Strategic Lawsuits Against Public Participation: Why Recent Reforms Don't Go Far Enough

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SLAPPs, or Strategic Lawsuits Against Public Participation, are abusive lawsuits typically brought by rich and powerful individuals or organisations. SLAPPs aim to silence critics who speak out on matters of public interest, such as journalists, researchers and non-governmental organisations. New anti-SLAPP provisions came into effect on 18 June 2025 via the Economic Crime and Corporate Transparency Act 2023, but these reforms do not go far enough, and more robust anti-SLAPP laws are needed to protect free speech.

In this article, I shall discuss key features of SLAPPs and examine some recent case study examples, concluding that further reform to anti-SLAPP legislation is needed.

SLAPPs: Key Features

SLAPPs are abusive lawsuits that are typically brought by powerful, wealthy individuals or large companies. The targets of SLAPPs are usually less well-resourced individuals, such as journalists or whistle-blowers, or organisations that speak out on matters of public interest.

The government has described SLAPPs as 'an abuse of the legal process, where the primary objective is to harass, intimidate and financially and psychologically exhaust one's opponent via improper means.'[1] In a SLAPP, litigation itself is the weapon, and punishing legal costs and aggressive litigation tactics are the Damocles' sword hanging over victim's heads should they refuse to self-censor or retract public criticism.

SLAPPs are mostly based on defamation claims, although other laws might be relied on, such as privacy and harassment. Another feature of SLAPP cases is that there is ordinarily a power imbalance between a well-resourced claimant and a less well-resourced defendant. This is particularly effective at 'muzzling' opponents because of the 'loser pays' principle in English litigation, under which the unsuccessful party in litigation is usually ordered to pay the winning party's costs. For victims of SLAPP claims, the prospect of having to pay steep legal fees or possibly face bankruptcy, should they lose their case, can prompt them to retract criticism or even decide not to publish on certain topics in the first place.

SLAPP cases are frequently accompanied by aggressive tactics, such as sending large volumes of highly adversarial pre-action correspondence to threaten individuals who intend to speak out in the public interest. Threatening pre-action communications can cause individuals to self-censor, thereby stifling legitimate scrutiny and reporting without formal legal action. This therefore makes it extremely difficult to gauge the extent of the problem. SLAPPs have a chilling effect on free speech; by weaponising the litigation process, the rich and powerful can prevent scrutiny on matters of public interest.

SLAPPs: Some Case Study Examples

[1] https://consult.justice.gov.uk/digital-communications/strategic-lawsuits-against-public-participation/

Part of the difficulty with SLAPP cases is that it can be very hard to identify when a case is abusive and goes beyond the usual 'rough and tumble' of litigation. The fact that a case is brought by a rich and powerful claimant against a less resourced defendant does not definitively indicate a SLAPP. Similarly, upset and distress caused to the claimant does not, of itself, indicate a SLAPP – this is a natural consequence of much litigation.

What identifies a SLAPP is the purpose and proportionality of the claim. If the primary purpose of the claim is to silence and intimidate critics, rather than to correct a legal wrong, this suggests a SLAPP. Similarly, if the claim is disproportionate in value and/or in the tactics used, it could indicate a SLAPP. However, this is sometimes a difficult distinction; practically speaking, the intention of the claimant can be very hard to determine.

A recent example of an alleged SLAPP was a libel claim brought by the Eurasian National Resources Corporation ('ENRC'), a Kazakh mining company, against Tom Burgis and his publisher, HarperCollins (*Eurasian Natural Resources Corporation Ltd* v *Burgis & Anor* (Rev1) [2022] EWHC 487 (QB)). Burgis wrote a book titled 'Kleptopia: How Dirty Money is Conquering the World'. ENRC brought a libel claim against Burgis and HarperCollins, alleging that the book suggested that the company had three people murdered to protect its business interests. Mr Justice Nicklin rejected the claim, on the grounds that:

'Only individuals can carry out acts of murdering or poisoning. Only individuals can be motivated to do so to protect some business interests. A company cannot.'[2]

The judge ordered ENRC to pay costs of £50,000 and refused permission to appeal. This case has been widely described as a prime example of a SLAPP, considering the power imbalance between the claimant and defendant.

However, the 2022 High Court case of *Banks* v *Cadwalladr* highlights the challenges that often exist in identifying cases as SLAPPs. This case was brought by millionaire businessman Arron Banks against journalist Carole Cadwalladr. Banks' claim related to two publications – a TED Talk and a tweet – which alleged that Banks had been lying about his relationship with Russia. ,

Cadwalladr won her case. However, Justice Steyn also held that: 'In circumstances where Ms Cadwalladr has no defence of truth, and her defence of public interest has succeeded only in part, it is neither fair nor apt to describe this as a SLAPP suit.'[3]

This view has not been shared by many campaigners. In a guest article for the Bar Council[4], the UK Anti-SLAPP Coalition maintained that the case was a prime example of a SLAPP, arguing that Banks filed his lawsuit against Cadwalladr rather than The Observer (which first published her investigations) to compound the power imbalance between the parties and force the defendant to put her personal assets, including her home, on the line.

