for criminal defamation and for violating a provision of the Computer Crime Act after they re-published a paragraph from Reuters which covered their reporting on the Rohingya migrant trafficking crisis.<sup>55</sup> The case later became known as the 'Phuketwan Trial', named after their small online news outlet. Both journalists were acquitted, in a move many observers thought would improve freedom of expression for the media in Thailand.<sup>56</sup>

However, today, Sidasathian is sadly facing an even longer jail term for criminal defamation. After two years of unpaid work as a whistleblowing advocate, she exposed a community banking scam that is being blamed for three suicides and financial trauma across scores of farming families in a rural district of Thailand. One local elected official, referenced in Sidasathian's investigation, initially tried, unsuccessfully, to have her charged with contempt of court over three Facebook posts. Subsequently, the official went to local police who filed three defamation charges, each carrying a maximum of two years' jail, plus a heavy fine. Police in Thailand say they are obliged to pursue all allegations involving criminal defamation because it is "their duty."

Sidasathian's supporters argue that her investigation should have led to the large bank involved in the scam targeting those responsible inside and outside the local branch and clearing its reputation.

Instead, they state that the bank chose to cover-up and deny any wrongdoing, while at the same time pursuing villagers through the courts for the return of the supposed loans, making them victims a second time.

An investigation by the National Human Rights Commission of Thailand recently declared Sidasathian to be a human rights defender and ruled that the SLAPP case against her could not be justified. The commission found that the elected local official had no genuine reason for pursuing Chutima. His argument that her posts were "political" and "personal" did not stand up. A second independent probe is underway by the bank, the Attorney General's department, the charitable Village Fund and the Thai equivalent of the FBI, the Department of Special Investigation. A second woman, a local villager, has also been charged by the same local official with criminal defamation over a Facebook post.

NGOs onlookers are hoping her three-day trial will prove conclusively that laws are being abused to silence public scrutiny and that another verdict in favour of Sidasathian could lead to criminal defamation laws in Thailand being repealed.

Having earned a PhD despite growing up amid rural poverty, Sidasathian also aims to improve education so farming communities no longer need whistleblowers to advise on their human rights. She has previously assisted the New York Times and Reuters in their reporting of human trafficking and slavery in the sea off SouthEast Asia, which would go on to win a Pulitzer prize.<sup>57</sup> Later she also worked as field producer on the subsequent documentary, 'Ghost Fleet' released in 2018.<sup>58</sup>

**"While countries governed by good democratic systems are actively advocating on global issues, Thailand still grapples with the fight for freedom of expression. This fundamental right is essential but incredibly challenging for people in Thailand. An elected official is misusing the law and is attempting to ruin my life. It's time for Thailand to end these appalling SLAPP cases. They are an insult to the entire system of justice."**



Chutima Sidasathian  
November 2023



# Sergio Aguayo

## Journalist and Academic, Mexico

### STATUS

Ongoing since 2016, with one case concluded in Aguayo's favour in 2023 and another ongoing.

Since 2016, the former Governor of Coahuila, Humberto Moreira Valdés has been judicially harassing the journalist and academic Sergio Aguayo. He has filed two lawsuits for moral damage. While Mexico City judges have favoured Moreira in the early stages, the federal justice system has thus far protected Aguayo.

#### First case: 2016 to 2023

In January 2016, Aguayo wrote the opinion column We Have to Wait, published in the newspapers Reforma and El Siglo de Torreón, among others, commenting on Moreira's imprisonment in Spain. In March 2016, Aguayo began an academic investigation into criminal activity in Coahuila. In July 2016, Moreira initiates legal action against Aguayo, demanding payment of ten million Mexican pesos (approximately 500,000 US dollars).

The following year, the 12th Court of the Capital acquitted Sergio Aguayo, arguing that Moreira did not demonstrate effective malice. Moreira appealed this decision and was treated favourably by Judge Francisco José Huber Olea Contró (among others). As a result, in 2019 Aguayo was ordered to pay the ten million Mexican pesos, after which Aguayo applied for hearing before the federal justice system. The First Chamber of the Supreme Court heard the case in 2022 and, in March 2023, it exonerated Aguayo. In total, the case involved six years of litigation in court.

#### Second case: 2022 onwards

In February 2022, Moreira filed a second lawsuit against Aguayo again accusing

him of "moral damage," this time for the publication of the book Reconquistando la Laguna and for the podcast El Café de la Mañana. In this academic investigation, Aguayo highlights the omissions, irregularities and acquiescence of the Humberto Moreira administration during the expansion of the Los Zetas criminal organisation in Coahuila.

The case was heard in the 54th Civil Court in Mexico City, but, in July 2023, the judge declared herself unable to hand down a sentence because the academic work has two other co-authors who were not called to trial nor was the book's publisher 'El Colegio de México'. Moreira appealed, explicitly pointing out that his interest is only in suing Aguayo, which is why it was not necessary to involve the other authors or the publishing house. This appeal is currently pending before the Fourth Civil Chamber in Mexico City.

As with the first case, so far the judges in the capital city have favoured Moreira. In a few years, this second case will reach federal justice where Aguayo expects that he will again be fully exonerated. Aside from the judicial harassment, Aguayo is also subject to physical threat, with the Federal Protection Mechanism ordering that he be protected by a group of bodyguards, among other protection measures.

**"For the past seven years, I have been facing permanent, exhausting and costly judicial harassment and there have also been physical threats to my safety. In 2023, the Mexican Supreme court exonerated me in the first case. It will now be a few more years before the second case reaches the same stage. I'm similarly expecting to cleared, yet at what cost both to me and the principle of free expression?"**



**Sergio Aguayo**

November 2023

# The Shift

## Independent media outlet, Malta

The Shift is no stranger to the changing nature of SLAPP suits. The newsroom received its first SLAPP suit three weeks after it was founded. On 24 December 2017, Henley and Partners, the company awarded a multi-million-euro contract to act as agents of Malta's cash-for-citizenship scheme with former Prime Minister Joseph Muscat as its salesman, threatened to take legal action against The Shift in the US and the UK, unless an article about the British company's alleged involvement in a scandal in Grenada was removed.<sup>59</sup>

Two years later, on 6 March 2019, The Shift News received a letter from London law firm Simons Muirhead & Burton, on behalf of Russian banker Ruben Vardanyan, demanding the removal of an article published on 4 March under the headline "Troika laundromat: How the Russians moved their money into the west".<sup>60</sup>

A year later, on 7 July 2020, Turab Musayev, the Azerbaijani-British National, SOCAR Trading's representative on the Board of Electrogas, threatened to take legal action against The Shift.<sup>61</sup> The London-based firm Atkins Thomson Solicitors sent the letter to four other newsrooms.

