



## Ministry of Justice

The Right Honourable **Alex Chalk KC MP**,  
Lord Chancellor & Secretary of State for Justice  
MoJ ref: 102694



## Department for Culture, Media & Sport

The Rt Hon **Lucy Frazer KC MP**,  
Secretary of State for Culture, Media and Sport

The Rt Hon the Baroness Stowell of Beeston MBE  
Chair of the Communications and Digital Committee  
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Dear Baroness Stowell,

### **STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION**

Thank you for your letter of 26 January 2023 regarding Strategic Lawsuits Against Public Participation (SLAPPs) and the regulatory oversight of solicitors. Please accept our sincere apologies for the delayed reply.

As you know, SLAPPs are an abuse of the legal process where the primary objective is to harass, intimidate, and financially and psychologically exhaust an opponent via improper means. These actions usually target journalists, campaigners, and public bodies, and seek to stifle scrutiny, close down inquiries, and prevent the publication of information in the public interest.

#### **Legislation**

You will be aware that the Government has now tabled amendments to the Economic Crime and Corporate Transparency Bill at report stage in the House of Lords. These amendments introduce measures to tackle Strategic Litigation Against Public Participation (SLAPPs) that relate to economic crime. The purpose of these amendments is to provide defendants with greater protection when faced with SLAPPs. They aim to ensure that claimants are unable to improperly exploit civil proceedings to prevent detection and prosecution of economic crimes whilst at the same time ensuring access to justice for, and fairness to, both claimants and defendants.

The amendments introduce a statutory definition for SLAPPs. Firstly, the defendant will have exercised their right to freedom of speech on a matter relating to economic

crime. Secondly, the disclosure will have to be for a purpose related to the public interest in combating economic crimes. Lastly, the claimant will have misused litigation in wrongfully causing or intending to cause harassment, alarm, distress, expense or any other harm or inconvenience beyond that which is ordinarily encountered in properly conducted litigation.

The amendments will also require the establishment of a new early dismissal mechanism for SLAPPs claims which ensures that only those that are likely to succeed at trial may proceed, with the onus on claimants to establish that. All other SLAPP claims will be struck out. In addition, the amendments offer further support for defendants by providing adverse costs protection for them in any cases that are allowed to proceed.

As such claims are most likely to be civil cases, the amendments require new Civil Procedure Rules to give the new provisions effect. They also allow the Lord Chancellor to make regulations to require the same approach in other proceedings in other courts should that prove necessary.

Additionally, the Ministry of Justice continues to work across Government to embed a cross-cutting, comprehensive approach to SLAPPs. We are working with the Home Office and the Foreign, Commonwealth and Development Office (FCDO) to understand and address the link between SLAPPs and corruption through the Anti-Corruption Strategy, and the Department for Culture, Media and Sport (DCMS) on media freedom and the safety of journalists.

On the international stage, the UK attends the Council of Europe Working Group to represent the UK's interests in a draft recommendation on SLAPPs. Ministry of Justice officials also met the US Anti-Corruption Coordinator on the topic of SLAPPs, and we recently worked with FCDO to include combatting SLAPPs as a written commitment following the US Summit on Democracy.

### **National Action Plan for the Safety of Journalists**

We note your recommendation to include SLAPPs in the National Action Plan for the Safety of Journalists. This Plan focuses on personal safety and including SLAPPs would broaden its remit. However, the Government recognises the importance of this issue and therefore DCMS and MoJ are carefully considering the links between SLAPPs, media freedom and journalists' safety and the opportunity to address these within the framework of the National Committee for the Safety of Journalists. This includes a new SLAPPs Task and Finish Group that will report into the National Committee and bring together relevant stakeholders to develop and drive forward non-legislative measures to support journalists facing SLAPPs.

### **A SLAPPs defence fund**

SLAPPs are used by the very wealthy to target journalists and campaigners who often have limited assets, by threatening them with having to pay high legal costs. Claimants use this fear of unaffordable costs to intimidate, oppress and silence those

who wish to investigate their affairs. Legal costs can vary significantly but can run into millions of pounds.

We will introduce a formal costs protection scheme to address this issue via secondary legislation. We will work with the Civil Procedure Rules Committee to introduce this scheme to disincentivise SLAPPs in the first place and help those who find themselves subject to this aggressive form of litigation defend themselves effectively when claims do proceed. We believe that costs protection itself will have a deterrent effect on claimants. It sends a clear signal that the Government is redressing the inequality of arms that exists in SLAPPs and engineering a change in the climate of these cases, empowering defendants to participate in litigation without fear of ruinous expense.

### **Action from the regulator**

We welcome the proactive response by the Solicitors Regulation Authority (SRA) on SLAPPs and look forward to continuing to work with the SRA on these issues. Since the Government announced its intention to crack down on SLAPPs last summer, we have seen a positive increase in SRA engagement on this issue.

