

Citizen Participation and Public Petitions Committee
Wednesday 1 May 2024
7th Meeting, 2023 (Session 6)

PE1975: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

Introduction

Petitioner Roger Mullin

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to review and amend the law to prevent the use of Strategic Lawsuits Against Public Participation

Webpage <https://petitions.parliament.scot/petitions/PE1975>

1. [The Committee last considered this petition at its meeting on 17 April 2024](#). At that meeting, the Committee heard evidence from:
 - Professor Justin Borg-Barthet, Convenor, Anti-SLAPP Research Hub
 - Graeme Johnston, Scotland Anti-SLAPP sub-working group, UK Anti-SLAPP Coalition
 - Roger Mullin, Petitioner
 - Ahsan Mustafa, Civil Justice Committee, Law Society of Scotland
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from the Petitioner, and the Minister for Victims and Community Safety, which are set out at **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial position on 6 October 2022](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 132 signatures have been received on this petition.
8. At today's meeting the Committee will hear evidence from:
 - Minister for Victims and Community Safety, Siobhian Brown MSP
 - Martin Brown, Solicitor, Scottish Government Legal Directorate

- Michael Paprakis, Policy and Bill Programme Manager, Private Law Unit

Action

9. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee

April 2024

Annexe A: Summary of petition

PE1975: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

Petitioner

Roger Mullin

Date Lodged

22 September 2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to review and amend the law to prevent the use of Strategic Lawsuits Against Public Participation.

Previous action

I wrote to the Scottish Government on 29 April 2022 detailing my concerns and asking what plans exist to review the law in relation to SLAPPs. I received a letter in reply on 5 May, the opening of which read.

"Dear Roger,

At this time, the Scottish Government does not plan to undertake a review of SLAPPs." It went on to show some awareness of actions at EU and UK level, but made no commitment to act.

I have also discussed the situation of SLAPPs with Michelle Thomson MSP.

Background information

There is an increasing use or threatened use of legal action involving SLAPPs.

SLAPPs are abusive defamation or privacy cases, often initiated by mega-rich individuals with the intention to intimidate and harass individuals and publishers, and prevent them from publishing information of wide public interest.

Those particularly at risk are investigative journalists and their news outlets. Given the cost of defending actions, the mere threat of action can prevent publication.

Such has been the growth in SLAPPs, the UK government launched a consultation on 17 March 2022 (closed 19 May) with a view to reforming the law in England and Wales. On 27 April 2022 the European Union published a draft directive to deal with SLAPPs across all 27 member states. Other countries have previously acted.

Scotland should act too. If we do not, it is likely we will become the chosen destination for defamation and privacy SLAPPs, providing succor to oligarchs.

Annexe B: Extract from Official Report of last consideration of PE1975 on 17 April 2024

The Convener: Agenda item 2 is consideration of continued petitions, the first of which is PE1975, which is on reforming the law relating to strategic lawsuits against public participation, which are sometimes, or probably more commonly, referred to as SLAPPs. The petition, which was lodged by Roger Mullin, calls on the Scottish Parliament to urge the Scottish Government to review and amend the law to prevent the use of strategic lawsuits against public participation

We last considered the petition on 4 October last year. At that time, we agreed to take evidence from stakeholders and, later, from the Minister for Victims and Community Safety. I am pleased to welcome as our witnesses the petitioner, Roger Mullin, who will address the meeting shortly; Justin Borg-Barthet, who is the convener of the anti-SLAPP research hub; Graeme Johnston, a member of the Scotland anti-SLAPP sub-working group of the UK Anti-SLAPP Coalition; and Ahsan Mustafa, a member of the Law Society of Scotland's civil justice committee.

Good morning to you all, and welcome to our proceedings. As we get into this, if you wish to come in on any of the questions that colleagues ask, please indicate to me. When colleagues are speaking, they will take note that you are seeking to come in. We will clarify who is coming in, so that those who are noting for the Official Report understand who is contributing at any given point. Rather than just speaking extemporaneously, please make sure that you are introduced through the chair.

