



Communications and Digital Committee

Corrected oral evidence: The future of news: impartiality, trust and technology

Tuesday 7 May 2024

2.30 pm

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Members present: Baroness Stowell of Beeston (The Chair); Lord Dunlop; Lord Hall of Birkenhead; Baroness Healy of Primrose Hill; Lord Kamall; Lord Knight of Weymouth; The Lord Bishop of Leeds; Lord McNally; Lord Storey; Baroness Wheatcroft.

Evidence Session No. 15

Heard in Public

Questions 148 - 152

Witnesses

[I](#): Susan Coughtrie, Director, Foreign Policy Centre; Sayra Tekin, Director of Legal, News Media Association; Fiona O'Brien, Bureau Director, Reporters Without Borders; David Hooper, independent media lawyer.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Susan Coughtrie, Sayra Tekin, Fiona O'Brien and David Hooper.

Q148 **The Chair:** This is the Communications and Digital Select Committee and we are still holding our inquiry on the future of news. We have a special session this afternoon: two panels of witnesses devoted to the topic of SLAPPs. As I said that, I realised I do not have the longhand for that in front of me but I think, from memory, it is strategic lawsuits against public participation.

This is a topic that this committee has held previous evidence sessions on and are pleased to return to it for the third time. Before we get going, I will ask the witnesses to, please, introduce themselves. I will start with Ms Tekin.

Sayra Tekin: I am director of legal policy and regulatory affairs for the News Media Association, which is the trade body that represents national, local and regional news in the UK.

Susan Coughtrie: I am director of the Foreign Policy Centre where I have been researching SLAPPs for the last four years. I am also a co-founder and co-chair of the UK Anti-SLAPP Coalition.

David Hooper: I was a media lawyer, predominantly on the defence side, for 40 years, and recently I have written a book on SLAPPs, so I have researched that for the last few years.

The Chair: Ms O'Brien is joining us down the line.

Fiona O'Brien: I am the UK director of Reporters Without Borders, which is an international NGO that works to defend press freedom and the right to information. I am also, by background, a foreign correspondent and former journalism academic.

The Chair: Thank you very much. We are looking for information on how the picture has evolved on SLAPPs over the last 12 months since we last looked at this and also to get the witnesses' views on the Private Member's Bill on SLAPPs, which is in the Commons at the moment. We will also want to get the witnesses' views on other action to protect journalists. Then we will have a second session with representatives from the Solicitors Regulation Authority. I will hand over straight away to the Lord Bishop.

Q149 **The Lord Bishop of Leeds:** Thank you for joining us today. Some of the committee have come on board since the last time this committee looked at SLAPPs. The committee last addressed it a year ago, and a lot has gone on since 2022. There is a Private Member's Bill in the Commons at the moment. Could each of you give us an evaluation of the Government's progress in relation to combating SLAPPs over the last 12 months? Are they doing well, badly—what is your view? Sayra Tekin.

Sayra Tekin: The biggest change has been the legal crystallisation of the concept of SLAPPs via what we have been calling the ECCTA—the Economic Crime and Corporate Transparency Act. However, this narrowly

focuses on corporate crime and was passed in haste during the latter stages. Therefore, it has not been used yet so we do not know if it is going to be efficacious. That has made a massive change in terms of it being recognised as a legal concept, because before that Act the conversations we were having were very much, "Does a SLAPP exist? There is no such thing". It has now changed from, "Okay, there is a legal concept of SLAPPs but this needs to go further" and the Government have committed to going further and broadening it out, which we have seen in the Private Member's Bill. But that is a very, very small step.

I do not want to pre-empt the following questions but the Private Member's Bill also has a long way to go in terms of having legal teeth and legal effect. Dominic Raab was the Justice Secretary who oversaw the passage of the SLAPPs provision and was committed to bringing in an early dismissal mechanism, a strong definition of SLAPPs, and costs protections for defendants. That is the main way we are seeing that the legal system is being abused, just because it is so costly. We have not seen those three elements necessarily come into force yet.

The Lord Bishop of Leeds: It raises another question that we will come back to in a moment. Susan Coughtrie.

Susan Coughtrie: I would echo the comments that Sayra has already made. As the UK Anti-SLAPP Coalition, we have always approached the issue from three main angles: legislation, regulation and a rather more nebulous concept of cultural change. Even within the last 12 months, let alone the last three years since the coalition was established, we have seen a lot of movement. Whether that movement, as Sayra said, is sufficient and goes far enough is obviously another question.

Further to what Sayra said about the ECCTA, I would underscore the point that it has, of course, recognised that SLAPPs are a problem and that in and of itself is a good thing, but it is very much a first step. The UK Anti-SLAPP Coalition produced a model anti-SLAPP law in November 2022, which was already based on the Ministry of Justice's outlined approach when the Government committed to legislating on this issue a couple of years ago. Very sadly, what we have seen so far has not even matched that. The UK is not starting from scratch. There are already anti-SLAPP laws in place in, I think, about 35 US states now and in three regions in Canada. As you may be aware, Europe has also taken action on this. There is now an EU anti-SLAPP directive and a Council of Europe recommendation that were both adopted in the last couple of years.

Turning back specifically to the UK since the last session: there has actually been a policy change. One of the topics that was raised at that session was the case around Eliot Higgins. He was sued by Yevgeny Prigozhin, who, at the time that case was happening a couple of years ago, was under sanctions. We are pleased to see that after this committee's session last year, the Government moved to take action to change the policy around sanctioned individuals getting the automatic licence to sue in the UK, to bring civil cases. That is very important, because a lot of the cases that we saw previously, and that I was particularly researching, related to economic crime and corruption. For

example, all the people who sued Catherine Belton a couple of years ago are now under sanction. What picture would that have been a couple of years ago if that policy had been implemented previously?

