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SLAPPS IN ENGLAND AND WALES: THE ISSUES AND THE EVIDENCE

PAUL WRAGG*

1. INTRODUCTION

CASE (the Coalition Against SLAPPs in Europe) has been hugely successful in raising political awareness of SLAPPs ('Strategic Lawsuits Against Public Participation') as a problem that needs an urgent political response, both in continental Europe and this country. It honours the memory of Daphne Caruana Galizia, a journalist who investigated endemic political corruption in her native Malta. She was assassinated, allegedly by those with links to central government, by a car bomb.[1] It is said that, at the time of her death, there were 47 active libel lawsuits against her.[2] Echoing CASE, and with the foundation established in her name, we can say that 'SLAPPs are an *abuse* of the legal system and a threat to democracy.'[3] CASE is especially concerned to ensure that defamation is decriminalised (it is a criminal offence in much of mainland Europe),[4] and rightly so. CASE works closely with the Daphne Caruana Galizia foundation to that end.[5]

Thanks to CASE, and, here, the UK anti-SLAPPs coalition (a collaboration involving English PEN, Index on Censorship, the National Union of Journalists, Amnesty International, Article 19, The Guardian, and many others),[6] there has been bi-partisan Parliamentary agreement that SLAPPs is a problem in need of a state solution, as a recent, spirited Parliamentary debate confirms.[7] This follows Keir Starmer's recent comments:[8]

> 'We… stand with journalists who endure threats merely for doing their jobs. Just because journalists are brave does not mean they should ever suffer intimidation. This goes for intimidation… by powerful people using… SLAPPS to intimidate journalists away from their pursuit of the public interest. Such behaviour is intolerable and we will tackle the use of SLAPPs to protect investigative journalism, alongside access to justice.

The Conservative government, led by Dominic Raab MP, it will be recalled, first sought to tackle SLAPPs which, they said, were being used by Russian Oligarchs, specifically, to thwart 'perfectly appropriate news investigations.'[9] It introduced a (limited) anti-SLAPPs measure relating to investigations into serious economic crime.[10] It appears that the current government may seek to implement further anti-SLAPPs measures, albeit the details are unknown.

The object of this paper is to provide a contextual and balanced analysis of the SLAPPs issue. This is no easy task given the apparent broad political consensus, with wide support from

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*Professor of Media Law, University of Leeds. This paper benefitted from generous funding by the Society of Media Lawyers, who act for both claimants and defendants in media law disputes.

[1] See P Caruana Galizia, *A Death in Malta: An assassination and a family's quest for justice* (Hutchinson Heinemann, 2023).

[2] CASE, 'Shutting out Criticism: How SLAPPs Threaten European Democracy,' March 2022, https://www.the-case.eu/wp-content/uploads/2023/04/CASEreportSLAPPsEurope.pdf.

[3] The Daphne Caruana Galizia Foundation, on behalf of the Coalition Against SLAPPs in Europe, 'SLAPPs: A Threat to Democracy Continues to Grow,' July/August 2023, https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf. ("Second CASE report"), 4.

[4] https://cmpf.eui.eu/wp-content/uploads/2019/01/decriminalisation-of-defamation_Infographic.pdf.

[5] https://www.daphne.foundation/en/about/daphne/.

[6] https://antislapp.uk/about/members/.

[7] HC Deb 21 November 2024, vol 757, cols 412-447.

[8] K Starmer, 'Journalism is the lifeblood of British democracy. My government will protect it,' *The Guardian*, 28 Oct 2024.

[9] Ministry of Justice, *Strategic Lawsuits Against Public Participation: A Call for Evidence*, 17 March 2022, 3.

[10] Economic Crime and Corporate Transparency Act 2023, s 195.

the press and NGOs, that there *is* a SLAPP problem and that legislative action is required to deal with it. Yet the evidence for this problem has yet to be scrutinised systemically and in detail. This paper seeks to address this lacuna and make three points. First, the meaning of the term 'SLAPPs' remains both highly unclear and overbroad in its reach. As shall be seen, despite the government's stated intention that they should remain unaffected by any prospective change to law, legitimate claims will be seriously imperilled if the definitions favoured by anti-SLAPPs campaigners are accepted without challenge. For the law to tackle any problem, it must first know what it is tackling. Terms like 'intimidation,' 'lawfare,' and 'bullying,' which characterise much of the discussion around this issue, are vague and unhelpful.

Secondly, this paper examines the evidence provided by CASE. It focuses on CASE's evidence, specifically, because it has been so influential both in Europe and in the UK, where Raab's Ministry of Justice appears to have relied upon it without any critical analysis.[11] Section 3 scrutinises the cases that CASE relied upon (many of which are also relied on by the UK anti-SLAPP coalition). It will be shown, there, that the figures relied upon by CASE, and, in turn, the UK government, are seriously inaccurate. These claims are not all SLAPPs, on any analysis.