We have received a written submission from Michelle Thomson MSP, who is unable to attend the meeting. The submission reiterates her support for the petition and notes that the Strategic Litigation Against Public Participation Bill passed its second reading in the United Kingdom Parliament in February. She argues that Scotland has fallen behind other jurisdictions and that we risk becoming a destination of choice for SLAPP action, which may very well form some of the discussion that we are going to have.

I would be grateful if Roger Mullin would say a few words by way of introduction.

Roger Mullin: Thank you, convener. First, I thank the committee for the opportunity to discuss the need for anti-SLAPP legislation in Scotland. When I was a member of Parliament, I became increasingly aware of the most malign people, including oligarchs, who were abusing the law to oppress and silence investigative journalists and authors in particular, but also academics and anti-corruption campaigners. Such abuse of the legal system is aimed at preventing the publishing of material that is in the public interest. The growth of expensive legal threats is an attack on free speech and some basic human rights. Scotland is in danger of becoming a jurisdiction of choice unless urgent action is taken.

The abuse is exercised through the commencement or threat of civil lawsuits using whatever laws seem convenient, including privacy and data protection laws, and in whatever jurisdiction suits. The abusers buy the expensive services of compliant legal firms and so-called reputational management firms and seek to make any defence as expensive as possible, in financial and psychological terms, for those

whom they wish to harass. That is why the majority of cases never come to court—the costs of defence prove too great and the abuser wins.

Other countries in Europe and the UK are now addressing the problem with anti-SLAPP legislation. I therefore appeal to the committee to protect freedom of speech by supporting the case for such legislation here in Scotland.

The Convener: Thank you, Mr Mullin.

I see that Mr Ewing has arrived. You have not missed anything, Mr Ewing. We have just heard the introduction to our evidence session on the petition regarding SLAPPs. I know that you are particularly concerned about that and will wish to come in with questions shortly.

Fergus Ewing (Inverness and Nairn) (SNP): My apologies, convener.

The Convener: We have a series of areas to explore in detail, but my first question is just meant to ensure our broad understanding of the issue. The committee was engaged by the petition when we saw it. Therefore, we have taken the unusual step of convening this evidence session, which we do not do in relation to every petition.

We have also had a briefing from the Parliament's independent research unit, the Scottish Parliament information centre. When I read that, I was struck not by the principle of the argument that you are making but by the question of whether, in practice, the different genetic code that Scotland's legal system has as a result of the way in which it was established means that it is less likely to be overwhelmed by the type of threat that you envisage and that, therefore, a reactive rather than a proactive Government approach to the issue, in the light of evidence, would be an arguable way to go.

What is your view on that? I put that question to you, Mr Mullin, and any of your colleagues.

Roger Mullin: I will allow my colleagues who are legal experts to respond on the detail of the issue, but I will respond from a more political perspective.

The reason why I think that it is likely that we will become a jurisdiction of choice in the way that I have described is because it has happened to Scotland before. When I was a member of Parliament, I tried to run a campaign for the reform of a thing called Scottish limited partnerships, which were used as the front for a huge amount of corruption by international players, including Russian oligarchs and people from the Baltic states, Israel, America and the like.

How did that situation come about? Scottish limited partnerships were formed in 1905, thanks to Asquith. However, around the time of the financial crash in 2008, people from other countries found that they were the ideal vehicle to hide their ill-gotten gains. Some of you may be aware of what became known as the Russian laundromat, which was effectively a huge multibillion-pound fraud on the people of Russia and was fronted by about a dozen or so Scottish limited partnerships. So, we already have experience of people who are able to look around for jurisdictions of

choice that will make it easy for them to pursue their malign interests. I think that we should reflect on that.