Lastly, on regulation. I know that you have people from the Solicitors Regulation Authority speaking after this and I am sure they will go into more detail. I think at the moment we are really waiting. It has been very active over the last couple of years. It has updated guidance, done thematic reviews and opened investigations into SLAPP-related complaints. But what we need to see now is movement on that and the resolution of some of those investigations.

The Government set up the SLAPPs Taskforce last September and recognised SLAPPs within the national action plan for the safety of journalists. This is a very positive step because, to fully understand how you can solve the problem, you need to know what is happening. So the movement there to try to track more information, provide advice to journalists and also look at the role of lawyers is important work, but none of it will actually hold water if the legislative and regulatory side does not bear fruit.

The Lord Bishop of Leeds: Just before we move on, I know some of the briefing papers say that the Coalition against SLAPPs in Europe's database recorded an increase in SLAPPs from 570 cases in 2022 to more than 820 cases in 2023, which would suggest that legislation internationally is not being very effective.

Susan Coughtrie: CASE is our sister organisation. In a way, it is a twofold answer, one of which is that more and more people are reporting SLAPPS. Previously, and this was what I experienced in my early research, it was very difficult to get people to talk about the legal threats they were facing. So some of that increase, by its nature, will be because more people are reporting. There also is not any current legislation in place in Europe. The anti-SLAPP provisions that were adopted in the ECCTA last year were the first national legislative measures to protect against SLAPPs, although of course they apply only in England and Wales.

The Lord Bishop of Leeds: I will put the same question to Fiona O'Brien and then come back to David Hooper.

Fiona O'Brien: On the legislation, I very much agree with the points that both Susan and Sayra have made. From our perspective, there have been some signs of progress over the last couple of years, particularly in terms of the very welcome willingness to engage on SLAPPs. As Susan said, it is a really important step that the National Committee for the Safety of Journalists recognised that SLAPPs are a safety of journalism issue and made them formally part of the National Action Plan. That shows a very welcome willingness. The start of the Taskforce looking at non-legislative measures is a very positive step as well. Although it is too early to say what that Taskforce will be able to deliver, as it is very much still a work in progress, I think that the sort of outlined objectives are the right ones. It is guidance for journalists, it is looking at regulatory issues for solicitors and so on, and also gathering information.

You mentioned already that the numbers seem to be rising. One of the problems with SLAPPs is that it is very difficult to understand the full scale of the problem, partly because many SLAPP actions never actually end up in court. We are talking about initial legal letters threatening journalists, which probably they would never report. Also, of course, it is not just those who are facing SLAPP action whom SLAPPs impact. There is a much broader chilling impact on journalists, who will self-censor, stop reporting on stories, and stop doing investigations because the fear of legal action puts them off. So it is quite difficult to measure.

Linked to that, I would highlight one particular development, which, again, has not yet borne fruit but I think will be really positive. This is that, as part of wider work within the National Committee for the Safety of Journalists, the NUJ is going to be introducing a tracker. This is basically an online platform where journalists will be able to report any violations—legal, but also physical violations, online abuse and so on. It remains to be seen how quickly that gets taken up by industry, but I think that it could potentially be a really positive step in helping us understand the nature of these problems and then taking action.

I would finish by saying, though, that although all those things are positive and we really do welcome them—and likewise the amendment that was made to the Economic Crime and Corporate Transparency Act—none of them in themselves will be able to be a game changer unless we have really strong legislation, a stand-alone law that can tackle SLAPPs effectively and robustly. Although we are very welcoming of all the positive steps there have been, that key part of the puzzle is still missing. It is essential that we get it right if we are going to take effective action against SLAPPs.

David Hooper: I am more optimistic than I was a year ago. I thought the ECCT Act was going to be unworkable and it was going to be a bonanza for claimant lawyers to argue whether it was triggered or not, or whether Schedule 11 to that Act disclosed economic crimes. The Bill introduced by Wayne David, if the amendments are accepted, goes a very long way to meeting the shortcomings that there were. It is perhaps not perfect but it is obviously a product of compromise. It brings us in line with Europe, both in terms of the European Directive, which has been mentioned, and the Council of Europe ruling, because that is bringing us more into line with 46 countries and 800 million people.

To follow up what you said about the increase in SLAPPs, the statistics show that although there are not that many libel actions, libel actions are falling, whereas SLAPP actions seem to be increasing. It is the tip of the iceberg. Of course, one also has to keep in mind particularly data protection acts, which even Mr Trump has used recently. I am concerned to see that the progress is kept up and that we are in line with Europe.

The Lord Bishop of Leeds: Perhaps I can follow up, starting with you, on what you expect might happen in relation to SLAPPs in the next five or six years.

The Chair: Just to just be clear, we will be coming on shortly to the actual legislation. We are asking at the moment about the issue of

SLAPPs rather than the legislation.

David Hooper: Again, I am conscious of the fact that you may be considering the actions of the task force, but I think one of the very important things that the task force seems to have in mind—which, again, is in line with what is happening in Europe—is to collect data and to see how things work. The SRA has an enormous role to play in this and what one really wants to do is to nip these things in the bud. If there is abusive conduct by claimant lawyers, there should be very heavy fines in respect of that, and things should be dealt with swiftly without the need for litigation. One needs to talk in terms of speed and making sure that there is not a mass of litigation. One of the problems with this area of litigation is that even if you win a case and you get it struck out, as has happened in cases brought against people such as Charlotte Leslie and Bill Browder, you are talking about it taking a year—or possibly three years in the Charlotte Leslie case—to get there, and costing millions. That is something that I hope we will all work to stop.