In addition, the UK Anti-SLAPP Coalition noted that Banks had published tweets about Cadwalladr that UNESCO described as 'menacing' and 'highly gendered', and that the 'online

[2] https://www.judiciary.uk/wp-content/uploads/2022/03/ENRC-v-Burgis-Another-judgment-020322.pdf
[3] https://www.judiciary.uk/wp-content/uploads/2022/06/Banks-v-Cadwalladr-130622-Judgment.pdf
[4] https://www.barcouncil.org.uk/resource/slapp-a-question-of-definition.html

harassment' which accompanied the lawsuit further suggested that the case was a SLAPP.[5] This case highlights how difficult it can be to determine when a case is a SLAPP or a legitimate claim in defamation.

Do Recent Reforms Go Far Enough?

SLAPPs have been on the government's radar for several years due to their potentially chilling impact on free speech and investigative reporting. The Ministry of Justice ran a Call for Evidence on SLAPPs from March to May 2022. On 18 June 2025, new anti-SLAPP Provisions came into force as sections 194 and 195 of the Economic Crime and Corporate Transparency Act 2023 ('ECCTA').

Section 194 of the ECCTA states that the Civil Procedure Rules must provide for a claim to be struck out before trial when the court determines (a) the claim is a SLAPP, as defined in section 195 of the ECCTA, and (b) that the claimant has failed to show that it is more likely than not that the claim would succeed at trial. However, the definition of a SLAPP in section 195 of the ECCTA only applies to information that has to do with economic crime.

This narrow definition of a SLAPP is a glaring problem, as it does not provide a holistic mechanism to resolve SLAPPs relating to all areas of public participation. In response to this issue, the government stated in a 2024 policy paper that legislation has been restricted solely to economic crime because the ECCTA 'presents the earliest opportunity to pursue reforms that address a significant proportion of SLAPP activity featuring economic crime.'[6]

However, the government also noted that it 'is considering future legislation options to introduce comprehensive anti-SLAPP measures as soon as parliamentary time allows.' As the current reforms are limited to cases involving economic crime, the additions to the ECCTA do not adequately address the SLAPP problem, and wider anti-SLAPP measures are needed.

It is important to note that there are arguments against more wide-reaching anti-SLAPP legislation. As noted by some respondents to the government's call for evidence on SLAPPs, the scale of the SLAPP issue might have been overstated, and there are no official statistics on the number of SLAPP cases in the UK.[7] The fact that many SLAPP actions do not proceed past the threat stage to formal litigation makes it difficult to determine the extent of the problem.

Another argument is that further reform is not required because there are already existing measures to deal with baseless claims under English law, such as Civil Procedure Rule 24.2, which allows for summary judgment if a case shows no real prospect of success. However, existing mechanisms are not sufficient to resolve the SLAPP problem at an early stage; while

[5] https://www.barcouncil.org.uk/resource/slapp-a-question-of-definition.html

[6] https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-act-2023-factsheets/economic-crime-and-corporate-transparency-act-strategic-lawsuits-against-public-participation-slapps

[7] https://www.gov.uk/government/consultations/strategic-lawsuits-against-public-participation-slapps/outcome/strategic-lawsuits-against-public-participation-slapps-government-response-to-call-for-evidence#:~:text=A%20number%20of%20law%20firms,the%20particular%20challenges%20of%20SLAPPs.

SLAPPs may have sufficient legal merit to avoid summary judgment or strike out, the claim may still be brought for an improper and abusive purpose.

Conclusion

Of course, it is important that any anti-SLAPP measures do not prevent legitimate claims in defamation and privacy. Individuals, including the rich and powerful, should have the ability to use the courts to defend their reputation and prevent the spread of damaging disinformation.

However, more robust reform is needed to prevent SLAPP instigators bringing claims to silence public criticism. One way to effect more meaningful reform would be to introduce an early disposal mechanism to deal with all SLAPPs, not just those concerning economic crime.

While this approach would not be a panacea – for example, it would not resolve the problem of threatening pre-action communications that cause individuals to self-censor – it would allow courts to quickly dispose of SLAPPs, and it would provide greater protection for those speaking out in the public interest.

Although the possibility of further anti-SLAPP legislation in the UK is uncertain, additional reform is needed to protect the right to free speech in the public interest, without fear of retribution.