

Citizen Participation and Public Petitions Committee
Wednesday 15 May 2024
9th Meeting, 2024 (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 1 May 2024](#). At that meeting, the Committee heard evidence from:
 - Siobhian Brown, Minister for Victims and Community Safety
 - Martin Brown, Solicitor, Scottish Government Legal Directorate
 - Michael Papparakis, Policy and Bill Programme Manager
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. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
4. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
5. [The Scottish Government gave its initial position on 6 October 2022](#).
6. Every petition collects signatures while it remains under consideration. At the time of writing, 132 signatures have been received on this petition.

Action

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

Clerks to the Committee
May 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 1 May 2024

The Convener: Agenda item 2 is consideration of continued petitions. The first of those is PE1975, which is on reforming the law relating to strategic lawsuits against public participation—commonly referred to as SLAPPs. The petition was lodged by Roger Mullin and it 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 at our meeting on 17 April 2024. At that point, we heard evidence from Professor Justin Borg-Barthet, Graeme Johnston, Roger Mullin and Ahsan Mustafa. I again thank our witnesses from that session for their evidence.

This morning, after our various considerations, I am pleased to welcome Siobhian Brown MSP, who is the Minister for Victims and Community Safety; Martin Brown, who is a solicitor with the Scottish Government’s legal directorate; and Michael Paparakis, who is the policy and bill programme manager at the Scottish Government’s private law unit.

I understand that, before we move to questions, the minister wants to make a short statement.

The Minister for Victims and Community Safety (Siobhian Brown): Good morning. Thank you, convener, for the opportunity to talk about strategic lawsuits against public participation—often referred to as SLAPPs. I would like to thank the petitioner, Roger Mullin, for his tireless campaigning work on this matter.

The petition raises important issues and it is helpful to have them discussed in such a forum. The committee will be aware that the Scottish Government recently introduced reforms to our law of defamation, which took steps towards further protecting freedom of expression.

Although SLAPPs are typically framed as defamation cases brought by wealthy individuals or corporations to evade scrutiny in the public interest, they can occur across a broad spectrum of issues, including data protection, privacy and environmental law.

Since Parliament considered the law of defamation, significant steps have been taken elsewhere in the United Kingdom and in the European Union. In England and Wales, the UK Government has given its support to a private member’s bill that will widen the scope of the limited anti-SLAPP legislation that is already in place. At EU level there is a recent directive, and the Council of Europe has recently adopted a recommendation on countering SLAPPs.

For those reasons, it is important that we make progress on the issue. I am pleased to say that we will consult on SLAPPs later this year. It seems to me to be both timely and sensible to consult on the issue of SLAPPs specifically in the context of Scots law. My officials have already had helpful engagement with stakeholders, and I will ensure that that continues throughout the consultation process.

I welcome any questions that you or other committee members might have.

The Convener: Thank you, minister. That is encouraging. If I look over your shoulder, I can see the petitioner, who is in the public gallery this morning and will, no doubt, be pleased to hear that, too.

I was trying to understand the pathway. At our last meeting, having read the previous submissions that we had received, I noted an understanding that, given that Scots law is rooted in different traditions and precedents to law elsewhere in the UK, the assumption underpinning the petition—that there would be tourist destination travel to Scotland for such litigation—was perhaps more of a theory than a determined outcome. The Scottish Government's thought process at that point was that it would prefer to be in a slightly reactive position if that happened rather than in a proactive position simply because it might happen, given everything else that the Government has to consider. Was that part of the thinking? Has the fact that action has now been taken in other jurisdictions compounded the potential risk—which might otherwise have been theoretically less likely but is now potentially more likely—that such litigation could occur, meaning that the Government perhaps feels that it needs to take more decisive and direct action on the matter, proactively rather than reactively?

Siobhian Brown: Yes, absolutely. When my predecessor in post originally wrote to the committee, and when the petition was first lodged, the legislation was under review. However, as I said in my opening statement, there has been quite a significant development in the past couple of months, which is why we think that it is quite timely that we move forward with consultation.

The Convener: Thank you. Given that that is the case, our questions might be quite focused and to the point. I do not think that we are pushing a stone up a hill, in the sense that the Government appears to have accepted the argument. However, it would be interesting to explore some of the issues underpinning the need for all of this.