We are in what is very much a global community today, and different jurisdictions know only too well what is happening by way of laws being put in place elsewhere in the UK, throughout Europe and elsewhere. As things stand at the moment, where will be the softest touch? It is going to be Scotland.

The Convener: Is a governmental position of taking a reactive rather than a proactive approach to that possibility not a reasonable one?

Roger Mullin: I do not think so, because that would mean that you are allowing people to exercise those threats first, before you start to respond. That would be a completely unfortunate position to take, and would certainly not be in the interests of the innocents.

The Convener: I hear what you say there. Might not the Government argue that, in an otherwise congested legislative environment, to act and to prioritise that when other matters need to be progressed might not be wise in terms of its use of resource and time?

Roger Mullin: I do not know what its arguments will be, but I cannot think of anything that is more important than protecting the good name of Scotland internationally and protecting the people of Scotland from those types of threats.

The Convener: It is good to have that on the record.

Graeme Johnston (UK Anti-SLAPP Coalition): Good morning. I used to work as a litigation solicitor in one of the big international firms and did a lot of cross-border type litigation—not about defamation but about all sorts of other things.

The reality is that, when people look at the options for bringing actions against people, they make a table or list of pros and cons, and as particular jurisdictions get tighter on a particular topic, it is natural for those that are not so tight to rise to the top of the table, as it were. Now that the European Union and England and Wales seem likely to tighten this up, the reactive move is to move relatively quickly and not wait for several years, when you might have had a great influx of litigation here.

Quite apart from the harm that can be done, which Roger Mullin pointed out, you might find things harder to fix later. As people start doing more of these things, lawyers will get attached to it; you will no doubt get a Scottish society of media lawyers being formed; and the problem will be harder to deal with. It will make things easier if you just nip this in the bud.

The Convener: It is as if you are suggesting that our legal profession always has an eye to the main chance. That is the conclusion that I am drawing from that.

Graeme Johnston: I would not wish to imply that.

Professor Justin Borg-Barthet (University of Aberdeen): In addition to the points that have already been made, there are a couple of things that we need to consider. First of all, the comparison being made is a little unfortunate, in that we are

constantly looking at what is going on in England and saying, “Oh, we’re not as bad,” or, “There’s just this SLAPP hub, so it must be a fringe issue in Scotland.”

The better question to ask is not what is different about Scotland compared with England and Wales but what is unique about Scotland compared with every other legal system in Europe. I suggest that, in this specific respect, the answer to that is: nothing. Therefore, the onus should shift to showing whether Scotland is immune to problems that every other legal system is not immune to. I cannot see how it could be.

I also suggest that this is not a prospective problem of Scotland becoming isolated as the only jurisdiction without anti-SLAPP laws, but a current problem that we perhaps do not see, given that most SLAPP practice never makes it to court. We know from discussions with lawyers on the side of the media that, even in Scotland, stories are changed or are not published, because of threats of lawsuits. Currently, then, we do not know things that we should know, and things go unreported that should be reported.

As for the legislative environment, Roger Mullin spoke to the important political point. That is an issue for politicians, but there is also the legal point that what is being addressed here is the basis of a functioning legal system. We are talking about a system without a free press or a fully functioning rule of law, and it is incumbent on legislators to ensure that the rule of law is advanced in every legal system.

The Convener: Is there anything that you would like to say, Mr Mustafa?

Ahsan Mustafa (Law Society of Scotland): Yes, thank you, convener. The Law Society of Scotland believes that a justice system that maintains the rule of law and ensures public confidence should not tolerate SLAPPs, just as it should not tolerate vexatious litigation or abuse of the legal process, generally. The Law Society appreciates the concerns that have been expressed by the petitioner.

The Convener: Yes, that aspect is at the heart of the petition.

Mr Borg-Barthet, I want to understand—you alluded to this—the extent to which the issue is a problem about legal threats rather than about court action. Is that where the centre of gravity is in this matter?