The Lord Bishop of Leeds: It is more humane, certainly. Fiona O'Brien, the next five years?

Fiona O'Brien: What happens in the next five years will depend largely on what happens with legislation. If we do not see people being held accountable for bringing abusive lawsuits against journalists in the UK, there will not be any incentive to stop bringing them, and we would then see a continuation. It is also worth thinking about the fact that other countries are making progress. The European directive that came into force—yesterday, I think—should start having a bigger impact as that is transferred into national laws around Europe in the next two years. If the UK is lagging behind, that could also have an impact on the attractiveness of the UK for bringing SLAPP actions.

It will also depend on what happens with the PMB—I know we are going to talk about that in a minute—and the specifics of the PMB. There is a risk that if that piece of legislation moves forward but is not effective, that it is not the right piece of legislation, it could, unfortunately, become a step back instead of a step forward. Of course, once the legislation exists and is there, if it is not effective there is a danger in the longer term that it could do more harm than good.

The Lord Bishop of Leeds: Susan and Sayra, do you have any anything that you wish to add? I see a lot of nodding.

Susan Coughtrie: I certainly agree with what has been said before. For me, it is important to situate SLAPPs within the wider context, particularly attacks on democracy. My entry point into this issue was looking at risks and threats to journalists who uncover financial crime and corruption. In many countries around the world, where that money is being in some way serviced by UK legal and financial systems, that is still going on. At the moment, of course, nothing has actually changed other than we know about the problem better. It is important to look at this issue in the round and look at the other measures that need to happen in order for media freedom to be protected and also democracy.

The first case of SLAPPs that I knew about here in the UK was brought against Paul Radu, who is the co-founder of OCCRP, the organisation behind a lot of the large-scale international investigations such as the Panama Papers and Paradise Papers. He was sued here in the UK by a sitting Azerbaijani MP and businessman a few years ago in connection to the Azerbaijani laundromat. That investigation uncovered a £2.9 billion fund that was being exited out of Azerbaijan through four UK shell companies. That happened at a time in Azerbaijan when there was a huge media and civil society crackdown about 10 years ago. The case was brought against Paul in 2018 and settled on the eve of trial in 2020. Then in the last couple of years, the National Crime Agency has been seizing money from figures involved in that case and involved with the laundromat for very small, in relative terms, amounts of money, including from the family of the person who sued Paul.

I want to say that SLAPPs are a tool within a wider toolkit. At the moment, freedom of expression in Azerbaijan, like in many countries, is still suffering—and this country is being affected by it as well, unfortunately.

Sayra Tekin: I very much agree with that. I want to build on one more point that Fiona made. We are on a precipice here with legislation forthcoming, and if we get this legislation wrong it has the potential impact of actually doing more harm than good. Going back to your earlier question of what it has been like for the last 12 months, it is looking not just at government but at the behaviour of the claimant solicitors who have been facilitating potential SLAPPs. They have cleaned up their act somewhat. They set up a set of standards that they expect people to behave to, in order to remedy some of the most egregious aspects of it. But also, as Fiona said, lots of this goes on via other channels before you even get to litigation, which is why it is so important for this piece of legislation to get it right; otherwise, I query whether there is going to be much government appetite in the forthcoming Governments. They need to actually show that it is not working, and that is going to cause time delay and a chilling effect in the intervening period.

The Lord Bishop of Leeds: We will come back to questions of viability, of objective definition and non-legislative approaches.

The Chair: Before we move on to the Bill, could I ask one point of clarification very briefly from Mr Hooper? When you said that you are more optimistic, are you more optimistic about what is being put in place to deal with the situation, as opposed to more optimistic about the picture of people trying to use SLAPPs? I wanted to be clear on what you were optimistic about.

David Hooper: I am optimistic about the work being done by the SRA, which is laying down the conduct solicitors should observe. As has just been told to the committee, it is affecting the behaviour of claimant solicitors and that is a good thing. I am also optimistic about the changes which seem likely to be adopted in Committee into the Wayne David Bill,

in that one will have a working Bill. It will not be perfect, it will not keep everybody happy but it is a step in the right direction.

The Chair: Thank you. Baroness Wheatcroft.

Q150 **Baroness Wheatcroft:** I should start by declaring my interest as a chair of the *FT's* complaints committee. Also, I have been involved in informal discussions to establish a pro bono panel of lawyers prepared to defend SLAPPs for NGOs and organisations that do not have the funds themselves.

It is fascinating to hear from you about the importance of the Bill, how you think that this is potentially pivotal and could be more dangerous than not, if we do not get it right. Could I start by asking you all if you think it is possible to effectively define SLAPPs and the public interest for the purpose of the Bill? Sayra.

Sayra Tekin: First, quite simply, yes, it is possible to define SLAPPs. One thing I would refer to is the Government's own fact sheet that they published last year following on from publication of the ECCTA. It did a very comprehensive job of capturing the elements of SLAPPs, because it is not limited to claimant behaviour but considers the impact of that behaviour on public participation and free speech. So, quite simply, yes, it is easy to define.

Secondly, in terms of public interest, again, yes, this pervades our libel laws and data protection laws. We have definitions there that have been further developed by case law. One of my primary concerns around the current draft of the Private Member's Bill is its distortion of the public interest definition by creating this hierarchy by saying, "In particular, these four things are public interest". This distorts the position as under libel law and the Defamation Act, as well as data protection. I am a litigator by background. Any litigator would know that what happens at a preliminary stage can easily distort what goes on later. If that is decided on a slightly different footing, that is going to massively impact what goes on later, to the point where I think if we do not amend that provision of this Bill, it could do more harm than good.