Finally, in light of these definitional and evidential problems, section 4 concludes by considering the range of solutions that campaigners seek, including the issues of pre-action correspondence and costs. It draws particular attention to the serious risk that the radical changes sought by campaigners will undermine the rights that the term 'SLAPP' was originally devised to protect. The paper concludes by recommending that no further Parliamentary time is spent on this issue unless and until the Law Commission is able to consider both the issues and the evidence properly, and systematically, with a view to issuing recommendations that ensure both public participation and legitimate claims are protected by the law.

2. MEANING

Proper evaluation of the evidence concerning the SLAPPs issue depends entirely upon precision in the meaning of the term. Without that, no meaningful conclusions can be made about the scale of the problem, and even whether it is a problem. Notably, in the recent Parliamentary debate, referred to above, the term was applied to a wide range of contexts, covering everything from books about Russian oligarchs, to workplace harassment and sexual assault, to housing disputes. Like the related term 'lawfare,' 'SLAPPs' was used as if its definition was settled and uncontroversial. When Members did proffer definitions, they did so in incredibly broad terms, as when Lloyd Hatton MP, introducing the debate, remarked that 'SLAPPs are just another name for lawfare, legal threats, intimidation, or – simply put – bullying…'[12] Alternatively, they made ambiguous inferences that may (or may not) have been intended as definitions, but which clouded the definitional problem, as when Max Wilkinson MP said: 'SLAPPS are intended to censor, intimidate and silence those who challenge powerful vested interests. SLAPPs burden critics of the rich and powerful with eye-watering legal defence costs.'[13]

In recent years, the anti-SLAPPs campaign has undoubtedly gained serious political traction. In this debate, the term has come to refer to attacks on journalists and the media. We see this in the terms of the Parliamentary debate, and in Starmer and Raab's interventions. We see it also in the Solicitors Regulatory Authority's definition; that SLAPPS are 'cases in which the underlying intention is to stifle the reporting or the investigation of serious concerns of corruption or money laundering…'[14]

[11] n 9, 6.
[12] Lloyd Hatton MP, n 7.
[13] Max Wilkinson MP, n 7, col 412.
[14] https://www.sra.org.uk/solicitors/guidance/conduct-disputes/

It is important to note the almost complete absence from these discussions of the issue of other vitally important rights and interests, particularly, access to court and limiting the flow of disinformation. True it is that society has an interest in ensuring that public debate in general and journalistic investigation in particular is not improperly impeded. But it is also true that society needs mechanisms to ensure that public and private interests are not wrongly damaged in the course of such debates and investigations.

As is (or should be) well-known the term SLAPPs is the invention of two American scholars, sociologist Penelope Canan and environmental lawyer George Pring, who coined it in the 1980s to describe a pattern of behaviour they had identified in their studies.[15] Their chief concern was the stark threat to representative government posed by private actors suing citizens 'just for talking to government'[16] about them. From their survey, Canan and Pring noticed that such complaints were baseless, typically, or else disproportionate in nature. They feared that, by permitting such complaints to progress to lengthy and involved trials by jury, the right of citizens to petition government with legitimate grievances had become jeopardised and in need of greater legal protection. For Canan and Pring, the archetypal SLAPPs claim involved rich property developers thwarting the legitimate objections of concerned citizens and environmental activists through spiteful threats of spurious legal actions founded in tortious claims like defamation, nuisance, and other business torts.[17] (It was the California Building Industry Association, we are told, that lobbied hardest to prevent anti-SLAPPs law being introduced in California.)[18] This is still the archetypal version of a SLAPP that Californian law envisages.[19] Contrary to what SLAPPs campaigners maintain, Canan and Pring were *not* concerned to achieve greater protection for press freedom, nor free speech in general. Canan and Pring's definition remains important, not least because campaigners continue to rely upon it when explaining of the meaning of the term. Yet those references may be partial and, so, misleading. We see this clearly in CASE's comment:

> 'Targets [of SLAPPs] are sued for speaking out because their words and actions concern the public interest. In their 1996 book, *SLAPPs: Getting Sued for Speaking Out*, Pring and Canan discussed their focus on "issues of societal and political significance", as opposed to those concerned with matters of "simple self-interest".[20]

This selective quotation is hugely misleading. The authors lobbied for, and subsequently defended, anti-SLAPPs laws as a necessary protection for citizens when petitioning branches of government to hear grievances. When seen in its context, the quote speaks clearly to the need for such protections to apply only to such petitions that have genuine civic appeal.