Professor Borg-Barthet: Court action is the tip of the iceberg with SLAPPs. The core problem is the credibility of a threat. If somebody were to threaten me with a lawsuit that was going to cost me several thousand pounds, I would probably give very serious thought to not appearing in court, no matter how right I thought I was. The income of a professor is a matter of public record. It is more than the minimum wage, and it is more than a freelance journalist who is getting started on investigating things that we should know about would earn. Most people on a normal income would be very cautious about engaging in litigation about anything.

We have normalised the threat of litigation in relation to a basic democratic function, which is public discussion and public exposition of facts in the public interest. The effect of that is that things disappear—they are not published or they are published in sterilised form. That has significant effects on governance because we do not know

what our local authorities are doing, we do not necessarily know what our Governments and politicians are doing and we do not know what businesses, which often affect our lives to an equal extent, are doing.

We do not know the extent of that—we cannot quantify it. However, from preliminary data that my colleague Francesca Farrington is collecting, we know that all journalists receive such threats. We can surmise that journalists often respond to those threats by limiting what they publish.

The Convener: Although we cannot talk about live cases, colleagues who were members of the Scottish Parliament in the previous parliamentary session will remember the case of our former colleague Andy Wightman, who was very much involved in and affected by such litigation.

I have a final question about the issue that you have just touched on. Are legal claims that relate to journalists and campaigners the type most commonly associated with SLAPPs? Is that what they are generally deployed in respect of?

Roger Mullin: Yes. The ones that I am most familiar with are used, first of all, against the journalistic community, and that is mostly in relation to investigative journalists. However, they also involve campaigners and, on occasion, academics, where the intention is to stop them from conducting or publishing research findings. As far as I am aware, journalists are the largest community that is affected by that, but they are not alone.

Graeme Johnston: In addition to what Roger Mullin said, another angle is that there is an increasing number of private individuals who get threatened or sued, for example, for leaving a bad review for a service—there have been some rather obnoxious cases about that—or for reporting on assaults that they have suffered from ex-partners and so on.

The Convener: There are other applications. I was just trying to understand where the centre of gravity is in relation to their use.

David Torrance (Kirkcaldy) (SNP): Looking at other legal systems across the UK, do you think that the action that is being taken in England and Wales goes far enough to adequately protect journalists and campaigners?

Roger Mullin: From my perspective, I doubt that it does at the moment, but I would rather defer to people who are legally trained to give a more detailed response.

Graeme Johnston: The main issue with the bill that is before the Westminster Parliament is that it has a subjective standard that applies to an intention to harass, for example. The criticism of that is that it does not go further than existing abuse-of-process law. There is a proposed amendment to create an objective test for things that can be reasonably understood as having a harassing intent or impact, and we will have to wait to see how that goes. There is a secondary issue about the definition of public interest in the bill.

Those are the main points. There are other enhancements that one could make. For example, other aspects are covered in the anti-SLAPP model law that the UK Anti-

SLAPP Coalition has put together, but those are the two big live issues in Westminster at the moment.

David Torrance: Does the Council of Europe initiative put pressure on the Scottish Government to do more on the issue?

Roger Mullin: I will give a very short answer to that: yes. I think that Justin Borg-Barthet, in particular, is aware of what has been happening on the European front, so he might want to expand a little on my response.

Professor Borg-Barthet: I am not sure that it is necessary to expand a huge amount on your “yes”. To be clear, I was involved with the European Union law-making process rather than that of the Council of Europe, but, essentially, the answer is yes.

The reason for that is that there is a model recommendation that should be adopted by all legal systems in the Council of Europe. That is not binding, but it is something which should be done. The Council of Europe takes the view that that would constitute a sound standard for the protection of fundamental rights in Europe. We also need to consider what is going on in the European Union, where just yesterday the anti-SLAPP directive was published. It must be adopted within two years by the 27 member states of the EU.

