A new anti-SLAPP law: proposals for legislation

Media Lawyers' Association

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1. Strategic Lawsuits Against Public Participation ("SLAPPs") are legal claims that unjustifiably limit public interest speech and participation in issues relevant to society. The threat of such legal proceedings deters publication of public interest information or seeks to remove content from the public domain with the prospect of expensive, time-consuming litigation.

2. This paper addresses the need for a new anti-SLAPP law of general application and makes proposals for what a new law should or could contain. The paper draws upon a range of different legal models and approaches to address the problem of SLAPPs: the Economic Crime and Corporate Transparency Act 2023 ("ECCTA")[1], Californian[2] and Canadian models[3], the UK Anti-SLAPP Coalition Model Law,[4] the Scottish Model Law,[5] the Council of Europe Recommendation,[6] and EU Directive 2024/1069.[7] It aims to provide some recommended principles for any new legislation.

3. This paper was prepared by the Media Lawyers' Association ("MLA") with the assistance of its members. It has been shared with representatives of the UK Anti-SLAPP Coalition and is supported by the Coalition and the News Media Association ("NMA").

4. The MLA is an association of in-house media lawyers from newspapers, magazines, book publishers, broadcasters and news agencies. It was formed to promote and protect freedom of expression, and the right to receive and impart information, opinions and ideas. A list of the MLA's corporate members may be found on its website.[8] The MLA represents major

[1] https://www.legislation.gov.uk/ukpga/2023/56/contents
[2] https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=425.16
[3] Ontario Protection of Public Participation Act (https://www.ontario.ca/laws/statute/s15023)
[4] https://antislapp.uk/wp-content/uploads/2023/05/Model-UK-Anti-SLAPP-Law-Final-Version.docx.pdf
[5] https://www.gov.scot/publications/scottish-government-consultation-strategic-lawsuits-against-public-participat ion/pages/8/
[6] https://rm.coe.int/0900001680af2805
[7] https://eur-lex.europa.eu/eli/dir/2024/1069/oj/eng
[8] https://medialawyersassociation.org/members/

publishers and broadcasters whose publications reach the vast majority of the viewing and reading public in the UK, at national and local level. Its members also publish Europe-wide and worldwide in a wide variety of formats.

Introduction

5. Anti-SLAPP legislation is needed to tackle the threat and commencement of legal proceedings which chill legitimate public interest reporting, speech and participation in matters affecting all of society.

6. The laws which are used to attack speech and dissent on matters of general public interest and the court processes for obtaining a decision on a claim do not allow for quick disposal of a legal claim. The existing court powers have not deterred the bringing of SLAPP claims in the England and Wales. Applications to dismiss for abuse of process or to obtain an early summary judgment in the defendant's favour are costly and carry considerable risk as the rules were not designed for the types of claims restricting freedom of expression that we see today.

7. As the law and the relevant procedural rules have become increasingly complex, it is no longer enough for individuals to rely on the truth of their publications. This complexity has enabled the wealthy to misuse the legal system to dictate what information enters and remains in the public domain.

8. The discussion on proposed anti-SLAPP legislation to date has been fraught with complexity. In reality, such legislation can be simple and cost-effective, while reducing the burden on court resources which are currently expended on claims which cannot be halted at the outset but which should be.

9. A fast, cost-effective early dismissal procedure is needed for legal claims which unjustifiably restrict public interest speech and public participation. Far from obstructing access to justice, an early dismissal procedure will still allow those who have a strong claim to vindicate to do so.

10. The legislation should deter intimidation of journalistic enquiries before publication with threats of legal action. Currently, there is no deterrent for such conduct although the Solicitors Regulation Authority has warned solicitors that the "'right to reply' process should not be used to threaten or commence legal action without a proper legal basis for

doing so".[9]

11. SLAPP claims include not only those based in libel but malicious falsehood, data protection, harassment, privacy, copyright and any other claim that may restrict freedom of speech. They include claims currently dealt with in the court system as abusive claims.

12. This paper highlights basic principles which we consider are necessary to underpin any legislation and allow it to fit with the existing laws while not replicating them, and to provide adequate and proportionate protection for public interest speech where merited.