The legislative campaign to tackle SLAPPs has enjoyed mixed success in both the USA and Canada. Whilst there is no federal law, there are widespread state laws across the USA.[21] Of these, Californian law[22] is one of the most well-established. In Canada, British Columbia[23]

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[15] P Canan and GW Pring, 'Strategic Lawsuits Against Public Participation' (1988) 35(5) Social Problems 506.
[16] GW Pring and P Canan, *SLAPPs: Getting Sued for Speaking Out* (Temple University Press, 1996), ix-x.
[17] n 15, 511, 'The majority of cases originated in disputes regarding urban development and basic resources.'
[18] n 16, 198.
[19] See, eg, *Wilcox v Superior Court*, 27 Cal App 4th 809, 815 (Cal Ct App 1994); *Hupp v Freedom Communications*, 221 Cal App 4th 398, 402 (Cal Ct App 2013): '[W]hile SLAPP suits 'masquerade as ordinary lawsuits' the conceptual features which reveal them as SLAPP's are that they are generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so.'
[20] CASE, n 2, 35, citing Pring and Canan, n 16, 9.
[21] These states were helpfully listed by at the National Conference of Commissions on Uniform State Laws, 10-15 July 2020 in its Uniform Public Expression Protection Act, 1-2, available at www.uniformlaws.org.
[22] Section 425.16 of the Californian Civil Procedure Code.
[23] Protection of Public Participation Act 2019.

Quebec,[24] and Ontario[25] have anti-SLAPPs laws. Further afield, the Australian Capital Territory has an anti-SLAPP law.[26] Common to each is an ambiguous description that can be understood in the narrow terms that Canan and Pring envisaged, of the civic-minded citizen, or group of citizens, utilising state procedures for grievances or championing a local issue for state action, or else in the much broader terms that both Keir Starmer (of brave journalists suffering intimidation for doing their jobs) and Dominic Raab (of 'perfectly appropriate news investigations [being] curtailed')[27] have understood it.

The problems generated by a wide understanding of SLAPPs can be illustrated by a case from California – one example among many. *DC v RR*,[28] was a harrowing case concerning a callous campaign of co-ordinated and concerted online bullying against a 15-year schoolboy whose website, created to showcase his singing and acting skills (and his relative successes in that field to date), was hijacked by a tirade of derogatory and threatening hate speech that attacked him and his (misperceived) sexual orientation. Outraged and horrified by this treatment, his parents contacted his school and the police who advised that the student relocate (which he did). The bullying campaign then enjoyed a sequel when his former school's newspaper published details of the affair, including rehearsals of derogatory comments, and of the new school he was attending. None of the children who admitted to posting the comments were disciplined by the school. No action was taken against the school newspaper.

DC's parents subsequently issued lawsuits against the bullies, including defamation and intentional infliction of emotional distress. The bullies responded with an anti-SLAPPs motion that was denied twice – at first instance and on appeal. This prompted a 79-page judgment by the Court of Appeal, which includes a 38-page dissent by one of the panel, who concludes 'Defendants have made a prima facie showing that RR's post was protected speech and was made in connection with an issue of public interest.'[29] According to this dissent, DC (a child) had made himself a public figure (a person in the public eye) by creating the website that showcased his talents. Accordingly, he must tolerate the abuse that came with it. The fact of DC being a child was 'of no moment' according to this dissent.[30] This is RR's post:

> 'Hey [DC], I want to rip out your f***ing heart and feed it to you. I heard your song while driving my kid to school and from that moment on I've wanted to kill you. If I ever see you I'm going to pound your head in with an ice pick. F*** you, you d**k-riding p***s lover. I hope you burn in hell.'[31]

This, according to the dissent, was constitutionally protected speech.[32] Moreover, there was insufficient evidence, continued the dissent continued, to disprove RR's statement that the post was a joke and was not meant to be taken seriously.

Not only does the length of the judgment – and the fact of an equally lengthy dissent – illustrate the divisive nature of the anti-SLAPPs test (Canan and Pring would be horrified to see it used in this way against a vulnerable child), but it also demonstrates, palpably, the damaging delay caused to the underlying action whilst such motions are determined. The claimants issued their claim on 25 April 2005. The defendants filed their motion on 20 July 2005. The first anti-SLAPP

[24] Code of Civil Procedure 2014, s 54.
[25] Protection of Public Participation Act 2015.
[26] Protection of Public Participation Act 2008.
[27] n 9.
[28] 182 Cal.App.4th 1190, 106 Cal. Rptr. 3d 399 (Cal. Ct. App. 2010).
[29] Ibid, [38].
[30] Ibid, [36].
[31] Ibid, [22]. Although it reads as if RR is an adult with children, RR was in fact a child at DC's former school.
[32] Ibid, [1].

motion was heard on 12 March 2008. The appeal judgment, affirming the original dismissal of the motion, was filed on 15 March 2010, almost *five years* later.