Before The Shift and other newsrooms started receiving threatening letters, Daphne Caruana Galizia was the only journalist threatened by a SLAPP suit in Malta. In May 2017, Ali Sadr Hasheminejad, the owner and chairman of Pilatus Bank, sued Daphne Caruana Galizia in an Arizona court for US\$40,000,000 in damages.<sup>62</sup>

Daphne never knew about the case filed by Pilatus Bank and Hasheminejad, and it was withdrawn within a day of her assassination.<sup>63</sup> All other independent media outlets in Malta threatened by Pilatus Bank opted to self-censor, modifying or completely deleting their reporting.

### The changing face of legal intimidation

More recently, the most pernicious legal harassment of The Shift is by Malta's own government entities. The Shift is fending off 40 legal challenges launched by the Maltese government.

This battle has been ongoing since December 2020, when The Shift filed a set of Freedom of Information (FOI) requests focusing on the use of public funds in the operations of the independent media with the government after it was revealed that a founder of nominally independent media outlet was also advising ministers on how to deal with the media on controversial projects and scandals.

But rather than abide by the decision of the Information and Data Protection Commissioner to release the information, 40 government ministries and agencies took the cases to the Appeals Tribunal. When 25 of those cases were thrown out by the Tribunal, several entities filed second appeals, this time in court, where The Shift is facing another 18 cases (so far) before a Judge.

With all this effort, the government is appealing the decisions of its own bodies – twice – imposing a substantial financial burden on a small newsroom that has to fight back some 80 lawyers, paid by taxpayers, to deny information in the public interest.

In early 2021, the Ministry of Justice commissioned a study and draft legislation to review the FOI Act. Yet the report submitted to the ministry and the draft Bill ready to be presented to parliament for discussion and approval was shelved, despite costing taxpayers €18,000. The Justice Minister even refused an FOI request for the FOI report.



by Caroline Muscat

Founder and Managing Editor of The Shift

**"This is about wearing us down and draining our resources, so we are unable to do our work in the public interest. It is clear that when Malta Prime Minister Robert Abela talks about supporting the free press, he means only the press that says things of which he approves."**

# SLAPPs: Key Findings

Below are some of the key findings from **'London Calling': The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom**, the first in-depth report on this issue, which highlight the main challenges:

**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.

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.

## Note

The full report - 'London Calling: The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom' - can be read on the link below:

## REPORT

[fpc.org.uk/publications/london-calling-the-issue-of-legal-intimidation-and-slapps-against-media-emanating-from-the-united-kingdom](https://fpc.org.uk/publications/london-calling-the-issue-of-legal-intimidation-and-slapps-against-media-emanating-from-the-united-kingdom)

# KEY UK ANTI-SLAPP DEVELOPMENTS

The UK Anti-SLAPP Coalition is formed by the Foreign Policy Centre and Index on Censorship.

**January 2021**

SLAPPs are mentioned in the UK Parliament for the first time by Damian Collins MP during a debate for World Press Freedom Day 2021.

**May 2021**

22 UK Anti-SLAPP Coalition members publish a policy paper on 'Countering legal intimidation and SLAPPs in the UK'.

**July 2021**

The Coalition holds two roundtables with legal experts, which conclude that there is a need for a UK Anti-SLAPP Law.

**Sept - Oct 2021**

FPC and the JFJ hold the first UK Anti-SLAPP Conference, highlighting the issue of SLAPPs with the participation of more than 40 speakers from 20 countries.

At the first ever UK Anti-SLAPP conference, the Coalition publishes its 'Proposals for Procedural Reform'.

**November 2021**

A Parliamentary debate on 'Lawfare and the UK Court System' is co-sponsored by MPs David Davis and Liam Byrne. At the debate the UK Government announces that it will be a member of the CoE's working group on SLAPPs.

**January 2022**

Russia launches a 'full scale' invasion of Ukraine. Then Foreign Secretary Liz Truss, is reported to have told government lawyers to "find literally any way" to crack down on SLAPPs.

**February 2022**

The Solicitor's Regulatory Authority (SRA) mentions SLAPPs for the first time in its updated guidance on Conduct in Disputes.

The Foreign Affairs Select Committee holds a one off evidence session on SLAPPs, with input from Catherine Belton, Tom Burgis, their publisher at HarperCollins Arabella Pike, and Coalition co-chair Susan Coughtrie.

**March 2022**

On 17th March, Justice Minister Dominic Raab, launches a call for evidence on SLAPPs, which cites research from the FPC and the Coalition against SLAPPs in Europe (CASE).

The House of Lords (HoL) Digital and Communications Committee, also holds an evidence session on SLAPPs with input from several journalists and lawyers, including Coalition co-chair Charlie Holt.

The Justice Committee holds a one off evidence session on SLAPPs, with input from lawyers, legal experts and the National Union of Journalists.

The UK Anti-SLAPP Coalition submits its response to the call for evidence, with a draft model UK Anti-SLAPP Law.

**May 2022**

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.

**June 2022**

The MoJ releases the outcome report from their SLAPPs consultation. It finds 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."

The UK Government commits to legislative reform. The co-chairs of UK Anti-SLAPP Coalition welcome this step but call for bolder measures.

**July 2022**

## Key dates in 2021

**March 2021**

Coalition members release a statement supporting Realitid, a Swedish publication, its Editor and two journalists as they face their first hearing in a case brought by a Monaco-based Swedish businessman for their investigation into his business affairs.

**May 2021**

openDemocracy (oD) 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'.

**August 2021**

22 Coalition Members publish a statement condemning lawsuits.

**November 2021**

Coalition members release a statement condemning the legal actions against Catherine Belton and HarperCollins for her book Putin's People brought by Roman Abramovich and Rosneft, the Russian state owned oil company.

**December 2021**

Abramovich decides to settle the case with Belton and HarperCollins, and withdraws a case he had also filed in Australia.

Eliot Higgins, founder of open source news agency Bellincaat, has a libel case filed against him in London by Yevgeny Prigozhin, a Russian oligarch known as 'Putin's Chef'.

**January 2022**

Coalition members monitor the trial of the libel case brought against journalist Carole Cadwalladr by Arron Banks, the businessman who co-founded the pro-Brexit Leave.EU campaign.

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.

**February 2022**

Coalition members release a statement in support of a California based media outlet Forensic News, its founder and several of its journalists, who were being used by Walter Soriano, an Israeli-British citizen. This followed what is believed to be the first appellate decision on the territorial reach of the UK GDPR, the Court of Appeal in December 2021.

**March 2022**

At a meaning hearing, Justice Nicklin dismisses 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. Less than two weeks later, ENRC withdraws its remaining case against Burgis and the FT.

**April 2022**

FPC, together with ARTICLE 19, publishes the first major report on SLAPPs in the UK, entitled 'London Calling'. Of the 35 cases mentioned in the report, over 70% have a connection with economic crime.

**May 2022**

Justice Nicklin strikes out the claim against Higgins as Prigozhin repeatedly fails to comply with court orders. At an earlier hearing Prigozhin's lawyer successfully applies to withdraw the law firm from representing Prigozhin.