13. The principles we believe should be included are:

    a. fast early disposal mechanism; and

    b. a deterrent in costs against bringing claims which are on a subject matter of public interest.

Background

14. The previous Government was convinced of the need for new legislation and created the UK's first anti-SLAPP provisions, and the first anti-SLAPP laws in Europe (sections 194 and 195 of ECCTA).

15. The ECCTA is unsatisfactory in dealing with the threat to public participation because the definition of a SLAPP at s.195 is limited by subject matter to information and disclosures about economic crime and includes a subjective test (to determine the intention of a party in bringing a claim) which is difficult to satisfy or examine and has no place in a procedure which is intended to be swift and simple.

16. Claims which restrict free speech can be brought in relation to any type of public interest speech and are not limited to economic crime. The key element of a SLAPP is that it has the potential to restrict freedom of expression on a matter which contributes to a general debate of public interest. The narrow approach deployed in ECCTA excludes numerous other matters of important public interest from protection. For example, the libel claim brought by Yevgeny Prighozin against the founder of Bellingcat, Eliott Higgins, related to allegations of war crimes carried out by Wagner group mercenaries in Africa and the

[9] https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice/

intimidation of journalists[10]. Matters of self-evident public interest and concern, but ones which would fall outside the ECCTA protections.

17. In addition, other topics of significant public interest which have been the subject of legal threats include victims speaking out about serious crimes[11], questionable business deals[12], failing institutions,[13] patients sharing their experiences to inform others,[14] and other matters of public concern such as substandard housing,[15] care homes, planning and development, and environmental issues.[16]

18. A new law should be of general application, relating to public interest participation in society generally and not restricted to speech on matters relating to economic crime. There is a need for a separate early dismissal mechanism, because the threshold is too high in the current summary judgment/strike out regime which is not designed specifically to protect public interest speech. It therefore is not appropriate to deal with these types of claims.

"Public participation"

19. US anti-SLAPP laws not only seek to protect freedom of expression but also public participation generally, which extends to other human rights including freedom of association. The EU Directive refers to "abusive court proceedings against public participation", which it defines in a non-exhaustive way: Article 4(3).[17] Article 4 of the Council of Europe's Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on countering the use of SLAPPs also refers to this in a broad way.[18] New legislation is an opportunity to provide better protection for defendants from SLAPPs. The wider aspects of "public participation" embodying the facilitation of protest as an expression of speech should also be protected.

20. Public participation encapsulates a range of claims beyond libel. The threat of or filing of a legal action is sometimes also accompanied by other measures designed to intimidate

[10] https://antislapp.uk/project/eliot-higgins/
[11] *Hay v Cresswell* [2023] EWHC 882 (KB); https://antislapp.uk/project/nina-cresswell/
[12] https://antislapp.uk/project/tom-burgis/
[13] https://www.thebureauinvestigates.com/stories/2024-11-22/nadim-zahawi-mohamed-al-fayed-and-ampika-picks ton-all-the-silenced-stories-raised-in-slapps-debate
[14] https://antislapp.uk/project/cosmetic-surgery-patients-and-patient-advocate/
[15] https://www.greensquareaccordresidents.co.uk/house-of-commons-debate
[16] https://www.greenpeace.org.uk/news/shell-settles-multimillion-dollar-slapp-lawsuit-against-greenpeace/
[17] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32024L1069
[18] https://rm.coe.int/0900001680af2805.

defendants. For example, a person may be threatened with a SLAPP claim which seeks to secure underlying documents or a data subject access request so that the claimant can threaten exposure of the defendant's sources.[19]

21. A Scottish model law which was drafted by the Anti-SLAPP Research Hub at the University of Aberdeen and fed into by the Scottish Anti-SLAPP Working Group, which was submitted to the Scottish Government consultation on SLAPPs, defines "public participation" partly as the "making of any statement or the carrying out of any activity by a natural or legal person in the exercise of the right to freedom of expression and information…and which concerns a matter of public interest."[20]

22. The Council of Europe Recommendation on countering the use of SLAPPs, which was approved in April 2024, defines public participation as "everyone's democratic right to participate in public debate and public affairs, online and offline, without fear or discrimination."[21]

23. The EU Anti-SLAPP Directive includes an expansive definition, which includes the "making of any statement or the carrying out of any activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting or assisting action directly linked thereto, and which concerns a matter of public interest."[22]

24. This definition is replicated in Section 19 of the Defamation (Amendment) Act 2026 for SLAPPs deployed via defamation in the Republic of Ireland.[23] It is also used in the General Scheme for the Strategic Lawsuits Against Public Participation Bill (announced by the Irish Government on 11 February) to ensure the country could transpose the EU Directive before the deadline of 7 May 2026.

