



HOUSE OF LORDS

The Rt Hon the Baroness Stowell of Beeston MBE
Chair of the Select Committee on Communications and Digital
House of Lords
London
SW1A 0PW

The Rt Hon Alex Chalk KC MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ

14 May 2024

Dear Lord Chancellor,

I write regarding Strategic Litigation Against Public Participation (SLAPPs).

The Communications and Digital Committee, which I chair, has taken a keen interest in this topic and welcomes the Government's recent efforts to prevent powerful individuals from silencing critics through lawsuits.¹ We commend the Government's work on the National Action Plan for the Safety of Journalists, the SLAPPs Taskforce and your efforts to strengthen legislation by supporting the Private Members' Bill brought by Wayne David MP.²

We took further evidence on SLAPPs on 7 May from expert witnesses and the Solicitors Regulation Authority.³

We are mindful of the fact that the Private Members' Bill is still before the House of Commons and has not yet reached the House of Lords, when Members of this House will have a proper chance to scrutinise it. However, we note that timetabling considerations relating to any potential Lords amendments may have implications for the passage of the Bill.

In part 1 of this letter we would therefore like to draw your attention to our views on the Bill, which we urge you to consider ahead of Report stage in the House of Commons. In part 2 we set out further measures to tackle SLAPPs which do not relate directly to the Bill.

¹ Communications and Digital Committee, [correspondence on lawfare and free speech](#); Communications and Digital Committee, [Oral evidence](#), 7 May 2024; [Oral evidence](#), 24 January 2023; [Oral evidence](#), 31 March 2022

² Private Members' Bill: [Strategic Litigation Against Public Participation Bill](#)

³ Communications and Digital Committee, [Oral evidence](#), 7 May 2024



HOUSE OF LORDS

Part I—Strategic Litigation Against Public Participation Bill

As a Committee, we believe that this Bill is a welcome step in the right direction and we commend Wayne David MP for his work. There is however a significant risk that, in its current form, the Bill will end up undermining protections against SLAPPs. The consequences of passing legislation containing technical flaws could be grave and we are giving consideration to the implications during this Bill's passage through Parliament.

Public interest and defining a SLAPP

We welcome the Bill's efforts to include a public interest test and provide a clear definition of a SLAPP. We note suggestions have been made by the Law Society and others to adjust the wording to provide more clarity or avoid capturing legitimate claims in the process.⁴

Intent to harass

The drafting of clause 2(1) and 2(2) suggests a degree of “expense, harassment, alarm or distress” may be “ordinarily encountered in the course of properly conducted litigation”.⁵ This also suggests the “inten[t]” to cause such outcomes within “properly conducted litigation” is acceptable.

In our view, this sets a peculiar and concerning standard for a Bill that seeks to prevent abuse of the legal system. We understand that anti-SLAPPs measures must not undermine access to justice and it is important to include some caveats in the Bill. But the current drafting appears to enshrine in statute a suggestion that the intent to cause harassment, alarm or distress may be a valid objective of properly conducted litigation.

We welcome the amendments from Wayne David MP tabled at Committee stage in the House of Commons, though we do not believe these have fully addressed the core issue. The clause should be changed – either by removing the reference to “ordinarily encountered in the course of properly conducted litigation”, or by adjusting the drafting so that it distinguishes between

- (i) *harassment, alarm or distress,*
- (ii) *any other harm, or*
- (iii) *expense or inconvenience beyond that ordinarily encountered in the course of properly conducted litigation.*

We do not believe such changes would lead to legitimate claims being unfairly dismissed as SLAPP cases: the three-part conjunctive test in clause 2 is stringent and tightly circumscribed. But these changes would clarify that causing a degree of inconvenience or expense are legitimate ancillary consequences of litigation, whereas the intent to cause harassment, alarm, distress or other harm are not.

Unless this distinction is addressed, the Bill will make the situation significantly worse for defendants, not better.