Justice Knowles rules on the Realitid case, leaving only 3 of the original 13 claims to go forward to trial.

## CASE DEVELOPMENTS

<p>The SRA sets out its ongoing steps to address this issue, including a thematic review, identifying almost 30 potential SLAPP cases.</p> <p><b>September 2022</b></p> <p>David Davis MP sponsors debate on <u>Lawfare and investigative journalism</u> in light of the claims filed against TBJ, the Telegraph and oD. During the debate Dame Margaret Hodge also raises concerns regarding a legal challenge against Chatham House's 2021 report 'The UK's Kleptocracy Problem.'</p> <p><b>October 2022</b></p>	<p>The Scottish Parliament places a public petition on SLAPPs 'under consideration'; later agreeing to take further evidence on it.</p> <p><b>October 2022</b></p> <p>The <u>Joint Committee on Human Rights</u> holds an evidence session on SLAPPs, including Coalition co-chair Nik Williams.</p> <p>The <u>Model UK Anti-SLAPP Law</u>, developed by the Coalition is launched in Parliament at an event co-hosted by MPs David Davis and Liam Byrne.</p> <p><b>November 2022</b></p>	<p>FPC and JFJ, in partnership with IBAHRI hold the 2nd UK Anti-SLAPP Conference, during which the SRA announces the publication of a SLAPP warning notice, a key Coalition recommendation.</p> <p>More than 70 editors, journalists, lawyers and academics write to Raab to express support for the Model UK Anti-SLAPP Law.</p> <p><b>January 2023</b></p>	<p>The Hol's Communications and Digital Committee holds another session on Lawfare and free speech. Coalition co-chair, Susan Coughtrie, spoke along with SRA chief executive, Paul Philip, who noted that they had up to 40 possible SLAPP cases under investigation.</p> <p>The Committee's Chair, Baroness Stowell, writes to the MoJ, HM Treasury and DCMS calling for action to tackle the use of SLAPPs by wealthy individuals to silence their critics.</p> <p><b>March 2023</b></p>	<p>FPC and TBJ hold a joint event in Parliament to mark one year since the publication of FPC and ARTICLE 19's report 'London Calling' and track progress on its recommendations.</p> <p><b>April 2023</b></p> <p>The Government announces anti-SLAPP amendments to the <u>Economic Crime &amp; Corporate Transparency (ECCT)</u> Bill. If brought into law, this would be the first anti-SLAPP measure in the UK.</p> <p><b>June 2023</b></p>	<p>DCMS announces the creation of a SLAPPs taskforce to look at non-legislative measures. Members include many Coalition members as well as regulators and representatives of the legal and media communities.</p> <p>Over 60 editors, journalists, writers, publishers and experts call on the UK Government to commit to a standalone anti-SLAPP law in the King's Speech.</p> <p><b>September 2023</b></p>	<p>The ECCT Bill, becomes an Act and receives Royal Assent on 26th October to become law. The Coalition releases a statement urging the government to make good on its commitment to bring in universally applicable anti-SLAPP measures.</p> <p>DCMS releases the 'refreshed' National Action Plan on the Safety of Journalists, which includes reference to SLAPPs for the first time.</p> <p><b>October 2023</b></p>	<p>The Kings' Speech does not include an anti-SLAPP Bill. The Coalition releases a statement, which reflects the disappointment given this is anticipated to be the last Parliamentary session before the next General Election.</p> <p><b>November 2023</b></p>
--	---	--	---	--	---	---	--

### Key dates in 2023

<p><b>June 2022</b></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><b>July 2022</b></p> <p>The issue of <u>legal threats being sent in letters</u> marked 'private and confidential' 'without prejudice' and 'not for publication', was publicly raised by Dan Neidle, founder of Tax Policy Associates. Neidle who had been investigating Nadhim Zahawi's tax affairs.</p> <p><b>September 2023</b></p> <p>Higgins posts a <u>twitter thread</u> in which he pointed out that Prigozhin has now admitted his involvement with Wagner.</p>	<p><b>October 2022</b></p> <p>Coalition members publish a statement '<u>Anti-SLAPP measures cannot come fast enough</u>' after claims are filed against oD, 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.</p>	<p><b>January 2023</b></p> <p>oD reveals that Prigozhin had been able to obtain special licences from the UK Treasury to sue Higgins, who had exposed his crimes, for libel.</p> <p>Zahawi agrees to pay a penalty to HMRC in relation to his tax affairs, which had been brought to public attention by Neidle, who persisted with his investigation despite legal threats. Zahawi is <u>sacked</u> as Conservative party chair over the matter.</p>	<p><b>February 2023</b></p> <p>In February 2023, the Court of Appeal found for Banks on one ground in his appeal. It dismissed the appeal on the other two grounds.</p> <p><b>March 2023</b></p> <p>Immediately ahead of a court hearing, a settlement was reached in the case against Forensic News and two journalists. The seven articles and one podcast episode that formed the basis of the claims were taken down.</p>	<p><b>April 2023</b></p> <p>The High Court passes down a landmark judgment in favour of writer Nina Cresswell, who had been sued after she named the man who sexually assaulted her.</p> <p><b>May 2023</b></p> <p>The UK Anti-SLAPP Coalition launched its new website: <u>antislapp.uk</u> to highlight the work Coalition, key case studies and other resources.</p>	<p><b>May 2023</b></p> <p>Cadwalladr is ordered to pay Banks £35,000 in damages, plus his legal costs which amount to more than £1 million by the Court of Appeal that finds Banks 'the overall winner'. A month later Cadwalladr's application for appeal is denied.</p> <p><b>June 2023</b></p> <p>The University of Aberdeen's Anti-SLAPP Research Hub holds a roundtable with a view to developing a model Anti-SLAPP law for Scotland.</p>	<p><b>August 2023</b></p> <p>On 2nd August 2023, the UK Anti-SLAPP Coalition submitted evidence in response to the public consultation on the draft text of the CoE's Committee of Ministers Recommendation on Countering SLAPPs.</p> <p><b>September 2023</b></p> <p>Index on Censorship and TBJ organises a Parliamentary roundtable on the risks of facing a SLAPP by those who are speaking out about sexual assault.</p>	<p><b>October 2023</b></p> <p>The Supreme Court also <u>denies</u> Cadwalladr's application to appeal. Her legal team <u>announce</u> plans to take the case to the ECtHR.</p> <p>Index on Censorship files an alert on the CoE's Safety of Journalists Platform, regarding the legal action being brought in London against OCCRP and two of their journalists for reports they published in 2021 regarding an oil deal in Iraq.</p>
--	--	---	---	---	---	---	---	---



# Implementation of Anti-SLAPP Measures around the World

Previously, the UK was considered behind the curve when it came to addressing the issue of SLAPPs. As of October 2023, however, the UK is now the first country in the world to pass anti-SLAPP measures in law at a national level; although, as previously discussed, due to the devolved nature of the legal system the current protections only apply in England and Wales and to cases relating to economic crime.