Against this background, the recently advanced definitions of a SLAPP can be considered. For present purposes, two will be highlighted.

First, the definition found in section 195 of the Economic Crime and Corporate Transparency Act 2023. This applies to 'behaviour' which has the effect of restraining the defendant's exercise of the right to freedom of expression (in relation to information concerning economic crime where disclosure relates to the public interest in combating such crime) and

> 'any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause the defendant—
>
> (i) harassment, alarm or distress,
>
> (ii) expense, or
>
> (iii) any other harm or inconvenience,
>
> beyond that ordinarily encountered in the course of properly conducted litigation.'[33]

Second, the definition in the EU Anti-SLAPP Directive[34] which deals with 'abusive court proceedings against public participation.' The latter concerns the exercise of freedom of expression on matters which affect the public to the extent that they might legitimately take an interest in them. 'Abusive court proceedings' are defined as

> 'court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims.'[35]

Indications of such a purpose include 'intimidation, harassments or threats' and the use of procedural tactics in good faith.

Both definitions have in common a focus on the intended purpose of the litigation. Such actions do not involve the genuine assertion of rights but ulterior purposes. This focus on the intention of the claimant is crucial. In Canan and Pring's original conception, the term 'Strategic' does not mean, and is not to be confused with, 'tactical.' They were not seeking to argue that legitimate, subjective feelings of being harassed or intimidated during litigation were peculiar, of themselves, or otherwise should – or even could – be outlawed. As they say:

> 'Most lawsuits intimidate. Many are strategic, not just tactical. Many are motivated by retaliation, or filed to stop particular behaviour, punish certain speech, or counter political activities. And many pressure tactics other than lawsuits are used to suppress political behaviour.'[36]

For Canan and Pring, the wrong inherent in 'Strategic' means 'abuse' of the legal system. It means either a claim without merit (for example, a claim that has no basis in law – an invention, as it were) or else a trivial claim whose merit is disproportionate (for example, a defamatory statement that causes no real harm). However, 'abuse' has now assumed a diluted form in both the political

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[33] Economic Crime and Corporate Transparency Act 2023, s195(1)(d).

[34] Council Directive 2024/1069/EC of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic Lawsuits Against Public Participation') [2024] OJ L, 2024/1069.

[35] ibid, Art 4.

[36] n 16, 8.

and campaigner SLAPPs terminology. By attaching itself not only to the merits of the claim, but also to both its management (by lawyers and other advisers) and in the emotional reaction by which that correspondence is received, the term has assumed a much different sense by which to capture a much greater, and less clearly defined, realm of legal activity.

This dilution is most clearly illustrated by the definition of 'abusive lawsuit against public participation' to be found in the 'Model Anti-SLAPP law' proposed by the UK Anti-SLAPP coalition. This definition reads as follows:

> An 'abusive lawsuit against public participation' means court proceedings brought in relation to an act of public participation that have some features of an abuse of process. Such features may include but are not limited to:
>
> i. The scope of the claim, including whether there is a real risk it will deter acts of public participation beyond the issues in dispute;
> ii. The excessive or unreasonable nature of the claim, or part of it, including but not limited to the remedies sought by the claimant;
> iii. Any disproportion between the resources deployed by the claimant and the likely legitimate benefit of the proceedings to the claimant if the claim succeeds;
> iv. The claimant's litigation conduct, including but not limited to the choice of jurisdiction, the use of dilatory strategies, excessive disclosure requests, or the use of aggressive pre-action legal threats;
> v. Any failure to provide answers to good faith requests for pre-publication comment or clarification;
> vi. The seriousness of the alleged wrong, and extent of previous publication;
> vii. The history of litigation between the parties and previous actions filed by the claimant against this party or others against acts of public participation;
> viii. Any refusal without reasonable excuse to resolve the claim through alternative dispute resolution:
> ix. Tangential or simultaneous acts in other forums to silence or intimidate the defendant or related parties; and
> x. Any feature that suggests the lawsuit has been brought with the purpose of intimidating, harassing, or otherwise forcing the defendant into silence.[37]

Three features of this definition can be noted. First, there is no longer a focus on the 'intended purpose' of the litigation. A claim can be a SLAPP even if the claimant's only intention is to vindicate her rights. Second, there is no requirement to demonstrate that the claim is, in fact, an abuse of process. It merely has to have 'some features of an abuse.' These are based on a disparate list of 'features,' many of which would not found an application to strike a claim out as an abuse of process. Third, the disparate nature of the list means that it will often be entirely unclear whether a particular claim can be classified as a SLAPP. There are obvious risks of complex preliminary hearings.