Pre-action protocols

The Bill does not address pre-action protocols sufficiently. Many SLAPPs succeed by silencing journalists through intimidatory tactics at an early stage, before a case makes it to formal court proceedings. These activities impose high financial and personal costs on the defendant. There are precedents for taking pre-action protocols into consideration.

⁴ Law Society, Parliamentary briefing, Strategic Litigation Against Public Participation Bill; UK Anti-SLAPP Coalition, [Briefing](#), April 2024

⁵ [Strategic Litigation Against Public Participation Bill \(as amended in Public Bill Committee\)](#), 10 May 2024



HOUSE OF LORDS

We note the Bill references pre-action protocols. More comprehensive treatment of disproportionate or unreasonable pre-action protocols would reduce the risk that some the most pernicious activities fall outside the Bill's scope.

Fining powers for the regulator

It would be valuable to update the regulator's fining powers by copying the provisions in the Economic Crime and Corporate Transparency Act (ECCTA) and applying them to the broader definition of SLAPPs set out in the Bill.

At present, the regulator can fine traditional law firms up to £25,000 for wrongdoing related to SLAPPs. This sum is very small given the overall turnover of these firms. During the course of our work we have been told that this does not provide an effective deterrent.

The precedent for introducing higher fining powers is clear. The SRA already has powers to fine Alternative Business Structures (other types of firms carrying out legal work) and those working in them £250 million and £50 million respectively.⁶

The logic of having a fining limit 10,000 times lower for traditional law firms eludes us.

Under changes recently introduced in the ECCTA, the regulator may levy higher fines on traditional law firms only if it can establish a definitive link between SLAPPs-related misconduct and the prevention or detection of economic crime. This is problematic for two reasons. First, these fining powers are very narrow and relate exclusively to economic crime. Many SLAPP cases will not be captured. Second, it imposes a high threshold, so even in-scope SLAPP cases will be extremely difficult to pursue. Indeed, the regulator stated in evidence to us on 7 May that the ECCTA "allowed us to increase our fining powers for a very definite list of economic crimes but not for this type of issue at all".⁷

This Bill offers a rare and valuable opportunity to enable the regulator to impose fines that actually deter wrongdoing and stop law firms from profiting from SLAPPs cases.

Part 2—Wider action on SLAPPs

There are numerous further actions the Government could take forward on SLAPPs outside this Bill. We would like to draw your attention to the following suggestions.

Prevent law firms from outsourcing abusive activities

We have heard repeated concerns that law firms may engage private intelligence firms or PR firms to survey, intimidate or smear defendants.⁸ The SRA itself recently raised concerns that some law firms are not doing enough to ensure PR firms, or the private investigators they instruct, are acting lawfully and appropriately. Few firms in the regulator's recent review had a written policy or carried out due diligence.⁹ The SRA said however that their powers of investigation do not extend to third parties.¹⁰

⁶ Solicitors Regulation Authority, [Sanctions](#), 20 July 2022

⁷ Communications and Digital Committee, [Oral evidence](#), 7 May 2024

⁸ Communications and Digital Committee, [Oral evidence](#), 7 May 2024; [Oral evidence](#), 24 January 2023; [Oral evidence](#), 31 March 2022

⁹ Solicitors Regulation Authority, [SLAPPs thematic review](#), 19 April 2024

¹⁰ Communications and Digital Committee, [Oral evidence](#), 7 May 2024



HOUSE OF LORDS

We believe that the Government should therefore consider extending the remit of the SRA to ensure the activities commissioned directly by solicitors may be subject to regulatory oversight. This would help prevent law firms from simply outsourcing activities that breach the SRA's professional standards.¹¹

Money laundering and proceeds of crime

We heard that anti-money laundering (AML) regulations have limited application to legal advice. The limits of money laundering regulations suggest that the proceeds of laundered money can be used to fund SLAPP claims. We wrote to the Chancellor of the Exchequer on 26th January 2023 and to the Home Secretary on 21 April 2023 expressing our concerns.¹²

We noted the Government's response to this and the suggestion that these issues could be raised in the SRA's warning notice and considered in the National Risk Assessment of Money Laundering and Terrorist Financing.¹³

We recommend AML rules should extend to the payment for solicitors' legal advice with a particular emphasis on cases of public interest. This should be accompanied by increased investigatory powers for the SRA to conduct spot checks and request details from firms—particularly those with a track record of concerning practice.