There is significant pressure, in that 27 states will certainly adopt anti-SLAPP legislation, we expect further anti-SLAPP legislation in England and Wales, and there is the recommendation that is applicable to the rest of the Council of Europe states, with the expectation that there will be some movement there—for example, significant pressure is being brought to bear on Switzerland, as well. So, in a word, yes.

David Torrance: Thank you for that. In drafting anti-SLAPP legislation, what are the key factors that will make it successful?

Graeme Johnston: One key factor is that it should focus on process abuse rather than on particular substantive types of claim. For example, in 2013, a statute was passed in England to restrict the law of defamation, in effect, and a similar statute was passed in Scotland in 2021. The history in England has been that that has not been particularly effective in getting cases kicked out early, partly because the standards are very fact-sensitive—matters of serious harm, for instance, usually has to go to trial. That is also partly because people have become very imaginative in using all sorts of causes of action: privacy, data protection, trespass, confidentiality, copyright—you name it.

Therefore, the focus must be on process rather than on particular substantive causes of action. That would be a good start. Then, everything really turns on the definition. There are examples in various things, which I will not elaborate on, but that is the starting point.

Maurice Golden (North East Scotland) (Con): I am interested in the comments that Professor Borg-Barthet made about the Council of Europe initiative. The Scottish Government is committed to aligning with EU law. Therefore, in theory,

there is no need for the petition, because the Scottish Government should align with EU law. What options for intervention are open to the Scottish Government? There is the legislative route, but what about non-legislative routes, such as via solicitor regulation? Would that assuage the requirements of the petition?

Professor Borg-Barthet: No, that would not be sufficient, but you have raised an important point. In addition to legislative intervention, a sound response to SLAPPs would include several flanking measures, such as education—both of the legal profession and of people engaging in public participation—support for SLAPP targets, changes to legal aid and additional measures that would ensure that we are dealing not only with what happens in court but with the effects of what happens in court and the issues that precede anything making its way to court. However, legislation is absolutely needed, because we cannot do the things to which Graham Johnston referred without Parliament's say-so.

Roger Mullin: It would be very helpful if the Law Society were to issue advice to law firms in Scotland on the things that they should look out for. That would be another mechanism, but it is in addition to the need for proper legislation.

Ahsan Mustafa: I will expand on what Mr Mullin said. In relation to England and Wales, the Solicitors Regulation Authority, has issued a warning to solicitors regarding raising any litigation that can be viewed as a SLAPP, but I will make reference to the solicitors code of conduct in Scotland. Rule B1 requires solicitors to act at all times with trust and personal integrity. They are also required to refuse improper instruction by a client, which comes under rule B1.5.

Following on from what Mr Borg-Barthet said about legal aid, no legal aid is currently available in defamation cases in Scotland. If a respondent in receipt of legal aid has legal expenses, they will be covered, and that can create another level of protection.

Foysoil Choudhury (Lothian) (Lab): I have a couple of small questions. How are SLAPPs identified, and what differences are there between SLAPPs and legitimate cases?

Professor Borg-Barthet: In order to identify a SLAPP, you first need to establish that the respondent is engaging in public participation. That is not about publication; it is about all forms of public participation. That could involve a demonstration or publishing something—assembly or expression.

Once you have established that, you then need to look at the claimant's behaviour and consider whether the claim is unfounded, in whole or in part, or whether there are elements of abuse other than the claim simply being unfounded. There are different definitions in different legal systems, but the standard in the Council of Europe recommendation—which I would suggest is the absolute minimum that Scotland should be aiming for—includes consideration of different types of abuse, such as exaggerated claims. That could involve a claim that might be founded but where someone is claiming several millions of pounds for £10,000-worth of damage, for instance, or it could involve someone who is engaging in multiple claims when the matter could be consolidated in a convenient and efficient manner for the respondent and for the court.

When it comes to persisting in litigation when there is a possibility of resolution outside the court—I will not take you through the whole list of such scenarios—we begin by considering whether there is an act of public participation. If there is, we then consider whether the claimant's behaviour reveals any elements of abuse.