We see this extended sense of the term SLAPP readily enough in the political discussion of SLAPPs over recent years. Dominic Raab, for example, spoke in terms of SLAPPs involving exchanges with advisers that go beyond the usual 'rough and tumble' of litigation.[38] Similarly, as noted above, the Solicitors Regulatory Authority conceives of SLAPPs in terms of 'improper and abusive litigation tactics' which includes making 'excessive' claims or 'aggressive and intimidating

[37] https://antislapp.uk/wp-content/uploads/2023/05/Model-UK-Anti-SLAPP-Law-Final-Version.docx.pdf, s1(2)(b).
[38] Ministry of Justice, *Strategic Lawsuits Against Public Participation (SLAPPs): Government Response to the Call for Evidence*, 20 July 2022, 4.

threats.' But it is hard to imagine any participation in litigation as anything other than intimidating and threatening when one considers the full implications of the 'loser pays' principle by which the English legal system is also known.

Accordingly, when Dominic Raab complains of the 'seemingly endless legal letters that threaten our journalists, academics, and campaigners with sky-high costs and damages,'[39] the term 'abusive' has assumed a very low level of meaning. It captures even the most anodyne letter from a solicitor, representing both her client's interests and the interests of the court in early settlement, to an unrepresented (and unrepentant) litigant in person, to explain to them the nature of both the 'loser pays' principle and the consequences of a Part 36 offer being rejected.

To be sure, the SLAPPs of Canan and Pring's essential conception *are* a pernicious threat to democracy. Citizens should be able to complain about proposed planning (zoning) applications without being hauled to court to face specious defamation claims by spiteful litigants. Likewise, the threat that Daphne Caruana Galizia faced before her assassination as she sought to expose endemic corruption in government office *was* a pernicious threat to democracy. Similarly, the fact that defamation is *still* a criminal offence in much of mainland Europe *is* a pernicious threat to democracy. The problem is that when the meaning of SLAPPs extends beyond these narrow circumstances to include much – possibly all – journalism it loses its grip on the moral high ground. Hence, it seems to me, that the strategy for tackling SLAPPs must start with recognition of the definitional problem that grips the concept. To begin with, we should recognise that any legal measures to tackle SLAPPs must leave legitimate cases unharmed. In other words, the reform campaign cannot prevent *all* litigation against those who claim to be expressing public interest concerns. It must be recognised that arguable complaints against the media, for example, in defamation and privacy, are legitimate.

3. EVIDENCE

a) Errors and inaccuracies in campaign reports on SLAPPs

Anti-SLAPPs campaign materials often contain striking claims about the prevalence of claims in this jurisdiction. The UK anti-SLAPPs coalition, for example, says that 'the UK is the number one originator of abusive legal actions. In fact, the UK has been identified as the leading source of SLAPPs, almost as frequent a source as all European Union countries and the United States combined.'[40] The basis of this claim is unclear, but it was repeated in the Parliamentary debate, above. It is, however, contradicted by the CASE report of 2023,[41] which puts the UK at 9th on the list (with 29 SLAPPs claims between 2010-2022), behind Poland (126), Malta (88), France (76), Croatia (54), Bosnia & Herzegovina (43), Slovenia (42), Italy (32), and Iceland (31).[42]

A number of different lists of UK SLAPP cases have been provided by Anti-SLAPP campaigners. The most definitive (and the one which appears to have been relied on by the UK Government)[43] is that provided by CASE which is compiled from entries upon a publicly accessible database, the details of which are provided in a previous CASE report.[44] This database, though, contains only 26, not 29 entries. If 26 is the true number, then the UK drops further back to 10th behind Serbia (28). Yet 26 is not the true number, at least not based on CASE's database, which

[39] Ibid.
[40] https://antislapp.uk/what-is-a-slapp/
[41].Second Case Report, n 3.
[42] As Figure 1 below shows, though, the accuracy of the UK's entry is itself doubtful. A further report, published in mid-December 2024, sees the UK drop further down in the rankings to joint 11th (with Ireland). This report contains no publicly assessable information upon the 4 new SLAPPs claims accounting for the UK's new total of 33. See https://www.the-case.eu/wp-content/uploads/2024/12/CASE-2024-report-vf_compressed-1.pdf.
[43] n 11.
[44] https://bit.ly/CASESLAPP.

contains duplicate entries describing the same alleged SLAPP activity. Once recalibrated to account for this discrepancy, the number of SLAPPs claims reduces to 19, as Figure 1 also shows. If that is the true number of SLAPPs claims, then the UK falls behind Romania (25), Turkey (22), Ukraine (22), Belgium (21), and sits alongside Greece (19). Of course, such comparisons depend on the reliability of the underlying dataset in all cases.