Baroness Wheatcroft: Would you amend it by simply leaving out that attempt to be really specific in the definition?

Sayra Tekin: Yes. There have been two amendments in particular that have been tabled by Wayne David himself and, I think, drafted by the MoJ, which I would endorse. One goes to intention and the other goes to public interest. I think that both of those are absolutely necessary just to give the Bill basic efficacy. It is not going to turn it into an amazing Bill, but it will just make it do what it is supposed to do, specifically in terms of public interest. Without that amendment, which gets rid of the hierarchy and makes it very clear that this is a non-exhaustive list, it would otherwise create a potential landmine that those whom this Bill is supposed to help need to navigate, thus increasing expenses. Without a lawyer, you are not necessarily going to know that that is a hazard to navigate.

Baroness Wheatcroft: Ms Coughtrie, rather than going over the same ground, can I ask you simply whether you agree with that?

Susan Coughtrie: I do. Also the model law, which I mentioned earlier that the coalition published in November 2022, goes to exactly your question. It has 10 characteristics to support the identification of a SLAPP and also a broad public interest remit. That was based on looking at our own UK system as well as laws elsewhere. Unfortunately, this Bill in its current drafting falls way short of that, which is very disappointing.

Baroness Wheatcroft: You are specific in saying that the Bill plus amendments could do the job—it makes you optimistic that it will do the job. Which amendments in particular do you think are crucial?

David Hooper: Removing the need to prove intent—that is always very difficult in libel law. When one was advising people on publication, one would always say, “Do not impute intent” because it is so difficult to prove. The other thing that has really improved is that when one is looking at public interest, one is not just concentrating on the conduct of the claimant, one is looking at the other side of the coin, which is freedom of speech. Part of freedom of speech is the right to information. That is really bringing it very much in line with law in Canada and also the approach in Europe.

The real thing with the law is to keep it flexible. The approach in other countries, other jurisdictions, seems to be to have indicators but making it quite certain that, as my colleague said, it is not a tick-box exercise or an exhaustive list. It must be a non-exhaustive list.

If I could make one other comment and look very quickly at it, it is sometimes worth, with SLAPPs, going back to what the people who really invented SLAPPs—some American academics called Pring and Canan—described. They said SLAPPs are “shutting down critical speech by intimidating critics and overwhelming them with a disparity of wealth and power”. My feeling with SLAPPs is that it is like an elephant, difficult to define but one recognises it when one sees it.

Baroness Wheatcroft: Could one recognise it, in effect, without legal action being absolutely threatened, so that the threat was implicit but it might not be conceived as a SLAPP?

David Hooper: Sorry, I am finding that distinction a little difficult to follow.

Baroness Wheatcroft: If a publishing organisation or an NGO, after researching something, was to make allegations and the subject of those allegations then wrote, maybe through a lawyer, extremely tough, intimidating letters but did not actually refer to the threat of legal action, that was implicit, would that, in your mind, potentially fall foul of the legislation?

David Hooper: Yes, I think it would, because one has so many cases where people have withdrawn books. One example was Dame Margaret Hodge, who was writing about kleptocracy in the UK. It was being published through the highly reputable Chatham House but the pressure

put on it—it was a decision, really, of Chatham House that it said, “We just cannot face a potential liability of £500,000”. The threat did not have to be spelled out. Of course, we all know about Catherine Belton’s book, but before that, there was a very similar book on Putin’s kleptocracy by a distinguished academic, Professor Karen Dawisha, that was published in the United States. It could not be published here. Cambridge University Press did not need very much threatening—it can work out for itself what a letter from one of the well-known claimant lawyers means and what the bottom line is.

Baroness Wheatcroft: You do not think that needs spelling out in the legislation—you think it could deal with that situation adequately?

David Hooper: I hope that with flexibility we will reach that position.

Baroness Wheatcroft: Thank you very much. Finally, Ms O’Brien, you were very clear that there is a risk that without legislation the situation will worsen, but bad legislation could make it even worse. Are you confident that the Private Member’s Bill, plus the amendments that are currently tabled, would do the job adequately from your point of view?

Fiona O’Brien: I am probably the least qualified person in the room on the legal front to talk about the specifics of the law. At RSF we work very closely with the Anti-SLAPP Coalition, and have worked together with them on the model law and also on the advice we have taken so I do not have a lot to add to what Sayra and Susan have said about the PMB in its current state.

When I say that it could do more harm than good, I think there is just a pragmatic reality that once things get laid down, they are less likely to be changeable for the foreseeable future. There is such a good opportunity here. We have all spoken about the steps taken forward in the last year to 18 months. There is a feeling that government is taking it seriously, that people really recognise the massive impact of SLAPPs—the professional impact, financial impact, psychological impact. As David said, the real issue here, and it is important to remember it, is that we are not talking about SLAPPs because they are difficult for journalists. This is not about journalism coming under pressure, it is about citizens’ right to information, it is about stopping important investigative reporting, it is about paralysing journalists, exhausting them, exhausting all their resources so that they cannot hold power to account. And journalism’s ability to hold power to account is fundamental to democracy, which speaks back to Susan’s point, which I completely agree with, that SLAPPs are part of a bigger portfolio of attacks on press freedom, which we are seeing right around the world, including here in the UK.

Baroness Wheatcroft: Thank you very much. You referred quite graphically to the London laundromat, as it is known. Do you think that enough has been done or is being done to stop that functioning so that it could no longer fund SLAPPs?