Foyso Choudhury: How prevalent are SLAPPs in Scotland, and what damage has been done?

Roger Mullin: I will have a first go at answering that. I am aware of a case that has never reached the public—and it probably never will—because the people who were going to publish it received such strong threats that they decided that they did not feel able to carry the risk. There are examples that you will be familiar with—and this was first referred to at the outset of this evidence session by Justin Borg-Barthet—and there are things that we are unaware of, because they never reached the public arena, although there are cases that do reach the public arena from different areas.

I will mention one thing that concerned me, long before I became a member of Parliament for a short time of my life. I used to chair the research ethics committee at the University of Stirling in the early 2000s. Some of you may remember that the University of Stirling had a research group in one of its institutes, which did research into tobacco use and the effects on young children of smoking, of advertising and so on. Some of that group's research will have informed the Scottish Parliament in the past, as tobacco legislation was pursued.

The university was threatened legally by a major tobacco company, which spent a long time pursuing it—two or three years, if memory serves me correctly. The company wanted access to original information, including details of interviews with 16, 17, 18 and 19-year-olds. It wanted to take everything, and it wanted to quell and silence the research, stopping it from ever being made public. It was unsuccessful in that, but we do have such cases—and that was a case beyond the realm of investigative journalism.

There are also cases involving individuals. One individual campaigning lady in Scotland was campaigning on behalf of people who had been subject to major fraud, and she was threatened. We know that there are cases of various types in Scotland. The concern that I have, and that I think many people have, is that, while there are cases that we know about, there is a strong suspicion that there are many more cases that we do not know about. Something needs to be done to protect the interests of public participation in Scotland.

Foyso Choudhury: Is it possible for non-governmental legal intervention to tackle SLAPPs?

Graeme Johnston: What sort of thing do you have in mind?

Foyso Choudhury: Non-governmental—so, as in the example just given.

Graeme Johnston: Civil society-type things?

Foyso Choudhury: That is correct, yes.

Graeme Johnston: Various types of support can be provided to journalists and others, and legal regulators can do things. It is a complex problem, and there is no single magic solution to it. The heart of the problem is what the law permits, and everything else refers to that, really. There are many things that can be done, but the legal one is the central one, I would say.

Professor Borg-Barthet: If I could respond—

The Convener: Briefly, please, as I wish to bring in Mr Ewing.

Professor Borg-Barthet: There is room for non-governmental intervention but, ultimately, non-governmental intervention cannot shift costs, and proceedings cannot require the claimant to provide security for costs, nor can they require claimants to pay damages for having brought a SLAPP, and so on. There is only so much that can be done by anything other than a Parliament.

Fergus Ewing: I apologise to the witnesses for being slightly late and not hearing all of Roger Mullin's opening statement, but I did read yesterday's "Thunderer" column, which I think bears a certain similarity to the arguments therein.

Roger Mullin: Indeed.

Fergus Ewing: I want to focus on some practicalities. This is helped by Mr Mustafa's evidence that there is no legal aid in Scotland for someone defending a defamation action, and that is very important.

The responses to the petition from the Scottish Government were made in October 2022 and on 2 March 2023. In each case, the Government's main argument for doing nothing was that the Defamation and Malicious Publication (Scotland) Act 2021 will provide protection and additional tests. That is true in the sense of certain defences, which is a good thing. My point, however, is that in order to defend an action, you need to be able to pay for it. Being taken to the Court of Session is completely beyond the means even of someone who is quite well off. I know of one case where a Court of Session action cost an individual £350,000. That is probably by no means unusual.

The Minister for Community Safety, in her reply of 2 March 2023, said that a solicitor said that it costs only £25,000 to pursue a defamation action in a sheriff court. Only £25,000? Who has £25,000 to blow on legal fees at this time of austerity? I want to put that on the record, because it seems to me to be an utterly hopeless defence—so hopeless that I am surprised that the Scottish Government put it forward.