David Torrance (Kirkcaldy) (SNP): Good morning to the minister and her colleagues. Will the minister outline what discussions have been had at meetings of the UK-wide SLAPPs task force on co-ordinating non-legislative action against SLAPPs?

Siobhian Brown: The task force includes representatives from the UK Government and the EU, and I know that Scottish officials are part of it, too. By itself, legislation would not address all the potential issues that SLAPPs raise. There needs to be more of a holistic approach, which is why we are working with the task force.

David Torrance: What wider monitoring has been carried out of the impact of the use of SLAPPs in Scotland?

Siobhian Brown: I will bring in Michael Paparakis to answer that question.

Michael Paparakis (Scottish Government): As, I think, the committee heard a couple of weeks ago, SLAPPs are difficult things to measure. I understand that academics at the University of Aberdeen are undertaking survey work to understand

the wider picture, but most evidence tends to be anecdotal rather than quantitative data.

We are aware of the issues that stakeholders have raised both here, at the committee, and generally. Some cases were presented at an anti-SLAPP conference in Scotland in the middle of February, so we are certainly aware of instances that stakeholders would suggest are SLAPPs. That is another reason why the Scottish Government has decided to consult on the issue. There is a perception that such action is currently happening in Scotland and that we should move things forward.

David Torrance: Thank you. I have no further questions.

Fergus Ewing (Inverness and Nairn) (SNP): If I might pursue the theme of that last question, convener, is it not the case that there is no doubt whatsoever that SLAPPs are a huge problem and that the number of SLAPPs raised or threatened is enormous? We have heard that time and time again in evidence from lawyers who practise in that area. Earlier this morning, I was reading Graeme Henderson's submission to the Scottish Law Commission from some years ago. It referred to the huge number of interdict cases that never come anywhere near court because the pursuer—or, more often, the petitioner, because such cases are usually heard in the Court of Session—is financially so much less strong than the defender that they have not a cat's chance in hell of affording the litigation. That is the whole point.

The Government must surely accept that that is a serious problem, which it cannot measure simply by counting the number of cases that go to court. You must know that, like an iceberg, most of the picture is submerged. You cannot measure it exactly, because there is no record of cases such as those of an oligarch who owns a Russian oil company or a mine owner from Kazakhstan—to pick two of the litigations that are quite prominent in the history of SLAPPs. I just want to establish, minister, that you accept that this is a very serious problem.

Will you answer a further question? It is good news that you have agreed to consult. We all recognise that. However, this is an ancient petition—it is becoming the pensioner of petitions. I am a pensioner myself, so I should not be rude about them, but it is not acceptable that these matters just go on and on. My questions to you are these. Can you say that the Government is supportive of taking action and not just that you will conduct a consultation? Can you say when the consultation paper will be issued? What is your target date? Is it July? Alternatively, is the answer a vague one—"sometime never"—in which case, we might be back here in a year, perhaps with another minister?

Siobhian Brown: Yes, we do take it seriously. Globally and historically, there has been evidence that SLAPPs have been an issue. As I said, we have seen action being taken in Europe and the rest of the UK, so it is time for the Scottish Government to act on the matter. I take your point that this is an old petition, but we are moving forward. Consultation will happen this autumn, but I cannot give a specific date at this time. It will run for 12 weeks, and then we will look at the responses and take it from there. I cannot predict what the Cabinet might suggest regarding legislation.

Fergus Ewing: Convener, that reply is as much as I could reasonably ask of any minister, so I am grateful for it. Minister, if you want a useful form of words to ensure that you are never really on any particular hook as to the timescale within which you do something, the legal terminology is, “We will do it on or around between X.”

Siobhian Brown: Thank you.

Fergus Ewing: That is just some free advice. [Laughter.]

The Convener: All of which is noted.

I point out that the petition was launched in September 2022, which makes it something of a teenager in our schedule of petitions. If that is a pensioner petition then, by that definition, some of our petitions are out of the Jurassic period.

Fergus Ewing: You are endowed with greater quantities of patience than me.

The Convener: That remains to be seen. Thank you, Mr Ewing.

Do any other colleagues wish to come in?

Maurice Golden (North East Scotland) (Con): I am interested in the motivation behind the consultation. Is that a result of this petition or of the Scottish Government’s policy of ensuring continuity with EU law? Can you explain that?

Siobhian Brown: The petitioner was there when my predecessor wrote to the committee to say that the petition was under consideration. We have seen definite progress being made in the EU and in the UK in recent months, and in the private member’s bill going through. That is why we decided to take action. We will go out to consultation in the autumn.