Sayra Tekin: By the laundromat, do you mean the—

Baroness Wheatcroft: Money laundering.

Sayra Tekin: I think this is more a question for Susan.

Susan Coughtrie: On that point, obviously, the other measures included in the Economic Crime and Corporate Transparency Act were touching on the wider context, but I am sure my colleagues who work within the anti-corruption space would say that that still falls short and does not go far enough. With the direct link, when it comes to SLAPPs, my particular concern is around the onboarding of clients to law firms. If anyone buys a house in this country or does anything that requires a lawyer outside of this area, you have to have quite a high level of due diligence as to the source of the funds. But, unfortunately, civil cases are a bit of a carve-out and are not covered by anti-money laundering regulations. At the moment it is possible to give legal advice without doing that level of due diligence.

I personally would like to see the law change around that, because obviously people who have committed crimes or have been involved with corruption, have pretty deep pockets and are highly motivated to use them to shut down any form of scrutiny—whether that is to a journalist who might have been uncovering it in the country of origin, or suing journalists internationally or in London who have been writing about it here. There is definitely a clear link.

Sayra and I both want to come back to your point about letters, if I may?

The Chair: Yes, briefly.

Susan Coughtrie: Legislation really is not the be-all and end-all. It is very important. It is important largely because it would be an effective deterrent and give people, if it is a good law, more confidence that they would be able to defend the case and get it struck out at an early stage. We know that a lot of SLAPP action happens way before you get to court, and that intimidatory process can immediately shut things down or you can end up having a long back and forth, which can be very expensive, before you even get to trial. That is why regulatory action and awareness are important—also more legal support, pro bono or otherwise, for journalists and others who are targeted in this way. There is no silver bullet here. Many elements are required to be an effective solution. I think Sayra may want to add to that as well.

Sayra Tekin: I take a slightly different view from David's, because ideally this Private Member's Bill and the scope of it would include pre-action conduct. However, I think one of the key issues here is—for this to work, given the nature of SLAPPs and how the harm comes about—that it is broader than litigation. This is even with the two amendments that I mentioned that have been tabled around intention, and the reasonableness of intention, as well as the public interest—which are absolutely necessary for basic efficacy. It starts before litigation and we need to empower judges to be able to look at that conduct like they do in other areas. We have pre-action protocols for, for example, employment disputes. Judges are able to look at pre-action conduct. We need to be able to allow it here.

As you rightly point out, this Private Member's Bill is too narrow to properly do that and therefore it needs to be broadened out, at the very least, in order to empower judges to look at broader behaviour—like a death by a thousand cuts it does build up to intimidate, to dissuade from publication, to put people in a position where they do not want to speak up and participate in public debate. That is one.

The second one that has been glaringly overlooked is there is an element of the Bill's messaging going back on itself. To be clear, there is a three-part test in the Bill at the moment. The first is the intention to restrain free speech. The second is the public interest. But the third looks at the behaviour of the claimant if it intends to harass, distress or harm beyond the "ordinary course of litigation". This is so pernicious and goes so far against the current Civil Procedure Rules. The point of civil litigation is to redress harm and vindicate rights. This must be done in a proportionate manner. For a piece of legislation that is there to curb an abuse of that process, this messaging, which is part of a conjunctive test—that is, you need all three elements, you need to jump all three hoops—it just runs completely counter to it. Under no circumstances can that stand as an acceptable standard.

Not only that, it goes against what the SRA is currently doing. The warning note is published by the SRA, which I understand has even been revised and strengthened. This falls short of the professional standards that are being set there. We need this Bill to have teeth and at the moment it is falling short on a number of levels.

Baroness Wheatcroft: That is really helpful. Thank you all very much.

The Chair: Before we move on, can I ask, and I will direct this at Ms Coughtrie, why do you think that this Private Member's Bill has been published in a way that is not as good as it needs to be, and what consultation did the MoJ conduct with interested parties such as yourself? It is a bit hard to understand how we have arrived at this situation.

Susan Coughtrie: I agree. I am not sure that I have the answer for you. Perhaps that is a question for the Ministry of Justice. We were consulted as the UK Anti-SLAPP Coalition—but after the Private Member's Bill was published in February. Many of the concerns are the same as those that we had previously raised about the anti-SLAPP provisions within the Economic Crime and Corporate Transparency Act, and we had raised those several times, when they were first announced. Of course, they were adopted in October. I think that is question you will have to direct to the Ministry of Justice.

The Chair: Do any of you have a view, briefly?

Sayra Tekin: Yes, I might be able to elucidate a bit more. I heard first-hand from officials at the Ministry of Justice that they are trying to balance the interests of claimant lawyers against SLAPP victims, which seems to be entirely the wrong starting point. It perhaps gives an indication of why this Bill, as its starting point, has been framed in this way, because it is extremely claimant litigants-friendly—that is, those

who could potentially be the ones bringing abusive claims. We can see that in its drafting. We have gone from a Government who in their SLAPPs fact sheet last year said, "Abuse of the system will not be tolerated" to, as we have just seen, tolerating a certain level of abuse—harassment, harm, distress—not as a corollary of bringing litigation but the very intent of it. We found it very, very concerning that that is the starting point of the MoJ.

The Chair: Thank you. We will move on. Lord Hall.

Q151 **Lord Hall of Birkenhead:** Could we go to the non-legislative part of what is happening on SLAPPs? Some of you mentioned it already but what is your evaluation of what is working and what needs more rapid progress on the national action plan for the safety of journalists and also the SLAPPs Taskforce? I recognise that the SLAPPs Taskforce has not yet done a year and you have mentioned some of its agenda, but we would like to explore whether the agenda is right, whether the things that are being talked about are right, how much progress there is. Could you also tell us whether you are on the task force? Fiona O'Brien, maybe you could kick us off on this.