Therefore, we are talking about David versus Goliath, but David with no sling—and no nothing—and Goliath with nuclear weapons. Having set that scene—

The Convener: I was going to ask whether you are a witness or are asking questions of the witnesses, Mr Ewing. [Laughter.]

Fergus Ewing: I thought that it would be useful, in seriousness, to refer to the Government's response to the petition because of what it said, and now we are 19 months on. Would it not be a completely impossible task for an ordinary individual who is threatened with such a legal action to defend it? As Mr Borg-Barthet quite

rightly said, most individuals would just fold, even if they think that they are absolutely innocent of any charge and have a perfect defence against it.

The Convener: I will assume that none of the witnesses disagrees with Mr Ewing, but I wonder whether anyone would like to expand on anything that he said that they think would help the committee.

Roger Mullin: I could add to that. What struck me as being rather narrow about the view of the Government, if I may put it that way, was that it only mentioned defamation in its response, whereas we know that SLAPPs can be applied in different types of legal routes, such as privacy law, data protection and the like. People such as me would like to see more general anti-SLAPP measures being considered because it is open to abusers to choose different legal routes, and they often do.

Professor Borg-Barthet: An excellent paper has just been published by Stephen Bogle and Bobby Lindsay from the University of Glasgow that addresses that specific point. Essentially, they say that the Defamation and Malicious Publication (Scotland) Act 2021 does not, and could not, address the SLAPP problem fully.

Although the 2021 act is welcome because it improves the environment for freedom of expression, it does so only in respect of a particular type of claim and, as Graeme Johnston explained earlier, SLAPPs can come in any form. In addition, the tests, including the serious harm test, come far later in the process, at which point several thousand pounds—which people do not have to spare—have already been spent. Therefore that legislation does not and could not address the problem in and of itself. That is not to say that it is not a useful law in the general sense of protecting freedom of expression, but by itself it is insufficient.

Fergus Ewing: We have established that the Government's main defence is, to be frank, pretty hopeless as far as I can see.

Moving on from that point, the petition is 19 months old, and in the course of that time, while the Scottish Government has been busily doing nothing, the UK Government has passed an act called the Economic Crime and Corporate Transparency Act 2023, which enables SLAPPs to be struck out. It has also announced its support for a private member's bill, the Strategic Litigation Against Public Participation Bill.

Meanwhile, I am told that the European Parliament has recently agreed a directive dealing with SLAPPs. I have not studied the detail, but I wonder whether I can ask the witnesses the following question: does this mean that in England and Wales and in the EU as a whole—which covers most of mainland Europe that is likely to be used as the jurisdiction of choice—effective legislation will very shortly be in place and therefore something that was a danger very much lurking on the horizon 19 months ago is now coming close to the harbour of Scotland and very close to our country? If it was necessary to do something 19 months ago, is it not far more urgent to do something now rather than continue to do nothing at all?

Roger Mullin: My petition was published by the committee 19 months ago—I started preparing it months before that. Therefore, it was, let us say, roughly two years ago

that I was getting increasingly concerned about the moves in other jurisdictions while no apparent moves were being made in Scotland. Before I could issue a petition, I had, quite properly, to demonstrate that I had approached and sought information from the Government, and I was told that it had no plans to review any matters in relation to that.

This is not something that has suddenly arisen and which the Government has not been aware of; it has been aware for a considerable amount of time of what I would say is a need to protect Scotland. When I set out, my hope was that, by raising a petition, I would encourage a focus on the issue so that we could gather support for proper reform in Scotland. That is why, in my opening remarks at the outset of the meeting, I said that I genuinely thanked the committee for taking the petition on board and allowing it to progress. From my point of view, this evidence session is very important in raising the issue not only publicly but among parliamentarians. Surely it is time for action.