Maurice Golden: Is the minister concerned about the potential time lag between developments elsewhere and those in Scotland and about how that could expose Scotland to SLAPPs?

Siobhian Brown: Not at the moment. I will keep the committee updated on that. I know that that is still in the early stages of going through the EU and through the UK Parliament. It has not passed yet or gone to the House of Lords, so I have no concerns at this stage.

Maurice Golden: Do you have ideas about the scope and form of the consultation? Do you know what you intend to bring forward or how will mirror what has been done by other jurisdictions that have introduced such legislation?

Siobhian Brown: We will engage with all the jurisdictions that have introduced legislation and will work with stakeholders.

Michael Paparakis may want to add something.

Michael Paparakis: At this stage, there is no set information about what the consultation will contain.

As the minister said, there is UK legislation, an EU directive and other items that might suggest possible questions for the consultation.

Maurice Golden: Is it likely that the issue of public education about SLAPPs will be included in the consultation? Can you tell the committee about that

Siobhian Brown: It is worthy of consideration.

Fergus Ewing: I am pretty sure that the minister has studied the previous evidence session. Mr Mullen and others made the point that, in its response to the petitioner's arguments, the Scottish Government has mostly referred to the Defamation and Malicious Publication (Scotland) Act 2021. However, as Mr Mullen pointed out, that is not the only type of SLAPP. SLAPPs can cover other types of action, and it would therefore be wrong to assume that only the law of defamation is in play. That is probably the main topic, but it is not the only one. Can the minister confirm that the consultation will fully cover that?

Siobhian Brown: Yes, we will cover every aspect.

Fergus Ewing: I have one last question. One of your predecessors made a reference that I thought was really not apt, which was that it does not really matter because the cost of pursuing an action in the sheriff court is only £25,000. Argument A is that that is £25,000 more than most people have got to pay for a court action and that most people therefore cannot afford that amount, so the idea that people would be able to afford such a sum is ludicrous. Argument B is that almost all of those actions will be raised by way of an interdict in the Court of Session anyway, so it is completely irrelevant to look at the cost of the sheriff court.

I do not raise that to be smart or to criticise anyone, but does the Government accept that that argument should be pushed to one side? The cost of action in the Court of Session is colossal. We are talking about hundreds of thousands of pounds, and no individual, unless they are a millionaire or a multi-millionaire, will go to court. Having practised law for 20 years, I know that. People will not go to court even if they think that they have a cast-iron defence. That is the whole point. It does not really matter whether brilliant defences are set out, as was the case in the Defamation and Malicious Publication (Scotland) Act 2021. That was a good piece of legislation in that regard, as it created a range of defences and protections, but they are not good enough to protect against the real mischief here, which Mr Mullin and his colleagues have clearly pointed out.

I just put that thesis to the minister to get some reassurance for the petitioner that the consultation paper will not duck those questions and that it certainly will not repeat that particular argument.

Siobhian Brown: Absolutely. I saw the correspondence that mentioned the figure of £25,000. I think that, when I spoke to my officials about that, it was in the context of UK-wide litigation.

I have looked at legal aid and, as you know, it can be considered on a case-to-case basis if anyone wants to pursue in that way. However, I totally accept your point and your comments on that issue.

Fergus Ewing: I think that I agree with the first part of that. On the second part, there is no legal aid for defamation.

Siobhian Brown: I have been told that the board can consider it on a case-by-case basis.

Fergus Ewing: Can they can consider it? If so, I stand corrected.

Siobhian Brown: I can double-check that.

Fergus Ewing: I thought that the chap from the Law Society in our last meeting said there was no legal aid.

Michael Paparakis: Legal aid is available on a case-by-case basis and according to circumstances.

Fergus Ewing: Well, it is still pretty dubious. Most people will not get legal aid if they have even a relatively small amount of capital tied up.

In any event, I think that your answer is satisfactory—thank you, minister. I have not said that for a while.

The Convener: We can agree on that point.

Minister, thank you very much. We do not need detain you any longer. I think that the petitioner's aims are potentially in hand and can be resolved. I am grateful to you for that and for joining us with your colleagues this morning.

Siobhian Brown: Thank you. I am happy to keep the committee updated as we progress.

The Convener: I would be very grateful for that.