Fiona O'Brien: Sure. Yes, I do sit on the Taskforce on a couple of the different workstreams, looking at the guidance for journalists, in particular. If I step back from SLAPPs, and SLAPPs are obviously a part of what the national committee is doing: from my perspective—and I joined RSF in February last year so I have been sitting on the National Committee for the Safety of Journalists for just over a year, about 15 months—I think the committee is doing a decent job of recognising problems, SLAPPs being one example of that. There is a will to identify where the obstacles to a free press are. I think, though, that it is struggling to deliver those things and there are quite a few reasons for that.

One of these is a lack of engagement from members. In particular, social media platforms have been all but absent. They do not want to join the committee formally but also do not really engage with it at all, and they are a big part of the whole range of online abuse of journalists that is a real threat to press freedom in the UK. We have been struggling to engage with the police within the committee. Obviously, they have a really important role to play in protecting journalists and preventing abuses. It depends a little on which force you talk to. Some forces are better than others in engaging with the issues and looking for solutions. But the police forces in England and Wales, which are a large component of solution finding, have largely been absent from that discussion. I think that is a real problem.

Other problems with the committee or other barriers to it being fully successful include funding. If you look at really successful platforms in other countries—for example, in the Netherlands, there is a platform that tries to prevent violence against journalists and protect journalists who have been targeted called PersVeilig—it is very well funded by a couple of different ministries, also by industry. It also—and this is a third issue with the national committee, a sort of foundational issue—sits at a little

distance from government. That does not mean that government is not involved—it is a government initiative. But in the UK, I think, over the last few years, one of the issues with delivery on the committee has been that changes in personnel at the ministry and ministerial changes have interrupted momentum when it was there. You are always going to have that problem when something is run so tightly by government. It is difficult sometimes to make progress when the people on the committee are changing and shifting around.

On SLAPPs, as you said, with the Taskforce, my feeling is that it is headed in the right direction, that the ideas behind it are good. As Susan said, while legislation is really important—and it is really important that we get this PMB right, if indeed it does become law—it is never going to be the only solution. We were very welcoming at RSF to the idea that there would be a raft of non-legislative measures too. I think that is essential. It is too early to say whether they will be able to deliver. I mentioned the NUJ tracker; I think that is a very positive development. Again, the amount of funding that was available for that was absolutely minimal. So while it is basing itself on a Dutch model, recognising that the Dutch model is very good, it will be able to do only a fraction of what is happening in Holland.

On all these different workstreams, it is too early to say how effective they will be. The will is there and the direction is right, but so far it has been quite limited in what it has been able to deliver.

Lord Hall of Birkenhead: You mentioned the tracker and issues with funding. Could you lead us through other things in the non-legislative field that could be useful and that are worth discussing, and you are discussing perhaps on the task force?

Fiona O'Brien: Do you mean broadly in terms of other obstacles to press freedom?

Lord Hall of Birkenhead: Yes.

Fiona O'Brien: There are a few things at the moment that are occupying our time. We have published at RSF a big report on transnational threats to journalists, which is a big issue here in the UK because we have large communities of exiled journalists reporting in their languages of origin—at BBC World, some big Iranian broadcasters as well, such as Iran International. You may be aware of recent events: an Iran International journalist was stabbed earlier this year in what seems to be an attempt to scare him and his colleagues into silence.

We have come up with a raft of recommendations that we are hoping the committee can help us to implement. Some are for government, and I can share the full report and all those recommendations with this committee afterwards so you have a full reference to it. Some are for police and some are for social media platforms. So whether or not we can actually implement those things will depend on their willingness to engage.

Lord Hall of Birkenhead: They are not very engaged, from what you were saying earlier.

Fiona O'Brien: The report came out a couple of weeks ago. I have had contact with the police since, which is a good sign, it suggests that they want to meet and discuss some of our recommendations. Whether that happens or not it is too early to say. Social media platforms have been chronically difficult to engage with, not just in the UK but right around the world. For journalism in the 21st century, social media is part of the workplace and that is a problem that we at RSF recognise right across the world. They need to be a part of solutions and I think it is for government to find ways to make them engage and hold them accountable for what is happening online.

Another big area of concern beyond transnational attacks is online abuse of journalists. It is happening on a growing and really alarming scale. It targets women in particular. If you look at crossovers, it is not just gendered and targeted at women but it particularly targets women of lower socio-economic backgrounds or of minority backgrounds, women who publicly declare their religion. All the people who it is driving away from journalism, who find themselves needing to reduce their profile online, needing to interact differently with their workplace, sometimes even leaving the profession, is disastrous in terms of diversity as well, which then is disastrous for press freedom. These are really important issues that we have not begun to grapple with.

In my discussions with the committee and government beyond on these kinds of topics, the response has very much been, "Oh, it is such a complex problem. Where do you begin?" But there are things you can do. They are complex problems, it is difficult in a nebulous online environment to identify where things are coming from and what is happening, but there are proper protective measures—really simple things. I will give you one example: when journalists go to police in the UK to report a crime, whatever type of crime that might be, there is no standard way of recording that they are a journalist and that this is happening because of their profession. We did a huge number of FOI requests to different police forces, trying to get some data and understand what was happening. The answer came back that there is no standard way of recording things, which seems extraordinary, and points to that fundamental problem of data collection, which we have mentioned before as well.