25. The Protection of Public Participation Act 2015 (the "Ontario anti-SLAPP law")[24] provides that the court must make an order to dismiss a claim if the defendant in the claim satisfies the judge that "the proceeding arises from an expression made by the person that relates to a matter of public interest". A claim cannot, however, be dismissed if the claimant

[19] https://www.livpost.co.uk/cutthroats-and-sell-outs-an-editors-note-about-laurence-westgaphs-threats-2/
[20] https://www.gov.scot/publications/scottish-government-consultation-strategic-lawsuits-against-public-participati on/pages/8/
[21] https://rm.coe.int/0900001680af2805
[22] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401069
[23] https://data.oireachtas.ie/ie/oireachtas/act/2026/2/eng/enacted/a0226.pdf
[24] https://www.ontario.ca/laws/statute/s15023

makes out a case that:

a. there are grounds to believe that (i) the proceeding has substantial merit, and (ii) the applicant has no valid defence in the proceeding; and

b. the harm likely to be or have been suffered by the responding party as a result of the expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

Applications must be heard within 60 days and the legal claim which the application attempts to dismiss is stayed during that period. An application is awarded costs on an indemnity basis if successful other than where considered inappropriate.

Key features of any new law

26. Anti-SLAPP laws characteristically share in common two main features: an early dismissal procedure for legal claims that engage the relevant legal provisions; and costs provisions which disincentivise the bringing of SLAPP claims and make it easier for defendants to defend SLAPP claims when they are brought. A fast, cheap early dismissal procedure and strong costs protections for defendants faced with SLAPP claims are essential elements of any effective anti-SLAPP law. Effective sanctions also can be considered.

The early dismissal mechanism

Element 1: the SLAPP 'starting point'

27. There is no need for a definition at the outset of an application that the claim challenged is a "SLAPP". Whether an application is successful or not will determine the status of the legal claim being challenged and whether it is a "SLAPP". A simple starting point for an application to dismiss a claim instead could be that the subject matter is on a matter of public interest.

28. It is not necessary to define the term "public interest". The English courts are able to determine this and currently do so in the context of s.4 Defamation Act 2013 (the public interest defence, "s.4")[25] and the "special purposes" exemption within the Data Protection

[25] https://www.legislation.gov.uk/ukpga/2013/26/section/4

Act 2018.[26] There is already a significant body of both domestic and European case law for the courts to draw upon. The premise here is that Judges already understand what the term "public interest" means and should be allowed to make their decisions on a case-by-case basis, building up a body of case law in the usual way.

29. This was the approach adopted by Parliament in relation to s.4, the first limb of which requires a defendant to show that "the statement complained of was, or formed part of, a statement on a matter of public interest". In practice, the s.4 case law shows that Judges adopt a broad and liberal approach to this question, based on European Convention of Human Rights Article 10 case law, and in many cases this first limb is conceded, with the battle ground being the question of the defendant's "reasonable belief" that publication was in the public interest.

30. Article 10 ECHR has described the public interest as "matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with matters that are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about."[27]

31. The same approach is adopted in the Ontario anti-SLAPP law,[28] in which the term "public interest" plays a central role but is not defined, and in the California Code of Civil Procedure Section 425.16 (the "California Anti-SLAPP Law")[29] which refers to the term "public issue" instead of "public interest" but again provides no further definition.

32. The alternative approach is to define public interest in a broad and non-exhaustive way. The EU Directive at Article 4(1) defines "matter of public interest" as "any matter which affects the public to such an extent that the public may legitimately take an interest in it", then provides examples of public interest speech such as "fundamental rights, public health, the environment or the climate" and the activities of public figures.