In addition, we have previously raised concerns about the Proceeds of Crime Act 2002 (POCA), which does not appear to prevent solicitors from accepting criminal funding to pay the legal fees for a SLAPP case. We understand that all individuals must have access to use of the justice system. But that does not mean they have a right to abuse the system. The regulator itself has stated that, in order to sanction lawyers for accepting proceeds of crime to fund SLAPP cases, changes would be needed to section 327 to “put beyond doubt” that the provisions apply to such activity.¹⁴

We noted the Government's response to our letter argued that the SRA could provide “guidance on the application of POCA, and solicitors' responsibilities in avoiding handling the proceeds of crime”.¹⁵ However, our view is that the law itself contains a problematic loophole, so further guidance is of limited value.

We are disappointed that the Government has made limited progress on this area so far. We encourage you to review POCA to prevent the use of proceeds of crime being used to facilitate SLAPPs.

SLAPPs Taskforce

We welcome the work of the National Action Plan for the Safety of Journalists and are pleased to see the establishment of the SLAPPs Taskforce and its aims. We encourage you to maintain momentum.

Our witnesses on 7 May suggested further direct engagement with the Taskforce from the Ministry of Justice would be helpful, in particular to examine the Civil Procedure Rules.¹⁶

¹¹ See also Communications and Digital Committee, [letter to the Lord Chancellor and the Secretary of State for Digital Culture, Media and Sport](#), 26 January 2023

¹² Communications and Digital Committee, [letter to the Chancellor of the Exchequer](#), 26 January 2023; Communications and Digital Committee, [letter to the Home Secretary](#), 21 April 2023

¹³ Letter from the Lord Chancellor and the Secretary of State for Culture, Media and Sport, [SLAPPs](#), 30 June 2023

¹⁴ Letter from the Solicitors Regulation Authority, [Response to letter dated 14 April 2023](#), 19 April 2023

¹⁵ Letter from the Lord Chancellor and the Secretary of State for Culture, Media and Sport, [SLAPPs](#), 30 June 2023

¹⁶ Communications and Digital Committee, [Oral evidence](#), 7 May 2024



HOUSE OF LORDS

We previously suggested a SLAPPs defence fund to help with early stage legal fees. The Government said it was “considering” this proposal.¹⁷ We would be grateful for an update on progress.

Transnational repression

We urge you to make progress on protecting journalists from intimidation from foreign states and note the Government’s awareness of this issue.¹⁸ We heard journalists in the UK continue to face physical security threats, alongside spurious lawsuits, surveillance, Interpol notices and more.¹⁹ We would be grateful for clarification on which Department or agency provides public-facing support services to individuals facing such repression.

We also heard there is still no standard method for the police to record threats against journalists.²⁰ We would be grateful for an update on progress to address this.

I look forward to hearing from you.

Yours sincerely,

BARONESS STOWELL OF BEESTON

Copied to:

The Rt Hon Lucy Frazer KC MP
Secretary of State for Culture, Media and Sport
Department for Culture, Media and Sport
100 Parliament St
London
SW1A 2B

The Rt Hon Lord True CBE
Lord Privy Seal and Leader of the House of Lords
House of Lords
London
SW1A 0AAP

Wayne David MP
House of Commons
London
SW1A 0AAP

¹⁷ Letter from the Lord Chancellor and the Secretary of State for Culture, Media and Sport, [SLAPPs](#), 11 September 2023

¹⁸ [Transnational repression by hostile states](#), 26 February 2024

¹⁹ Communications and Digital Committee, [Oral evidence](#), 7 May 2024; [Oral evidence](#), 31 March 2022

²⁰ Communications and Digital Committee, [Oral evidence](#), 7 May 2024