Until this development, SLAPP laws were only in place in some parts of the United States, Canada and in the Australian Capital Territory. However, there are now other countries, namely the Republic of Ireland, that have looked at adopting anti-SLAPP legislation. This has been prompted in part by the continued work underway in the European Union (EU) to develop a Anti-SLAPP Directive that could be applied across the region.

An expert working group at the Council of Europe is due to deliver a recommendation for Member States in December 2023. Meanwhile, the South African Constitutional Court recognised SLAPPs as an abuse of process in a landmark case in 2022, creating new legal protections further reinforced in a judgment this year.

## The EU Anti-SLAPP Directive - informally known as 'Daphne's Law'

After significant progress to advance a EU Anti-SLAPP Directive was made in recent years, 2023 has marked a concerning turning point for campaigners trying to advance SLAPP protections across the European bloc. A broad coalition of civil society organisations, now known as the Coalition Against SLAPPs in Europe (CASE), has been advocating for a number of complementary steps, including the adoption of an EU Directive on SLAPPs, over the past five years. The Daphne Caruana Galizia Foundation, established after the assassination of the Maltese journalist in October 2017, was one of the founders of CASE, which now counts over 100 member organisations from across Europe.

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>64</sup> 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. CASE published an updated report in August 2023, which "comprises 200+ abusive lawsuits filed after the first reporting period and a broader regional scope: review[ing] the situation in 35 countries, including Georgia and Greece that see a particularly alarming number of lawsuits identified as SLAPPs."<sup>65</sup>

In April 2022, welcomed by CASE as a 'crucial first step forward', 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.<sup>66</sup> The non-binding recommendation encourages EU Member States to put in place anti-SLAPP safeguards at a national level, while the directive (which will be legally binding) focuses on cross-border cases.

**"The Council's general approach on the anti-SLAPP directive defeats its spirit. The tragedy of the compromise text is that it would not have protected Daphne. Daphne's Law should be worthy of its name. The final text should include a broadly inclusive definition of cross-border cases, include an early dismissal mechanism, and set a minimum standard for compensation for SLAPP targets."**



**Corinne Vella**

Head of Media Relations  
at The Daphne Foundation,  
November 2023

The proposed anti-SLAPP Directive followed a model version developed by CASE, including 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). At the time, the Commission Vice President Vera Jourová referred to the directive as 'Daphne's Law' to honour the Maltese journalist.

In March 2023, the Swedish Presidency of the EU Council, put forward a draft compromise proposal for the European anti-SLAPP Directive.<sup>67</sup> CASE members criticised this move stating that "compromise proposal goes in the opposite direction, watering down crucial protections and radically narrowing the scope of the procedural safeguards proposed by the European Commission".<sup>68</sup> In June 2023, Governments at the Council of the EU agreed a "general approach" to negotiations on the directive which removes key elements of the European Commission's original initiative.

On 8 November 2023, 74 civil society organisations affiliated with CASE wrote to the European Commission, the European Parliament's rapporteur, the Spanish Presidency of the EU Council and the Ministers of Justice of all EU Member States to reiterate their concerns regarding the trilogue process of the anti-SLAPP Directive.<sup>69</sup> Their statement set out how, with the absence of certain key provisions, the anti-SLAPP Directive will fail to counteract the growing problem of SLAPPs in the EU:

- "These provisions include first and foremost a strong early dismissal mechanism for all SLAPPs. If the Directive fails to ensure that all claims against public participation are subject to a rigorous threshold test at the earliest stage of proceedings, as

is the case with the Council of the European Union's general approach document, the Directive will be a hollow instrument.

- Secondly, if the definition of "cross-border" SLAPP cases is deleted, then the notion of cross-border cases would implicitly refer to cases where the parties are domiciled in different Member States. This means that the Directive will only be applicable in a handful of cases; thousands of actual and potential SLAPP targets will not be able to invoke any of the anti-SLAPP protective measures introduced by the Directive.
- Finally, the provisions on compensation of damages risk being left entirely at the discretion of Member States and the courts, leading to unequal compensation mechanisms in different countries. Leaving out a minimal standard for compensation would be disgraceful considering that full compensation for damages is essential in any anti-SLAPP legislation worthy of the name. We cannot ignore the restorative function for SLAPP victims and its deterrent effect on powerful actors who consider starting similar abusive proceedings."<sup>70</sup>

At the moment the Directive is subject to the trilogue process, which is "an informal inter-institutional negotiation bringing together representatives of the European Parliament, the Council of the European Union and the European Commission," which will end on 29th November 2023.<sup>71</sup> The aim of a trilogue is "to reach a provisional agreement on a legislative proposal that is acceptable to both the Parliament and the Council, the co-legislators. This provisional agreement must then be adopted by each of those institutions' formal procedures."<sup>72</sup> As such the finalisation of the EU Anti-SLAPP Directive is expected by the end of 2023.



## Council of Europe

In January 2022, the then Parliamentary Under-Secretary of State for Justice, James Cartledge, 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 (CM), is composed of seven representatives of Member States and six independent experts in law and media policy. The aim of the work group was to produce an anti-SLAPP recommendation, the draft of which is now due to be put forward for adoption in December 2023.

As with the EU Anti-SLAPP Directive, CASE members launched a campaign in 2021, supported by more than 100 organisations, to push the CoE for a recommendation on SLAPPs 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>73</sup>

The working group has convened several times over the last two years to develop the draft recommendation.<sup>74</sup> In June 2023, a public consultation on the draft CM 'Recommendation on Countering Strategic Lawsuits against Public Participation (SLAPPs)' was launched.<sup>75</sup>

The UK Anti-SLAPP Coalition made a submission welcoming the draft recommendation and making a number of proposed amendments aimed at strengthening the Draft Recommendation.<sup>76</sup>

These included:

- addressing the UK's existing and inadequate processes to dispose of SLAPPs before costly and time-intensive legal hearings;
- responding to the costs environment that can make lodging a defence too costly to even consider; and,
- improving the indicators presented to identify SLAPPs.<sup>77</sup>

The last meeting of the working group was held in 17-18 October 2023.<sup>78</sup>

Prior to this point several texts already adopted at the CoE, explicitly referred 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.

**"If the draft recommendation is approved as it is, it will be a very strong instrument."<sup>79</sup>**



**Flutura Kusari**

Legal Advisor at the European Centre for Press and Media Freedom and a member of the Council of Europe Expert Committee on SLAPPs, November 2023

### Note

CASE's website

CASE

[www.the-case.eu](http://www.the-case.eu)



## The Republic of Ireland

Last year, CASE identified Ireland as a jurisdiction of concern due to the number of SLAPPs that had been recorded there.<sup>80</sup> Shortly thereafter Index on Censorship set up the Ireland Anti-SLAPP Network, a coalition of NGOs, academics and legal experts seeking to put an end to the legal harassment of public watchdogs on the island of Ireland.