33. It could be pointed out in Explanatory Notes that the term public interest has not been

[26] https://www.legislation.gov.uk/ukpga/2018/12/schedule/2/paragraph/26; the "special purposes" meaning for the purposes of journalism, academic purposes, artistic purposes and/or literary purposes.
[27] *Satakunnan Markkinaporrsi Oy & Satamedia v Finland*, App 931/13, para 171.
[28] Protection of Public Participation Act, 2015, S.O. 2015, c. 23 - Bill 52 (https://www.ontario.ca/laws/statute/s15023)
[29] https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=425.16.

defined, but the courts are accustomed to following existing domestic case law and the approach of the Article 10 ECHR case law.

34. The merits of a simple starting point is that there is no need to define the legal action to which the application for early dismissal relates as a SLAPP before an application can be made. Subjective tests are also avoided.

35. Criticism that this starting point would allow too many claims for early dismissal to be brought is misguided. In reality strike outs are not common and anti-SLAPP applications are likely to be an even smaller proportion as their outcome will depend on satisfaction of further steps. An applicant would not wish to bring an application which is likely to fail. The starting point ensures that applications to dismiss under the legislation can only succeed if the court determines that the case concerns speech on a matter of public interest. Under Article 6 ECHR such a provision would be compatible provided the objective is legitimate. The starting point makes clear that the objective is a legitimate one – to protect free speech on matters of public interest.

36. "Claim" should remain undefined in any new law because in principle many different types of claim can be used in SLAPPs. Although most SLAPP claims historically have been libel claims, they can take a wide variety of forms including threats of and claims in harassment, breach of confidence, misuse of private information, data protection and copyright. They can also evolve as individual laws are reformed and the judicial climate changes. Not defining "claim" here gives courts the flexibility they require, while also future-proofing any protections established in law.

37. While the starting point of an application does not require a SLAPP to be defined at the outset, clarity on the outcome of a hearing and the categorisation of the claim is required. This allows applicants to refer to the claim in this way and deter similar actions – it operates as a 'name and shame' tool without any arguments about how the court viewed the claim. This also enables monitoring and record keeping and review.

The ECCTA mechanism

38. The ECCTA provisions contain a strike out mechanism comprising two main elements. First, the court must decide whether the claim is a "SLAPP claim", using the tests set out in s.195. If the claim is designated as a SLAPP, then under the second limb the claimant bears the burden of showing that the claim is more likely than not to succeed, failing which

the claim may be struck out.

39. Section 195 of ECCTA sets out a 4-stage test for deciding whether a claim amounts to a SLAPP. The first step under s.195(1)(a) is that "the claimant's behaviour in relation to the matters complained of in the claim is, or is intended to have, the effect of restraining the defendant's exercise of the right to freedom of speech". The focus on "the claimant's behaviour in relation to the matters complained of in the claim" is the wrong focus.

40. The criteria by which the court is to assess whether a claim is a SLAPP under s.195(1)(d) are problematic. The court must decide whether the behaviour of the claimant in relation to the matters complained of "is intended to cause the defendant (i) harassment, alarm or distress (ii) expense, or any other harm or inconvenience, beyond that encountered in the course of properly conducted litigation." The provision asks whether a claimant in effect set out to cause harassment, alarm or distress, expense or any other harm or inconvenience. This focus on such a subjective element is unworkable in practice requiring careful examination of evidence which may be inconclusive. In addition, the clause also looks at such behaviour "beyond that ordinarily encountered in the course of property conducted litigation". Interpretation of this element raises questions of what is the ordinary course of litigation and what is its proper conduct.

41. This is a subjective test which requires examination of the intention of the claimant and is difficult and time-intensive to assess. A claimant could argue that they are only properly seeking to vindicate their reputation and that they do not have such intention. It will be difficult for defendants to gainsay a claimant's description of what their intention is, not least because it will necessarily be done on the basis of written statements and submissions. This is an uncertain and risky exercise, undermining the key purpose of the law which was to create an early dismissal procedure that potential defendants will be able and willing to invoke.

42. Legislation should ensure that all elements of the test that the court has to apply are objective and relate to features of the claim itself, without involving any requirement for the court to ascertain the claimant's intentions.

43. Nonetheless, some of the features of SLAPP behaviour in s.195(4) and 195(5) are matters which the courts could take into account in a third step (see below) where a balancing test is conducted.