#	CASE Entry	Claimant	Defendant	Case Ref
1	279	EDF Energy	No Dash for Gas	None
2	289	Professor Mohamed El Naschie	(1) MacMillan Publishers Ltd; (2) Quirin Eugen Alfred Schiermeier	[2011] EWHC 1468 (QB); [2012] EWHC 1809 (QB)
3	282	Stanko Subotic	Ratko Knezevic	[2013] EWHC 3011 (QB)
4	291	Pavel Karpov	(1) William Felix Browder; (2) Hermitage Capital Management Ltd; (3) Hermitage Capital Management (UK) Ltd; (4) Jamison Reed Firestone	[2013] EWHC 3071 (QB)
5	290, 379	Hamad Al Wazzan	Clare Rewcastle Brown	None
6	294	Abdul Hadi Awang	Clare Rewcastle Brown	None
7	280	INEOS Upstream	(1) Joseph Boyd; (2) Joseph Corré	[2019] EWCA Civ 515
8	292	Javanshir Feyziyev	(1) The Journalism Development Network Association; (2) Paul Radu	[2019] EWHC 957
9	281	Aaron Banks	Carole Cadwalladr	[2019] EWHC 3451 (QB); [2022] EWHC 1417 (QB); [2023] EWCA Civ 219
10	287	Craig Wright	Roger Ver	[2020] EWCA Civ 672
11	293	Mian Muhammad Shahbaz Sharif	Associated Newspapers Ltd	[2021] EWHC 343 (QB)
12.	278, 380	Mikhael Fridman	(1) HarperCollins Publishers Ltd; (2) Catherine Belton	None
13.	288, 383	Roman Abramovich	(1) HarperCollins Publishers Ltd; (2) Catherine Belton	[2021] EWHC 3154 (QB)
14.	283, 384	Public Joint Stock Company Rosneft Oil Company	(1) HarperCollins Publishers Ltd; (2) Catherine Belton	[2021] EWHC 3141 (QB)
15.	284, 381	Shalva Chigirinsky	(1) HarperCollins Publishers Ltd; (2) Catherine Belton	None
16	285, 382	Pyotr Aven	(1) HarperCollins Publishers Ltd; (2) Catherine Belton	None
17.	377, 378	Eurasian Natural Resources Corporation (ENRC)	(1) Tom Burgis (2) HarperCollins Publishers Ltd	[2022] EWHC 487 (QB)
18.	385	Eurasian Natural Resources Corporation (ENRC)	(1) Serious Fraud Office; (2) John Gibson; (3) Anthony Puddick	[2023] EWHC 2488 (Comm); [2024] EWHC 1244 (Comm)

#	CASE Entry	Claimant	Defendant	Case Ref
19	286	(1) Svante Kumlin; (2) EEW Eco Energy World Plc	(1) Camilla Jonsson; (2) Per Agerman; (3) Annelie Östlund; (4) Realtid Media AB	[2022] EWHC 1095 (QB)

Figure 1: Corrected Version of the CASE evidence concerning SLAPPs in the UK, 2010-2023

According to CASE, 'the majority of cases were compiled, assessed, and verified…'[45] prior to publication. On this basis, it is not clear how these errors went unnoticed, unless the UK entries belonged to the minority of cases that were not verified (we are not told which cases formed the minority). Moreover, close analysis of the reported cases in Figure 1 suggest that the label of SLAPPs ought not to have been attached to them in any event, albeit one plausible explanation for why it was relates to the loose definition that CASE attaches to that term, which is broadly the same as that found in the 'Model Anti-SLAPP law,' mentioned above.[46] As can be seen from the fifth column, most of these actions resulted in a publicly available judgment, which also casts doubt on whether they can be properly termed SLAPPs actions. Given that these claims came before a judge, the defendant would have been able to petition the court to strike out the claim as an abuse of process, if that is what it was.

Entries 1 to 4, in figure 1, relate to the period 2010-2013. This is significant for entries 2-4, especially, since these are (known) libel claims brought under the old, pre-Defamation Act 2013 regime which did not require the claimant to demonstrate 'serious harm' (although they did need to show more than trivial harm).

b) Case Analysis

A number of general points can be made about the cases in this Table. Not all the defendants are journalists or media publishers (entries 1, 3, 4, 6, 9 and 17 are not journalists). Of the claimants, five are companies – two of which are household names (INEOS and EDF Energy). Fourteen are individuals:

- Professor Mohammed El Naschie, an academic
- Stanko Subotic, a Serbian businessman with political connections;
- Pavel Karpov, a retired Russian policeman;
- Hamad Al Wazzan, a Kuwaiti investment advisor;
- Abdul Hadi Awang, a Malaysian politician;
- Javanshir Feyziyev, an Azerbaijani politician;
- Aaron Banks, a British businessman and co-founder of the Leave campaign;
- Craig Wright, an Australian computer scientist and businessman;
- Shebaz Sharif, a Pakistani politician;
- Mikhael Fridman, a Russian-Israeli businessman;
- Roman Abramovich, a Russian-Israeli businessman;
- Shalva Chigirinksy, a Russian-Israeli businessman;
- Pyotr Aven, a Russian businessman;
- Svante Kumlin, a Swedish businessman.