The SRA issued a warning notice on SLAPPs to its regulated professionals on 28 November 2022, particularly addressing misleading correspondence labelling which may amount to SLAPPs conduct. As you are aware, 40 law firms are being investigated for potential misconduct relating to SLAPPs. These investigations are complicated and take time, but the SRA expects half of these investigations to be concluded shortly – by the middle of this year. The outcome of these investigations will further build our evidence base on SLAPP activity, which is often obscured as it takes place before formal pre-action.

### **SRA fining and information request power**

On 20 July 2022, we increased the maximum financial penalty the SRA can impose for all disciplinary matters from £2,000 to £25,000 for traditional law firms and solicitors: an increase which helps the SRA to address SLAPPs cases. However, the SRA also has recourse to refer cases that involve serious misconduct to the Solicitors Disciplinary Tribunal which has unlimited fining powers.

As you are aware, on 20 September 2022, the Government went further to enhance regulators' enforcement powers by introducing the Economic Crime and Corporate Transparency Bill (ECCT Bill), and we understand you took part in the debate at committee stage in the House of Lords, tabling three amendments. Thank you for your interest and participation in what was a lively debate.

Within the Bill, we have introduced a new regulatory objective to the Legal Services Act 2007, clarifying the extent and importance of frontline regulators' duties in relation to economic crime and creating a new metric against which the oversight regulator can manage their performance. The Bill also removes the SRA's statutory financial penalty limit for disciplinary matters relating to economic crime. This will

ensure the SRA has sufficient enforcement powers to uphold the economic crime regime and will reduce the risk of challenge from regulated members questioning their authority to do so.

It also introduces a new proactive information request power for the SRA. This will allow the SRA to proactively request information from all regulated individuals, licensed bodies, and firms within its regulated community, in relation to economic crime. This will enable effective risk-based regulation and better targeting of the SRA's monitoring and enforcement work in relation to economic crime. These measures will assist regulators, particularly the SRA, to address SLAPP cases related to economic crime.

### **'Black PR' and private intelligence agencies**

We note your recommendation that we work closely with the SRA to ensure appropriate oversight of solicitors who are engaging with PR firms and private intelligence agencies and can assure you that we will continue to engage with the SRA on this subject. The SRA has now published its thematic review into conduct in disputes, looking at how well firms understand and manage risks in relation to abusive litigation. This found that most solicitors take their responsibilities seriously, but some need to do more to meet the high standards expected by the SRA. They will be keeping this area under review and will continue to emphasise the standards that are expected. We continue to work with the SRA to explore possibilities for further join-up and guidance on SLAPPs and will consider how abuses by unregulated reputation management and private intelligence agencies can be remedied.

### **Money laundering loopholes**

The Money Laundering Regulations (MLR) 2017 set out the high-level requirements on regulated firms to combat money laundering and ensure that key professionals identify their customers and understand the purpose behind transactions including the source of funds. The Regulations are designed to combat illicit finance, while minimising the burden on legitimate customers.

In order to ensure the requirements of the MLRs are proportionate, they are targeted at those activities which are most susceptible to abuse by criminals for the purposes of money laundering or terrorist financing. Regulated activity undertaken by legal professionals in scope of the MLRs includes the buying and selling of real property or business entities; the managing of client money, securities or other assets; the opening or management of bank, savings or securities accounts; the organisation of contributions necessary for the creation, operation or management of companies; or the creation, operation or management of trusts, companies, foundations or similar structures.

While regulated businesses have legal requirements under the MLRs to implement robust anti-money laundering (AML) policies, controls, and procedures, and identify and verify the identity of their customer, any money laundering is a criminal offence

under the Prevention of Organised Crime Act (POCA) and businesses outside of the regulated sector may still choose to implement AML controls. Legal firms will also have to consider their new regulatory objective introduced under the ECCT Bill to prevent economic crime.

The review of the UK's Anti-Money Laundering / Countering the Financing of Terrorism (AML/CFT) regulatory and supervisory regime published in June last year noted the importance of ensuring the UK's regulated sector remains responsive to emerging risks or to changing international standards<sup>1</sup>. It committed HM Treasury to use its next National Risk Assessment of Money Laundering and Terrorist Financing as the central vehicle through which emerging risks are assessed to determine whether inclusion in the MLRs is a proportionate outcome.

The SRA has also indicated that it would consider including legal services not currently covered by the anti-money laundering legislation, such as advice on SLAPPs, in its next AML warning notice. This includes putting out guidance on the application of POCA, and solicitors' responsibilities in avoiding handling the proceeds of crime for firms both within and outside of the anti-money laundering regulated sector.

We hope that this response has been helpful and thank you for your continued interest in this subject area. We look forward to continuing to work with you on this important topic to make sure that we are able to act decisively and effectively to tackle SLAPPs in all their forms.



**RT HON ALEX CHALK KC MP**



**RT HON LUCY FRAZER KC MP**

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<sup>1</sup> [MLRs Review Report - 2.5 for publication.pdf \(publishing.service.gov.uk\)](#)