Element 2: the merits test

44. The merits test under s.194(1)(b) ECCTA requires the claimant to show that it is more likely than not that the claim would succeed at trial. This test should be carried over into the general legislation. An aim of the legislation is to ensure those who speak in the public interest are not vexed by lengthy and costly High Court litigation without good reason. Good reason here must connote, amongst other things, a claim with sufficient merit. Without that the exposure to such litigation should not be regarded as justifiable.

45. This reverses the usual burden of proof which applies to defendants' summary judgment and strike out applications, where the defendant bears the burden of persuading the court that the relevant test is met. The reversal is justified because the claimant chooses to bring the claim against free speech and must make out their case at trial (if it gets there). The balance of probabilities test is significantly harder for a claimant to satisfy than merely showing that their claim is not "unreal" or not "fanciful", which is the test for summary judgment, but it has the advantage of being the normal test that applies in civil claims for interim injunctions that restrict a defendant's right to freedom of expression, and is well understood by parties and the courts.

Element 3: A balancing test

46. The court could be required to assess whether the public interest in protecting the expression outweighs the public interest in protecting the harm resulting from that public interest expression, such that the claim should not be permitted to continue.

47. This sort of balancing act is also well known to the courts in determining competing human rights and submissions could be accepted on any issues arising from publication which have a bearing on the detriment to the claimant or defendant. It was referenced in a recent successful application under ECCTA: "Our substantive laws have a long history of striking careful balances between protecting free speech and protecting other fundamental rights and interests of citizens, including the protection of personal autonomy, integrity, safety, privacy and reputation. These balances are always contestable in policy terms, and have been struck by the law in different places at different times. But wherever they are struck, the courts must protect and enforce those balances. Litigants who invoke that duty of the courts, on either side of the balance, are entitled to have their arguments tested and adjudicated upon in a justice system which seeks scrupulously to respect the precise

balance Parliament has struck at any one time."[30]

48. We do not recommend that this assessment should include whether the claim has indicative or distinctive features of a SLAPP although these are prevalent in model laws.

49. There are several references. The UK Anti-SLAPP Coalition's Model Law refers to "an abusive lawsuit against public participation", again defined non-exhaustively by reference to a number of factors: s.1(2)(b).[31] 194(5) ECCTA (a) - (g) lists a series of "relevant" factors in determining intention.[32] The Council of Europe recommendations list at paragraph 8 (a-j) a series of factors which it states while not necessarily are all included in each claim, "the more of them that are present or the more acute the behaviour, the more likely the legal action can be considered as a SLAPP."[33]

50. The EU Directive refers at recital (15) to an imbalance of power and the chilling effect of court proceedings against public participation, the misuse of economic advantage or political influence by the claimant against the defendant and the potential for a harmful or chilling effect of those proceedings on public participation (see chapter 1, article 4(3) of the Directive for factors cited).[34]

51. Other factors which are frequently referred to are the links of some SLAPP claimants to hostile states, such as Russia; the use by claimants of other intimidating and harassing methods alongside SLAPPs, such as targeting or placing defendants under surveillance (as happened in the SLAPP claims threatened in connection with the Wirecard fraud)[35], and the bringing of claims in multiple jurisdictions.

52. However, including such a list of factors, even if expressed as indicative, risks generating a 'tick box' approach to interpretation. The tendency would be for such factors to be adopted as hurdles. In any event they create uncertainty in legislation. A holistic approach to any SLAPP test is vital with the balance assessed in all the circumstances to ensure access to justice for all parties.

53. The third limb of the Ontario anti-SLAPP law puts the burden on the claimant to persuade

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[30] *Kamal v Tax Policy Associates Ltd and Daniel Neidle* [2026] EWHC 551 (KB)
[31] https://antislapp.uk/wp-content/uploads/2023/05/Model-UK-Anti-SLAPP-Law-Final-Version.docx.pdf
[32] https://www.legislation.gov.uk/ukpga/2023/56/section/195
[33] https://rm.coe.int/0900001680af2805
[34] https://eur-lex.europa.eu/eli/dir/2024/1069/oj/eng
[35] Dan McCrum, Wirecard and me: Dan McCrum on exposing a criminal Enterprise, Financial Times, September 2020, https://www.ft.com/content/745e34a1-0ca7-432c-b062-950c20e41f03

the judge that "the harm likely to have been suffered by the responding party [claimant] as a result of the moving party's [defendant's] expression is sufficiently serious that the public interest in permitting the proceedings to continue outweighs the public interest in protecting that expression." This limb of the test has been described as the "crux" of the court's decision on anti-SLAPP applications, allowing the court to balance the claimant's right to reputation against the defendant's freedom of expression. If the claim has sufficient merit the application to dismiss is determined at this stage.