Lord Hall of Birkenhead: Thank you very much. Finally to you, Fiona O'Brien, is there evidence that this is driving people away from journalism and from the proper pursuit of good journalism?

Fiona O'Brien: Yes, definitely. It is a really difficult thing to measure because part of what you are talking about is a chilling effect and how do you measure if people are making the decisions—and I suspect that this is what happens most frequently, that a journalist who has an idea for a story decides not to go there because it is too hot a topic, it is going to attract too many problems—and that is extremely difficult to measure, because it is the absence of something. But what we do know from well-structured research is that people have decided to leave the profession. People have decided to withdraw from online profiles. When people are facing online abuse, the response of employers—perhaps a pragmatic

response but not a great one in terms of securing good journalism for the future—is often to keep a lower profile and step back.

Yes, we do have evidence that it is impacting the industry and will continue. Also, one last point—but I think an important one when we talk about online attacks and abuse, intimidation—is that it does often also link into physical violence and attacks. So the two should not be viewed in isolation. They are both part and parcel of the same thing, which is an attempt to shut journalists up.

Lord Hall of Birkenhead: As we have seen with, as you mentioned, Iranian journalists here. Sayra Tekin, could you give us an evaluation of the national action plan and the SLAPPs Taskforce? Are you also on the task force?

Sayra Tekin: I am. The News Media Association sits on the National Committee for the Safety of Journalists and I personally sit on the Government’s SLAPPs Taskforce. My view is that, ideally, I would like to see the Ministry of Justice taking a more active role. We have a Secretary of State for Culture, as well as a Minister for Culture, who have been driving a lot of this work. But given where we are up to with the ECCTA, given where we are up to with this Private Member’s Bill, it makes it all the more important to give the issue a platform and I think that is the most vital thing that this does. Moreover, what I would like to see and what I have on a number of occasions asked the MoJ, when we were planning the remit and the focus of the task force, was whether, given its role, it would head up one of the subgroups—it calls them working groups—with a focus on collating a panel of experts’ views on the workings of the current Civil Procedure Rules. Some of the issues that are non-legislative derive from some of the loopholes that have arisen in the Civil Procedure Rules.

Lord Hall of Birkenhead: Could you explain what those are?

Sayra Tekin: The Civil Procedure Rules are the set of criteria that any litigant and litigation lawyer needs to follow. They are rules around timing. I mentioned pre-action protocol. They are sets of criteria in terms of behaviour, timing, format and interactions that you need to follow if you want to engage in any form of civil litigation. These are a legacy from, I think, the Woolf reforms back in 1996. They are very much a good thing and one of the strengths of our legal system. However, they need updating and they get updated twice a year by the Civil Procedure Rule Committee, which is currently working on updating them to reflect the latest changes with the ECCTA. The Ministry of Justice, I think, works closely with that committee so it would be a perfect conduit to relay suggestions, even if it is not in its own name. If you are going to convene a panel of experts, such as the task force, for such a limited period, it is a missed opportunity not to pool potential changes and actually quite small changes that it could consider—it does not have to accept them but something to put before it as it is drafting these rules that it might want to think about. It is a really simple step, it is a non-binding step, and it is simply a conduit that the Ministry of Justice could facilitate. The only thing it has committed to do is to use the task force

as a sounding board for this work, but we have yet to hear any more on that front.

Lord Hall of Birkenhead: Thank you very much. Susan, is there anything that you would like to add to the evaluation of both the action plan and the SLAPPs task force?

Susan Coughtrie: I am also a member of the SLAPPs Taskforce. Further to what both have said, we were very pleased as a coalition that the national action plan incorporated SLAPPs last year. It was something we had been pushing for even before the action plan was first announced. That is because, again speaking to this point of not seeing SLAPPs in isolation, I do not think there is any SLAPPs case that I have looked at where there has not been some other form of harassment outside of the legal process, such as online trolling and sometimes physical surveillance has come up in some of the cases as well. There really does need to be this joined-up thinking when it comes to these cases. That is what the action plan has started to do.

Aside from the NUJ tracker, which Fiona has mentioned, there is also an effort to look at guidance for journalists, which is being led by the Media Lawyers Association, and at the professional ethics of rule of law for lawyers, which is being led on by the Legal Services Board. I would underscore the point that it is a good effort, a very positive direction of travel, but if we do not get the legislation right, it is going to be very hard for those things to be effective.

The last point I want to make is something that Fiona was talking about, which is transnational repression. We very much see SLAPPs as a form of transnational repression when they are brought here in attempts to shut down information or scrutiny of issues like the ones I was mentioning, such as transnational corruption. At the moment there is very little that the UK does to support journalists who are subject to that kind of threat. Aside from what Fiona was saying in terms of immediate risk to life, one example is the investigative journalist Clare Rewcastle Brown, who has spoken to this committee previously. She was sentenced earlier this year in absentia in Malaysia in a case of criminal defamation that was brought relating to the book that she had written after uncovering the 1MDB corruption scandal, where money was stolen from a sovereign welfare fund in Malaysia. She has also been sued here in the UK; she has been subject to Interpol red notices. It is very difficult for someone such as Clare, who is a freelance journalist without the support of a big media organisation, to know where to go to get support. Clare has previously, and I believe she gave that evidence to this committee, been subject to in-person surveillance in the street. When she went to a police station to try to report that, as Fiona mentioned, there are already difficulties in that area. Then also online smear campaigns and harassment in that way.

I think the UK really needs to look at how it captures that information. One of the academics we have been working with at Lancaster University, Dr Andrew Chubb, has proposed a transnational rights protection office, which is something that I can send more information to

the committee about. That would be a good focal point for gathering that kind of information and also a source of support for those who are victim to these kinds of attacks.