[45] n 2, 14.
[46] See n 37. CASE's definition can be found at n 2, 15.

Most, but not all, of these claimants are rich, powerful men. Some, but not all, of these cases relate to clear and obvious matters of public interest.

A number of these claims were struck out on jurisdictional grounds, on the basis the claimant could not establish a reputation within this jurisdiction (*Karpov v Browder et al*)[47] or else not sufficiently to claim for the global relief sought (*Kumlin v Jonsson et al*),[48] or that England and Wales was not the appropriate jurisdiction (*Wright v Ver*),[49] or otherwise on *Jameel* abuse grounds (*Subotic v Knezevic*), on the basis that reputational damage was so slight as to be disproportionate to the costs of a full trial on the issues.[50] These claims are all connected by the general sense of an insufficient connection to the English and Welsh jurisdiction. Importantly, only one of these was struck out as abusive (*Subotic v Knezevic*). Nevertheless, the fact that several of these claims were struck out demonstrates that the present system is working.

Dealing with the claims in the order set out in the above table:

1. *EDF Energy v No Dash for Gas* bears the hallmarks of Canan and Pring's original definition since, we are told, the putative action would have been for an enormous sum of money (£5 million).[51] Although this claim was later dropped, the SLAPPs label does not entirely fit. The protesters had trespassed on EDF Energy's property to stage an occupation. This involved, amongst other things, several protestors scaling, and sitting atop, one of the plant's cooling towers. Twenty-one protestors were prosecuted for aggravated trespass, which they admitted. The civil lawsuit, we are told, represented the associated operational costs of the criminal activity. This renders the label SLAPP deeply problematic to apply: the company had a properly arguable claim that was clearly not an abuse of the judicial process.
2. *El Naschie v MacMillan Publishers* was a complaint relating to a Nature magazine article written by the second defendant that said he abused his position as Editor-in-Chief of an academic journal to publish his own, poor-quality articles without proper peer-review It was not disputed that the words complained of were defamatory.[52] The live issues related to defences, which were decided in the defendant's favour.[53] It is difficult to understand why this case has been classified as a SLAPP as it was not alleged that it was abusive or meritless.
3. In *Subotic v Knezevic*, which is perhaps the most likely candidate for categorisation as an abuse of process, the judge was careful to note that he made no 'finding that Mr Subotic's purpose in bringing this action was to increase costs and expenses for Mr Knezevic.'[54] It was common ground that the Court had jurisdiction to hear the claim, despite the foreign nationality of both parties,[55] and the defendant had been unsuccessful in attempts to strike out the claim on the basis it was the product of absolute privilege.[56] The claim was struck out on *Jameel* abuse grounds that the 'game was not worth the candle.'[57] In that sense, the SLAPPs label seems appropriate on the facts.
4. In *Karpov v Browder et al*, the alleged 'abuse of process' related to the want of a demonstrable reputation in this jurisdiction; yet the court did not find it to be a vexatious claim. Instead,

[47] [2013] EWHC 3071 (QB), [139].
[48] [2022] EWHC 1095 (QB), [200]-[224].
[49] [2020] EWCA Civ 672, [70]-[81].
[50] [2013] EWHC 3011 (QB), [64]-[82]
[51] J Ball, 'No Dash for Gas campaigners set up anti-EDF website,' *The Guardian*, 10 March 2013.
[52] [2012] EWHC 1809 (QB), [8].
[53] Ibid, [9].
[54] [2013] EWHC 3011 (QB), [74].
[55] Ibid, [25].
[56] Ibid, [27].
[57] Ibid, [70] & [76].

it accepted that the claimant sought vindication for 'the allegations that he had caused, or was party to, the torture and death of Sergi Magnitsky [Browder's lawyer and friend], or would continue to commit, or be party to, covering up crimes.'[58] On this point it said: 'the Claimant has achieved a measure of vindication as a result of the views I have expressed on his application. The Defendants are not in a position to justify the allegations [made]. To use the expression in Olswang's letter… the record has been 'set straight'.'[59] Further, it said 'nothing in this judgment is intended to suggest that, if the Defendants were to continue to publish unjustified defamatory material about the Claimant, the Court would be powerless to act.'[60] Accordingly, this cannot be described as a SLAPP.