54. Other factors referred to in proposals for legislation include penalties for failure to comply with a pre-action protocol, court rules or practice directions, and prescriptive measures for case management. Such matters would be brought into play by the effective reliance on the civil procedure rules (in particular the overriding objective) and judicial guidance, and could be informed by explanatory notes.

Costs

55. Costs are weaponised by potential claimants. Much of the damage which manifests as the chilling of speech derives from the threat of legal fees which are not fully recoverable even when a defendant is successful.

56. In a case settled between Shell and Greenpeace, Shell sought $1 million in damages in a case brought in London in relation to protests by Greenpeace in the context of the climate crisis. Greenpeace said, "The suit remained one of the largest legal threats Greenpeace UK has faced in over fifty years of campaigning as a result of $10 million in legal costs Shell planned to recover from Greenpeace."[36]

57. The costs protection for defendants enacted in the ECCTA are workable. Section 194 provides for new rules in the CPR the effect of which is that "in respect of a SLAPP claim a court may not order a defendant to pay the claimant's costs" except where the defendant's misconduct justifies such an order.

58. This has two main consequences. First, a defendant bringing an early dismissal application to strike out a SLAPP will not be at risk of paying the claimant's costs if they are unsuccessful. Secondly, if the claimant succeeds in showing that he is likely to win at trial, the claim will be allowed to proceed but the claimant will not be able to recover his costs even if he wins at trial (absent misconduct by the defendant, which will be a rare case).

[36] https://www.greenpeace.org.uk/news/shell-settles-multimillion-dollar-slapp-lawsuit-against-greenpeace/

59. This is likely to make SLAPPs uneconomic for claimants, as the costs of a case usually far exceed any damages awarded at trial. This costs protection also makes it more likely that defendants will be willing to fight a case to trial. This was the previous Government's intention, as it stated in its Response on the question of cost reforms that it was "seeking to engineer a change in the climate of these cases, to enable a party to defend themselves without having to capitulate."[37] For these reasons, it seems likely that a route through an early gateway will redress the current imbalance between claimants and defendants when it comes to settlement.

60. A successful defendant in an early dismissal application could ordinarily be awarded their costs on the indemnity basis, not the standard basis.[38] Typically, an order for costs on the standard basis leaves that party facing a shortfall in the costs that they can recover, so if the claim has been struck out on the basis that it is a SLAPP, then a suitable order could be indemnity costs. A default position of indemnity costs serves as a further deterrent in bringing an unjustified claim against freedom of speech in the public interest.

61. However, the structural flaws in the ECCTA as outlined above undermine some of these measures that can limit costs. The first known test of the ECCTA anti-SLAPP provisions was in the case of *Kamal v Tax Policy Associates Ltd and Dan Neidle*[39] where the applicants successfully secured a partial strike out and summary judgment and a declaration that the claim was a statutory SLAPP. The legal action was in effect filtered out by the ECCTA early dismissal mechanism before it could proceed. However, it cost the applicants £146,000 in respect of legal costs, and eight months' work.[40] This sum would be significantly beyond the reach of many if not most subjects of SLAPP cases. It is of note that the Judge in the case found that the value of the claim was 'plainly inflated' at £8 million.

62. The Ontario anti-SLAPP law provides that if the application to dismiss a claim is not successful the claimant is not entitled to recover their costs in the usual way unless the judge determines that such an award is appropriate in the circumstances. A deterrent in costs which goes beyond indemnity awards would be effective and should be explored.