Uncovering and highlighting cases of SLAPP has been an important part of Index's work. Since the beginning of 2022, Index has issued four Council of Europe media freedom alerts in relation to SLAPPs. Three of the alerts relate to SLAPPs brought by politicians. But politicians are not the only ones engaging in legal harassment, and journalists are not the only ones being targeted.

In March 2023, the Ireland Anti-SLAPP Conference, organised by Index on Censorship in partnership with Trinity College Dublin, heard from academics, campaigners, solicitors, barristers, as well as journalists, on the front lines of legal harassment.<sup>81</sup> Some panellists could speak openly about their experiences, but others could not.

The scale of self-censorship around the issue was emphasised by the subsequent decision of Trinity College's legal team to block the online publication of the conference. The university feared that it could be leaving itself open to a defamation action, even though all the speakers had signed legal waivers.

Defamation is often used as the basis for SLAPPs. In the Republic of Ireland, the lack of an effective public interest defence and of a serious harm threshold makes defamation law even more punitive.<sup>82</sup> Defamation cases are currently heard by juries which, as a recent report by Index on Censorship has shown, helps to drive up the time and cost of defending a case. As it stands, defending a defamation action could cost up to €1 million (£870,000).

The reformed Defamation Bill is due to be published in the coming weeks. The draft scheme of the bill (published in March) has already been welcomed by the Anti-SLAPP Network, not least of all for its inclusion of anti-SLAPP measures. In July 2023, the Network gave evidence to the Joint Committee on Justice, urging members to ensure that the law would enable all public watchdogs to quickly and inexpensively quash any abusive actions. The Network also called for the bill to include protections for those who currently have SLAPPs pending against them.

In Northern Ireland, the issue of SLAPPs was raised by Index on Censorship and English PEN in the context of the pre-legislative scrutiny of what became the Defamation Act (2022).<sup>83</sup> The lack of an assembly has prevented any progress from being made since then. A report reviewing the act is due to be published by June 2024, and would ordinarily have provided an excellent opportunity to reiterate the need for anti-SLAPP measures to be included in the legislation. However, given the improbability of a devolved government returning in the near future, the report will likely be delayed. In the meantime, the Network will continue to engage public watchdogs and support them in the fight against SLAPPs.



**Jessica Ní Mhainín**

Policy and Campaigns Manager at Index on Censorship and co-chair of the UK Anti-SLAPP Coalition

## Countries with pre-existing Anti-SLAPP Laws

### The United States

As of today, 33 states in America have anti-SLAPP statutes, which vary significantly in scope and protections. 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. As a result, there is a checkerboard of protection throughout the US promoting libel tourism among states.

The Uniform Law Commission sought to address this problem through the passage of a model anti-SLAPP act in 2020, entitled the Uniform Public Expression Protection Act (UPEPA).

Despite the roll out of this model anti-SLAPP law during COVID, the momentum for passage is building and now 6 states have adopted UPEPA: Washington, Hawaii, Kentucky, Oregon, Utah, and New Jersey. It is being filed for consideration in almost a dozen more next year.

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. 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. A new federal anti-SLAPP bill is to be filed in the coming months with Rep. Raskin and Sen. Wyden as sponsors.

**“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. What is needed now is a federal Anti-SLAPP Law to prevent a ‘checkerboard of protection’ across the US.”**



**Laura Prather**

Partner, Haynes and Boone, LLP,  
United States, November 2023

### 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>84</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>85</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>86</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>87</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.

## Canada

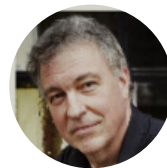
The three largest provinces in Canada all have anti-SLAPP legislation on the books. British Columbia (BC) was the first province to bring in an anti-SLAPP law in 2000, but that was quickly repealed by an incoming right-leaning government. In 2009 Quebec amended its Code of Civil Procedure to create an 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 the 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>88</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 in June 2023, ruled on a third from British Columbia.<sup>89</sup> The Court’s decision was positive for anti-SLAPP protections, emphasising the need for plaintiffs to show serious harm rather than relying on ‘the presumption of harm.’<sup>90</sup>

**“The challenge always is to adapt this concept of SLAPPs to national settings in a nuanced way. I think we’ve managed to do that, though it’s taken us a while in Canada... I think that the more this becomes a concept that is broadly accepted and is being dealt with nationally in a variety of ways, the more that I think we can be secure in the expectation that there will continue to be laws on the books to protect public participation.”**



**Chris Tollefson**

Professor of Law, Faculty of Law at University of Victoria and Executive Director, Pacific Centre for Environmental Law and Litigation speaking at the 2022 UK Anti-SLAPP Conference

## South Africa: The power of an anti-SLAPP defence in common law

South Africa does not have anti-SLAPP legislation. But an anti-SLAPP defence has been adopted in our common law. As reported last year, 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.

The Court unequivocal recognised a SLAPP defence under common law as a species of the well-known doctrine of abuse of process. 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: the defendant has to show that the claim has low prospects of success and that the claimant instituted the claim for an improper motive. Thus 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”.

The power of this anti-SLAPP defence at common law was illustrated in a case decided by the Full Court of the Pietermaritzburg High Court in South Africa in June 2023, *Maughan v Zuma*.

The case involved the former president of South Africa, Jacob Zuma, bringing a private prosecution against a court reporter, Karyn Maughan, asserting that she had breached a provision of a statute which carried with it a maximum prison sentence of 15 years. Maughan had simply reported on an affidavit filed by Zuma in his own criminal prosecution, where he asked the court for a postponement on medical grounds. The reporter made mention of a letter from a medical practitioner attached by Zuma to his affidavit, which disclosed that he was receiving medical treatment but did not disclose any medical condition. More importantly, the affidavit was not confidential or filed confidentially. Yet Zuma alleged this breached a statute which punished the disclosure of any document in the possession of the prosecuting authority without getting its permission for the disclosure.

When the National Prosecuting Authority declined to prosecute a related party based on Zuma’s complaint about the disclosure of the letter, Zuma instituted a private prosecution against Maughan. Maughan brought an application to set aside her prosecution on various grounds including that it was an abuse of process. A number of free speech and media organisations intervened as amici (friends of the court), arguing that the private prosecution was a SLAPP and should be dismissed under the authority of the Mineral Sands case. Zuma’s team objected, arguing that the Mineral Sands case and the anti-SLAPP defence only applied in civil not criminal cases. They also argued that the case was not an abuse of process.

In an important development, the Court rejected the attempt to limit the anti-SLAPP defence to civil cases. The Court continued:



**by Dario Milo**

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

"[T]he courts have recognised that it is quintessential to the freedom of expression and freedom of the press to protect the abuse to intimidate, censor and silence journalists by means of SLAPP suits. SLAPP suits give recognition to the various international instruments where the attacks on journalists, specifically female journalists, have been recognised. The private prosecution of Maughan arises from her reporting specifically on [Zuma's] criminal cases. Maughan's reporting of [Zuma's] criminal trial is essential to ensure that the public learns the truth about the criminal allegations, sees justice being done and maintains trust in the criminal justice system. These are issues which Maughan not only has the right to report but a duty to report on."