Fergus Ewing: I have one final question. Let us assume that the Scottish Government—which, to be fair, said in its first submission that it was not ruling this out—were to say, “Right, we’re going to solve this problem.” Would it be able to do so through a legislative consent memorandum, or something close to it? In other words, could it rely on, borrow, plagiarise or copy the approach being taken down south, bearing in mind, of course, that it would have to be adapted to Scottish circumstances? In other words, is it a fairly simple task—well, perhaps not simple, but reasonably straightforward—because the work has already been done by others and can largely be translated into Scots law? Is that fair?

Graeme Johnston: I would say so. There is not only the UK legislation, but the European materials. There are plenty of examples that have been thoroughly debated and discussed.

Fergus Ewing: Thank you very much.

The Convener: Just before I ask whether any of you have anything further to offer, I wonder, following on from the exchange with Mr Ewing, whether there has been any further contact with the Scottish Government, beyond the two instances that have been referenced. In fact, before we meet and have the opportunity to put these issues to the minister, can you say whether it is, as far as we are publicly aware, still the Government’s position that it has no plans to do anything or that this is something that is very much on the back burner? Is that still its perception, as you see it?

Roger Mullin: Well, I have not had any communication—

The Convener: You have had nothing to the contrary.

Roger Mullin: The only official position that I know is what has been recorded.

The Convener: Before we come to a conclusion, is there anything further that it would be useful for us to understand or that you wish to add for our consideration?

Roger Mullin: I just want to thank the committee again. You have given us a very fair hearing—I cannot ask for anything more. I simply encourage you to be on the right side of this very important argument.

The Convener: Well, we have a reputation for being tenacious when it comes to pursuing ministers in relation to petitions. I always say that our mandate comes not from any party political manifesto but from the petitioner, on whose behalf we are acting when we are able to pursue and discuss the issues with ministers.

Does anybody else want to say anything?

Graeme Johnston: I have not been here before, and I was not quite sure what to expect. I am just grateful for the very thoughtful and engaged discussion that we have had. Thank you very much.

The Convener: Thank you very much for your time. Before I suspend the meeting, are members content to consider the evidence later?

Members *indicated agreement.*

The Convener: Thank you very much.

Annexe C: Written submissions

Petitioner submission of 18 April 2024

PE1975/U: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

During the session I was asked for concrete examples of SLAPPs. I did my best to carefully recount examples but did not have detailed information with me at the time. I am therefore sending links to publicly available and previously published material on each case which will give a more precise understanding for those committee members interested.

This first example is in relation to the woman in the West of Scotland I mentioned who was targeted as an advocate for people battling fraud. The following, very recent article, is in my view the best public summary of the case I have come across:

<https://www.thebureauinvestigates.com/stories/2023-12-01/carter-ruck-britains-fiercest-libel-firm-will-pursue-anyone-anywhere-reputation>

The other example I briefly mentioned was in relation to Stirling University tobacco research. This story from 2011 in the Independent gives a full summary of the case.

<https://www.independent.co.uk/news/science/exclusive-smoked-out-tobacco-giant-s-war-on-science-2347254.html>

Minister for Victims and Community Safety submission of 23 April 2024

PE1975/V: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

Petition PE1975 raises important issues about the use of our legal system and the possibilities for obstructing freedom of expression. I wanted to write to inform you of my intention to consult on SLAPPs in autumn this year.

Work on non-legislative solutions is already underway. The UK Government launched a SLAPPs Taskforce last year to develop non-legislative responses to SLAPPs. A wide range of interests are represented on the Taskforce and a Scottish Government official attends along with their UK and NI counterparts. The Taskforce is tentatively expected to conclude its work towards the end of 2024.

Given this work and the legislative developments that have taken place elsewhere in the UK and in the EU I am keen that more progress is made here in Scotland. That is why I intend to consult on SLAPPs later this year.

I am grateful for the opportunity to appear before the Committee on 01 May to discuss these matters and look forward to any questions you may have.

SIOBHIAN BROWN