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[37] https://www.gov.uk/government/consultations/strategic-lawsuits-against-public-participation-slapps/outcome/strategic-lawsuits-against-public-participation-slapps-government-response-to-call-for-evidence

[38] Section (7) Protection of Public Participation Act, 2015, S.O. 2015, c. 23 - Bill 52 (https://www.ontario.ca/laws/statute/s15023)

[39] [2026] EWHC 551 (KB)

[40] https://antislapp.uk/2026/03/12/the-first-statutory-slapp-only-underscores-the-need-for-universal-anti-slapp-protections-in-law/

63. Other costs measures:

    a. Security for costs is an order for one party to pay a sum before a case has been determined. This form of order should be made a key consideration for a judge in determining an application made under the quick resolution procedure. This protects a defendant from being out of pocket if a claimant declares it cannot pay the costs awarded. Costs are a key deterrent and such deterrents are needed to ensure that the legislation is effective. An order being routinely available for security for costs is a good deterrent for those who bring claims but think they can avoid paying out on a costs order. Other suggestions include the imposition of a costs cap for recoverability of costs.

    b. Costs capping was recommended by the CoE. Escalating costs become particularly oppressive in claims which continue to trial with the use of costly disclosure requests and other tactics. A claim which is permitted under an early dismissal mechanism, either partly or entirely, to proceed or which is not challenged by way of an application for dismissal at all could still bear the marks of a SLAPP claim, possibly because tactics change or new information comes to light. It would be prudent to include costs measures in any legislation which encourage the discretion of a judge to impose costs caps on a claimant's recovery of legal fees if the claim is on public interest matter, is an expression of speech and is proceeding to trial. The court should be able to take into consideration all the circumstances of the litigation if the claim would pass the test of SLAPP legislation. This could mean that after an early dismissal application or even without one, reference can be made by a court to the public interest purpose of the speech and that a court can be required on that basis to exercise its discretion on costs without having to apply for an order that the claim is an abuse of process. The practice direction to CPR rule 3 (general costs management) allows costs caps to be awarded but states they must be made only in exceptional circumstances.

Do the courts already have sufficient powers to deal with this type of claim?

64. It has been suggested that a new law is not necessary and that the courts already possess sufficient powers to deal with weak or abusive claims.

65. The courts' powers to grant summary judgment and strike out to defendants who are sued do not deter the bringing of SLAPP claims in England & Wales and do not bring about an

effective means of bringing an early resolution to the claims that have been brought. This is not surprising as these procedures can only be invoked in exceptional circumstances:

a. Where the courts possess the power to grant summary judgment under CPR Part 24 in favour of a party who can show that the other party's case has "no real prospect of success". But the threshold for a successful application of this kind is very high – a defendant bringing such an application has to show that the claimant's prospects of success are "unreal" or "fanciful". In addition, if there is any significant dispute of fact that is relevant to the claimant's prospects of success then the court is likely to find that the facts should be decided at trial. These limiting factors mean that such applications are only successful in rare cases.

b. There is also a power to strike out a claim under CPR Part 3, which can potentially be exercised in relation to a claim which a court finds is an abuse of the court's process. However, in the libel law context this power has only been invoked in relation to claims involving minimal publication. The best-known example of this was *Jameel v Dow Jones* [2005] EWCA Civ 75, where the court struck out a libel claim relating to a publication that had been published to only a handful of people on the basis it was so disproportionate as to amount to an abuse of the court's process. While an anti-SLAPP law would embrace cases of this kind, the vast majority of cases have involved mainstream news reporting and mass publications, to which the *Jameel* jurisdiction has no application.

66. For these reasons, it would be right to address SLAPPs effectively with a bespoke early dismissal and costs protection regime that departs in significant ways from the usual approach of the courts in summary judgment and strike out applications and provides much stronger protections for defendants. By doing so the legislation would recognise the importance of protecting public interest speech.

67. It is also important that this is a practical law that works not just for journalists employed by organisations such as the members of the MLA, but also for individuals, freelancers, NGOs, academics, victims of crime, and even MPs who find themselves subject to SLAPP threats for speaking out about, for example, the misuse of power or public funds.

Other considerations

68. New universally applicable legislation would result in the anti-SLAPP provisions

contained within ECCTA being repealed. Key to the efficacy of the new law is the reliance on current provisions of the CPR particularly in respect of the overriding objective and case management to ensure that the process remains swift, that documents are kept to a minimum and thus that costs are also kept to a minimum. This was recognised in s.194 ECCTA.