The Court then held that the amici were correct on the facts alleged by Maughan that the private prosecution had all the elements of a SLAPP suit. It had the effect of harassing and silencing her as an ulterior motive, and the prosecution

lacked prospects of success. The prosecution was therefore set aside with punitive costs against Zuma in favour of Maughan.

This case clarified that the anti-SLAPP defence applies not only to civil claims but also criminal prosecutions. It also shows that punitive costs will generally be awarded against parties who engage in such abuses of process, which should also discourage them from proceeding.

In an even more recent Constitutional Court case from November 2023, in a non-SLAPP context, the Court set out the principles where a court will order that legal practitioners should be deprived of their fees where they have acted recklessly. It seems to me that in appropriate cases, legal practitioners who knowingly facilitate the institution of a SLAPP by their clients should be on the hook to lose their professional fees if the courts ultimately find that the case constitutes a SLAPP.

In 2023, the Global Freedom of Expression initiative at Columbia University published a paper by ARTICLE 19, entitled **"How are courts responding to SLAPPs? Analysis of selected court decisions from across the globe"**.

Examining cases from around the world, the paper concluded that "many courts have provided protection against SLAPPs despite lacking special anti-SLAPP legislation, albeit in different ways and with varied implications. Several courts recognised that SLAPPs pose a threat to freedom of expression and media freedom. Some courts explicitly refer to definitions of SLAPPs in other jurisdictions, correctly apply international freedom of expression standards, and even apply available procedural protection that exists in national law in SLAPP cases (e.g. the abuse of process provisions)."<sup>91</sup>

# The Cost of a SLAPP

## Financially, Personally and for Society

When announcing the Government's intention to introduce legislative reforms in July 2022, then Justice Minister Dominic Raab, stated that the responses to the MoJ's call for evidence had shown 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."

Leading defamation lawyer Mark Stephens CBE has stated that £500,000 is the "absolute floor" for a full-scale libel trial in the UK. Even preliminary hearings, at which stage defendants might seek to get the case thrown out on meaning or jurisdictional grounds, can run anywhere from £50,000 - £100,000. HarperCollins, the publisher of Catherine Belton and Tom Burgis' books, spent nearly £1.5 million and £340,000 respectively defending their cases in the

UK, and other jurisdictions, despite them concluding at relatively early stages.

Costs therefore are significant in understanding why some journalists and media outlets, or other individuals speaking out on matters of public interest, who want to defend themselves find they cannot. Instead, they may have to settle, apologise, and amend or remove articles.

For those who do decide to mount a defence, the sometimes 'less seen' impacts can be devastating. The often debilitating financial 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 bring to bear psychological pressure, particularly if the defendant is also subject to other forms of harassment, including smear campaigns, surveillance and online trolling.

**"This decision has huge ramifications for any news organisation or journalist who believes that the overwhelming public interest of a story will enable them to speak truth to power.**

At appeal, the court upheld Mrs Justice Steyn's finding that my 2019 Ted Talk was both in the public interest and lawful. It ruled only that the public interest defence fell away after a change of circumstances a year later when the police concluded its investigation. It acknowledged that I did not control publication of Ted's website. And even by its own estimate, 98% of the views were lawful and just 2% were not. Nevertheless, it has ordered me to pay 60% of Banks's costs.

Many abuses of power already go untold in Britain because our defamation laws are among the most repressive in the world. This arbitrary and punitive ruling will mean there will be many many more which will never see the light of day."<sup>92</sup>



**Carole Cadwalladr,**  
in a statement about the  
costs order against her  
in the case brought by  
businessman Arron Banks,  
May 2023



## Why is the UK such an expensive jurisdiction?

**“We have one of the most complex and expensive legal systems for resolving media disputes in the world. It usually costs over £1m to defend a defamation claim to trial on the basis of either truth or public interest. Under our legal system a successful party can generally recover their legal costs from an unsuccessful party, so if you lose at trial you’re generally looking at a total outlay of over £2m.**

Legal costs are usually the central issue in every media claim. The cost risk drives decisions to settle claims, apologise and withdraw reports. Often these decisions are taken for purely commercial reasons, with little regard for the available evidence or merits. It only takes communication of words to one person to enable a claimant to bring one of these claims. So a single tweet or sentence in a long report can result in this sort of cost exposure. Striking out abusive litigation through existing common law framework is risky and expensive. If an application to strike out fails, the defendant may be ordered to pay hundreds of thousands of pounds to the claimant in any event, and still face the £1m to defend the claim. Even if a claim is struck out successfully, it may be difficult to recover costs.

The context above is taken into account in editorial decisions about whether and what to publish. When it comes to reporting serious allegations about the wealthy, the threat of being dragged into ruinously expensive litigation is substantial. So much of the ‘chilling effect’ of SLAPPs on public debate is actually unseen and very hard to measure.”



**Rupert Cowper-Coles**

Partner at the media defence law firm RPC, speaking in May 2023

**“Off the record, journalists have told me of multiple attempts to blow the whistle on Savile from the 1960s onwards that failed because newspapers could not afford the legal risks involved....**

If the media found itself in the same position now, with a prolific offender with powerful friends, ample resources and vulnerable victims, I suspect the legal advice would be the same: don’t publish. Every investigative journalist can tell you about the ones that got away – the outright villains who escaped because the legal risks were too high. But there is a chance to reset this.”



**Meirion Jones**, In an op-Ed for The Guardian in April 2022. Jones was instrumental in the allegations against Saville coming to light.

**“These litigants, the claimants, are very often the world’s super rich who are demanding their own version of history.”<sup>93</sup>**



**Catherine Belton**, Investigative Journalist & author of Putin’s People

And what happens even if you succeed, usually years down the line? As investigative journalist and co-founder of OCCRP Paul Radu has pointed out: “Even if you win, you lose. You lose money, time, and energy you can never get back.”

In January 2022, two years after a case against Radu was settled, on the eve of a trial in London, the National Crime Agency (NCA) seized £5.6m from family members of the Azerbaijani politician who had sued him. By the time the agency had built its case from OCCRP’s original 2017 ‘Azerbaijani Laundromat’, together with information that had been sealed in the settlement, it was as decade on from when the complex money-laundering operation, which saw \$2.9 billion funnelled out of Azerbaijan via four UK shell companies, had begun.

In March 2023, the UK Government was forced to change its policy after it was revealed that the Office of Financial Sanctions Implementation, which sits in the Treasury, had granted licences to allow Yevgeny Prigozhin to pursue a legal case in the UK against the

Bellingcat founder Eliot Higgins. Prigozhin was sanctioned in 2020 for significant foreign mercenary activity in Libya, which has been linked to the Wagner Group, a private military company, that then went on to play a key role in the Russian war in Ukraine, until Prigozhin’s subsequent death this summer. Higgins had spent £70,000 to defend the case before it collapsed, which he was unable to recoup.