Lord Hall of Birkenhead: Thank you. We would like to know more about that, on those sorts of solo freelance journalists—this office might help. Are there other forms of support for someone like that, who must feel cut off from all the things that large organisations have?

The Chair: Could I ask you to be brief? We are now running out of time and is another question I need to ask.

Susan Coughtrie: I think Fiona may give a wider insight. There are certain organisations such as the Rory Peck Trust, which does a lot with freelancers but perhaps Fiona might want to speak to that point more broadly.

Fiona O'Brien: I can speak very briefly. Again, the NUJ tracker is intended to be—it is not yet in existence but it is in development—a one-stop shop. To be clear, it is not just for NUJ members; they are leading on it but it is for any journalist. It should be somewhere that when you go to report a violation, you have information about where you can go to, which would be another good step.

It is particularly difficult for freelancers.

Picking up on Clare Rewcastle Brown, I was just on the phone to her right before joining the session because a court in Malaysia today has decided that, despite the fact she has been sentenced to two years, she needs to turn up in court to have the next appeal case management hearing. It is one of those farcical cases. She does not know where to turn for help, she has not been able to get any help from the FCDO and she is really struggling. That is a good example of where the systems are not backing up where they need to.

Q152 **The Chair:** Just before we conclude—and we are running over time so I can ask you all to be very brief—you have all mentioned the SRA at some point in your evidence this afternoon. Could I ask each of you in turn, do you have any views on where the SRA is not going as fast as it could be, or if it is not doing anything that you think that it should be? You have talked a lot about what it has done in terms of the guidance notice it has put out, but it would be helpful to know whether there is anything that you want to raise about the SRA before we actually take its evidence. I will start with you, Ms Tekin.

Sayra Tekin: I am a qualified solicitor and so I am regulated by the SRA. In terms of what the SRA is doing, I think it is going in the right direction. What would be good to see is greater transparency. The work it has done has already borne fruit in terms of behavioural changes. The warning notice has made a real difference, and I know lawyers on the ground who are relying on and pointing to it. What would make a real difference is some transparency in its thematic review process and also knowing the outcomes of who has been investigated and what has happened there.

To go back to the Private Member's Bill, the SRA at the moment is setting standards that are higher than what the Government are doing via the Private Member's Bill. I say "Government"—even though it is a Private Member's Bill, it was drafted by the Government and is supported by them. The standards that are being set by the SRA, in terms of conduct or hire, they do not permit harassment as an acceptable form of litigation process, or oppressive conduct or heavy-handed conduct. The SRA is calling it out.

Going back to the very first question around being able to define a SLAPP, the SRA has done a very comprehensive job of defining it more broadly than simply bringing an action and a claim or threatening to do so. I would urge those voting in Committee tomorrow for the amendments to accept, at the very least, those tabled by Wayne David himself, but that is not enough to make this Bill work. That is not enough to bring this Bill in line with the parallel lines that are going on with the SRA in the regulatory sphere, or indeed what is going on in the non-regulatory sphere via the task force.

Susan Coughtrie: I would echo what Sayra said, particularly in terms of the positive efforts that we have seen. I think the SRA's warning notice has had an impact, as has already been said, not least to raise awareness of this problem and to put solicitors on notice that the letters that they were writing, I think, particularly because they were written "private and confidential, not for publication" could have the spotlight of scrutiny, at least from the regulator's point of view, which was not happening before.

We hear from those who have already complained to the SRA that they are unhappy with the conclusion of some of the cases, or the ones who are still waiting for a resolution in their case. Some of them have been going on now for the best part of two years. Fast movement on that would certainly be welcome.

In terms of the thematic review, there have been two now. One of them was published last year, and I think the criticism was that the methodology was not really very clear at the time, that the SRA was not looking at any law firms that were under current investigation. At the time it was conducting the review, we understand that there were at least 20 to 30 open complaints and, given that we often see the same law firms coming up time and again in this area of work, we assume, therefore, that they were not interviewed as part of those thematic reviews. That methodology was made much clearer in the most recent thematic review on SLAPPs, which was published just last month. That is a good thing because unfortunately it had been misconstrued by some who want to deny that there is an issue with SLAPPs. As to why that is the methodology, surely it would be better to go—

The Chair: Well, will ask them.

Susan Coughtrie: Yes.

David Hooper: One of the very important things in the latest thematic review was that it is also looking at—which nobody else, I think, has

done so far—the use of enquiry agents and PR agents, which is part of the abuse. In fact, it is something that I have made a complaint about to the SRA, which it is currently investigating. I also think that the SRA powers to fine people should be increased. When the ECCT Act came in, the cap of £25,000 was lifted in relation to economic crimes. Now that we are moving to a wider public interest definition, there is a rather strong logical argument for saying that the cap should be raised in relation to that, because that is really what is going to make real changes, obviously only where there is bad behaviour, but I mean reputationally. Of course, a lot of the problem with SLAPPs is about money and so if you hit lawyers who abuse the system in the pocket, you are probably going to get rid of the problem.

The Chair: Thank you. Finally, Ms O'Brien.

Fiona O'Brien: I have nothing of substance to add on the SRA. Just to reinforce the point that David made about accountability, when we are looking at all obstacles to press freedom around the world impunity is the thing that drives further violations. So, through regulation of solicitors and SLAPPs law for claimants, the essential thing as a deterrent is to hold those responsible for trying to silence journalism in these abusive ways responsible for their actions.

The Chair: I will have to draw it to a close there but thank you, all four of you, very much for joining us this afternoon and for the testimony that you have given. Order, order.