There is therefore a larger cost too, one that affects the democratic health of our societies. 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.

The Russian ‘full scale’ invasion into Ukraine underscored this point last year, albeit woefully too late. Ultimately, when our societal right to information on matters of public interest is affected, the exposure of wrongdoing can take years to come to light – if it does at all.

**“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>95</sup>**



**Tom Burgis**, Investigative journalist, March 2022



**Eliot Higgins**, Bellingcat Founder, September 2023

**“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.”<sup>94</sup>**

**“Staring down the barrel of a lengthy legal battle and eye-watering legal costs, it’s no wonder that journalists often feel they have no choice but to shelve their investigations, fearful of financial ruin and their reputations being dragged through the mud simply for trying to expose the truth...**

**And, as Lord Chancellor, I will not allow our justice system – admired the world over for its fairness – to be abused by the powerful and unscrupulous. So, today, the fightback begins. New laws will strike a hammer blow against those who weaponise our justice system to wage war on the truth...**

**But we know there is more to do. We are determined to end the scourge of Slapps for good, and this is just the start. We are also looking at how to tackle cases that fall outside the category of economic crime, with plans to legislate on this as soon as parliamentary time allows.”**



**The Rt Hon Alex Chalk KC MP**

Lord Chancellor and Secretary of  
State for Justice

Writing in The Telegraph to  
mark the adoption of anti-SLAPP  
measures in ECCTA

26th October 2023

# 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**

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

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

## **Reporters Shield**

More information on Reporters Shield is available on page 24.

## **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**

[www.mediadefence.org/get-help](http://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**

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

## **Solicitors Regulation Authority**

More information on reporting to the SRA is available on page 19.

# Information about the Organisers



**Justice for Journalists**  
Foundation for International  
Investigations of Crime against Media

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**

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)



**International Bar Association's  
Human Rights Institute**

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 & Sponsors

We are grateful for the continued support of our partners:



[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)



[www.trust.org](http://www.trust.org)

[@TRF](https://twitter.com/TRF)

The 2023 UK Anti-SLAPP Conference has been made possible through funding from the Justice for Journalists Foundation and UNESCO's Global Media Defence Fund.



With the support of the  
UNESCO Global Media Defence Fund (GMDF)

We are also grateful for the additional financial support this year provided by our sponsors the law firms Wiggin and RPC.

# wiggin

Wiggin is an award-winning law firm with significant experience in resolving complex media disputes, defending the freedom of writers and journalists. The team are known as fearsome tacticians, who have defended prominent SLAPPs in recent years, and worked closely with members of the UK Anti-SLAPP Coalition



RPC is an international law firm specialising in media and technology, retail and consumer, insurance, commercial and financial disputes and regulatory, with offices in London, Bristol, Hong Kong and Singapore. It has the largest and one of the most highly regarded media defence teams in the UK, recognised in the market as the "go to" firm for publishers and journalists facing media litigation, with long-standing experience of defending public interest reporting.



# Endnotes

- 1 Peter Geoghegan and Mary Fitzgerald, Jeffrey Donaldson sued us. Here's why we're going public, openDemocracy, May 2021.
- 2 Padraig Moran, Facing death threats, Indian journalist Rana Ayyub says world must stand up for press freedom, CBC, January 2023.
- 3 John Whittingdale, New committee for journalists' safety promises national action plan as first priority, Press Gazette, July 2020
- 4 NUJ, NUJ welcomes updated National Action Plan for the safety of journalists, October 2023.
- 5 PersVeilig, About Us.
- 6 ANP, Half of journalists have been threatened with legal action, NL Times, March 2023.
- 7 Nick Hilborne, Judges and lawyers call for curbs on misuse of SLAPPs, Legal Futures, November 2021.
- 8 FPC, EnglishPEN, JFJ, and Amnesty International event, 'SLAPPs: an ongoing threat to freedom of expression', July 2023.
- 9 Jennifer Robinson and Keina Yoshida, 'How Many More Women? Exposing how the law silences women', 2023, p.383
- 10 Ibid.
- 11 Kate Hind, 'The worst kept secret in comedy': Female comedians warned one another about Russell Brand's alleged lewd behaviour, Daily Mail, September 2023.
- 12 Rosamund Urwin, Grazia Magazine, My Russell Brand Investigation: 'These Women Spoke Out As They Believed It Would Help Protect Other Women', October 2023.
- 13 Tom Murray, 'Russell Brand denies 'serious criminal allegations' related to his 'promiscuous' past in video, The Independent, September 2023.
- 14 UK Anti-SLAPP Coalition, 'Proposals for Procedural Reform', FPC November 2021.
- 15 UK Anti-SLAPP Coalition, Response to the Ministry of Justice's SLAPPs Consultation Joint Submission by the UK Anti-SLAPP Coalition - May 2022, FPC.
- 16 Index on Censorship, Co-chairs of UK Anti-SLAPP Coalition welcome Government's action on SLAPPs, July 2022.
- 17 Over 60 editors, journalists, writers, publishers and experts call on the UK Government to commit to a standalone anti-SLAPP law in the King's Speech, UK Anti-SLAPP Coalition, September 2023.
- 18 House of Commons (HoC), Lawfare and UK Court System, January 2021.
- 19 Maj, Strategic Lawsuits Against Public Participation: A Call for Evidence, March 2022.
- 20 Maj, Strategic Lawsuits Against Public Participation (SLAPPs): Government response to call for evidence, July 2022.
- 21 Maj, Crackdown on corrupt elites abusing UK legal system to silence critics, July 2022
- 22 Economic Crime and Corporate Transparency Bill, Government Bills, October 2023.
- 23 The Scottish Parliament, PE1975/A: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs), September 2022.
- 24 University of Aberdeen, Briefing Note: Workshop on Developing a Model Anti-SLAPP Law for Scotland, July 2023.
- 25 The Scottish Parliament, PE1975/A: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs), September 2022.
- 26 Scottish Government, Defamation in Scots Law, Published responses
- 27 Index, ARTICLE 19 and ECPMF, Damages sought from British Journalist Oliver Bullough in Portugal, Safety of journalists platform, October 2021.
- 28 House of Commons (HoC), Sanctions Debate, March 2022.
- 29 The Law Gazette, Ukraine backlash - profession hits back over 'amoral' allegation, March 2022.
- 30 Letter to Paul Phillip CEO of the SRA from Dan Neidle, Tax Policy Associates, July 2022.
- 31 James Bolton-Jones & Dr Susan Hawley, How will the Economic Crime and Corporate Transparency Act help fight corruption, and does it go far enough?, Spotlight on Corruption, October 2023.
- 32 Speech on SLAPPs by Matthew Hill, CEO of the Legal Services Board – 24 April 2023, Legal Service Board, April 2023.
- 33 Bar Council Press Release, Bar Council reacts to Government's SLAPPs amendments, June 2023.
- 34 Mark Neale, Ethics and access: striking the right balance, Bar Standards Board, April 2023.
- 35 Danielle Viall, Legal Services Board Meeting: Reflections on the cab rank rule: supporting the rule of law, improving access to justice and maintaining independence, October 2023.
- 36 DCMS and The Rt Hon Lucy Frazer KC MP, New plans to stop journalists being silenced by baseless lawsuits, September 2023.
- 37 Terms of Reference - SLAPPs Taskforce.
- 38 Royal Court of Justice, MR WILLIAM HAY and MS NINA CRESSWELL Approved judgement, February 2023.
- 39 She said #MeToo. Now she's being sued, Case Study, Good Law Project, Updated April 2023.
- 40 Royal Court of Justice, MR WILLIAM HAY and MS NINA CRESSWELL Approved judgement, February 2023.
- 41 Ibid.
- 42 She said #MeToo. Now she's being sued, Case Study, Good Law Project, Updated April 2023.
- 43 Tasmin Allen, Abusers are using a sinister new route to silence their accusers. This is how we fought back – and won, The Guardian, May 2023.
- 44 Royal Court of Justice, MR WILLIAM HAY and MS NINA CRESSWELL Approved judgement, February 2023.
- 45 Tasmin Allen, Abusers are using a sinister new route to silence their accusers. This is how we fought back – and won, The Guardian, May 2023.
- 46 Resources - Videos & Photos, Don Staniford, Standing up Against Salmon Farming.
- 47 Don Staniford – Price for exposing the dark side of salmon farms, Coalition Against SLAPPs in Europe, 31st May 2023.
- 48 Ibid.
- 49 Verena Mueller, Kayak vigilante goes undercover to expose salmon farming 'horror', The Times, October 2023.
- 50 Don Staniford – Price for exposing the dark side of salmon farms, Coalition Against SLAPPs in Europe, 31st May 2023.

51 Sandy Neil, Fish Farmer, Mowi Scotland denies it wants to 'gag' activists, June 2023.

52 Ibid.

53 Ashlie McAnally, Mail On Sunday: "Salmon activist who's been banned from going within 50 ft of dozens of fish farms", October 2023.

54 Don Staniford – Price for exposing the dark side of salmon farms, Coalition Against SLAPPs in Europe, May 2023.

55 Thailand: Acquittal of Phuketwan journalists small step in the right direction, Amnesty International, September 2015.

56 Charlie Campbell, Australian Journalist and Colleague Cleared of Charges in Thai Navy Defamation Case, TIME, September 2015.

57 The Pulitzer Prizes, The 2014 Pulitzer Prize Winner in International Reporting, Jason Szep and Andrew R.C. Marshall of Reuters.

58 Ghost Feet, Human Rights Watch Film Festival, 2018.

59 The Shift Team, Henley and Partners threatens legal action against The Shift, The Shift, December 2017.

60 The Shift Team, Troika laundromat: How the Russians moved their money into the west, The Shift, March 2019.

61 Caroline Muscat, SLAPP threat from Azerbaijani - British national Turab Musayev, The Shift, July 2020.

62 Contributor, Iranian in name only: Dual nationals hide Iran ties to avoid US sanctions, France 24, August 2018; Stephanie Kirchgassner, Bank criticised by Daphne Caruana Galizia under scrutiny in Brussels, The Guardian, February 2018.

63 Manuel Delia, Pilatus filed lawsuit in the USA against Daphne Caruana Galizia. She never knew. January 2018.

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

65 CASE, How SLAPPs increasingly threaten democracy in Europe - a new CASE report, August 2023.

66 CASE welcomes the EC's Anti-SLAPP Initiative as a landmark step in the right direction, ECPMF, April 2022.

67 See: [aeur.eu/f/5ng](https://aeur.eu/f/5ng)

68 Elizabeth De Gaetano, 'Self-defeating': Swedish presidency criticised on anti-SLAPP Directive, The Shift, March 2023.

69 CASE, Open letter: We refuse to let the Anti-SLAPP Directive be a missed opportunity, November 2023.

70 Ibid.

71 EUR-Lex, Trilogue.

72 Ibid.

73 CASE, The need for a Council of Europe Recommendation SLAPPs, September 2022.

74 Council of Europe, MSI-SLP Committee of Experts on Strategic Lawsuits against Public Participation.

75 Council of Europe, Public consultation on draft CM Recommendation on Countering Strategic Lawsuits against Public Participation (SLAPPs), June 2023.

76 UK Anti-SLAPP Coalition, UK Anti-SLAPP Coalition submitted evidence to the Council of Europe, August 2023.

77 Ibid.

78 Committee of Experts on Strategic Lawsuits against Public Participation (MSI-SLP), Meeting Report, 4th meeting, 17-18 October 2023.

79 Flutura Kusari: SLAPPs in Europe and how civil society and media are fighting back, YouTube, Latvijas Mediju etikas padome, November 2023.

80 Linda Ravo, SLAPPs In Europe: How The EU Can Protect Watchdogs From Abusive Lawsuits, Liberties, January 2022.

81 Catherine Sainz, Trinity College Dublin blocks recording of defamation conference for fear of being sued, Business Post, April 2023.

82 The national broadcaster RTE has said that the current public interest defence [Section 26] is, "so hedged and rigid that it is a statutory dead letter".

83 Joint Response to the Committee For Finance in Relation to the Defamation Bill Submitted by Index on Censorship and English PEN, Northern Ireland Assembly, 2021.

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

85 G. Ogle, 'Anti-SLAPP reform in Australia' (2010) 19(1) Review of European Community & International Environmental Law 35.

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

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

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

89 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.

90 Osler Hoskin & Harcourt LLP, Supreme Court of Canada provides further guidance on anti-SLAPP laws, Lexology, June 2023.

91 Global Freedom of Expression, How are courts responding to SLAPPs? Analysis of selected court decisions from across the globe, Columbia University, July 2023.

92 Charlotte Tobitt, Arron Banks awarded £35,000 damages and 60% of his costs after Cadwalladr libel ruling appeal, Press Gazette, May 2023.

93 DCMS, What are SLAPPS? ft. Catherine Belton, November 2023.

94 FPC, Case Study - Eliot Higgins, founder of Bellingcat, an open source news agency, February 2023.

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

## Acknowledgements

This conference booklet was prepared by the Foreign Policy Centre (FPC) to tie in with the third UK Anti-SLAPP Conference. The information provided in this booklet is largely based on research conducted as part of FPC's Unsafe for Scrutiny project and the recommendations are drawn from the 2022 report 'London Calling': The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom, published together with ARTICLE 19. Unless otherwise indicated any views expressed are those of FPC's Director Susan Coughtrie.



# **UK Anti-SLAPP Conference**

27-28 November 2023

**#SLAPPS23**