5. In *Al Wazzan v Rewcastle Brown*, the claimant Hamad Al Wazzan, a Kuwaiti investment advisor with connections to the Malaysian Royal family, was accused of brokering a deal connected to the 1MDB scandal. The defendant, Clare Rewcastle Brown is the author of the blog *Sarawak Report* and book *The Sarawak Report*.[61] She is an investigative reporter, living in London. Rewcastle Brown reported that Al Wazzan instructed law firm Taylor Wessing to pursue an action against her but that although the claim was issued it was never served.[62] There is insufficient evidence to say whether these proceedings were a SLAPP; they might or might not have been.

6. The claimant in *Abdul Hadi Awang v Rewcastle Brown* is a Malaysian politician and president of the Malaysian Islamic Party. He instructed Carter-Ruck to pursue a libel action on the grounds that Rewcastle Brown had implied, they said, that 'the money had gone directly to the personal use of the actual President of the PAS.'[63] Rewcastle Brown notes that this claim was 'settled' but does not say on what terms. She does say that Hadi Awang:

> 'justified his climb-down to the local media acknowledging his lawsuit had been politically motivated from the start and that since it had now served his party's purpose in the elections he had decided to withdraw. What more damning indictment could there be of a self-admitted SLAPP suit?'[64]

Given the unavailability of a publicly available judgment, it is difficult to say if this is a SLAPP or not. Yet, Rewcastle Brown's statement presents, of itself, an obvious explanation as to why this is *not* properly classifiable as a SLAPP. For if, as she intimates, Hadi Awang's fears about the impact of her allegations proved unfounded, then it is not only understandable but right that he should withdraw his complaint. Surely, this is an outcome that the law should (and, in fact, through the CPR, does) encourage? We should be careful that any change to the law does not inadvertently discourage claimants from withdrawing claims when circumstances change, rather than waiting for an application to strike out to be granted.

7. As with *EDF Energy v No Dash for Gas*, *INEOS Upstream et al* v *Boyd & Corré* speaks to Canan and Pring's original conception of a SLAPP in as much as the putative defendants were citizen environmental campaigners. Nevertheless, it is difficult to see how this action could be classified as a SLAPP given its fact pattern. The claimants were granted injunctions against the defendants 'to restrain potentially unlawful acts of protests' at their fracking sites. This action cannot be described as meritless or abusive given that the judge, at first

[58] [2013] EWHC 3071 (QB), [141].
[59] Ibid.
[60] Ibid.
[61] *The Sarawak Report* (Lost World Press, 2018).
[62] https://fpc.org.uk/clare-rewcastle-brown-investigative-journalist-and-founder-of-the-sarawak-report/.
[63] n 62.
[64] Ibid.

instance, granted the injunctions. The judge's unchallenged finding was that there was a real and imminent risk concerning the commission of the stated torts to which the injunctions related. On appeal, it was held that the judge had erred in some material respects. The precise wording of those injunctions, as he had granted them, were both too wide and imprecise so as to capture potentially lawful conduct. But the appeal was only partially successful, which meant that only some of the injunctions were discharged and others remitted to the original judge to redraft.

8. *Javanshir Feyziyev v The Journalism Development Network Association & Paul Radu*[65] concerned an Azerbaijani politician accused of involvement with a money laundering operation. The defence is curious: both defendants denied any responsibility for the impugned publication but also pleaded the defence of truth and public interest in the alternative. By the time of the meaning hearing, the defendants had admitted that the words complained of were defamatory and seriously harmful. At the hearing, the claimant also sought to strike out the defendants' pleaded defence of truth. The court granted this application, noting that it was 'rightly unopposed.'[66] Furthermore, the defendants' did not contest the claimant's pleaded position on jurisdiction, that: 'he lives for a substantial proportion of the year in a home he owns in London, where his wife and children live permanently and where his two children are at school, and that he invests significant sums in this jurisdiction.'[67] The second defendant, Paul Radu reports that the claim was settled shortly before the trial on terms favourable to the defendants.[68] Given these features, it cannot be a SLAPP.

9. *Banks v Cadwalladr.* In this case journalist Carole Cadwalladr was sued personally after she defamed businessman Aaron Banks, the co-founder of the Leave campaign, in a TED talk. After losing at first instance, Banks successfully appealed and was awarded substantial damages. Cadwalladr had alleged that Banks had breached electoral funding rules by receiving funds from a foreign power and had subsequently lied about this payment. A subsequent investigation by the National Crime Agency, though, found no evidence to support that claim.[69] Accordingly, by the time of the libel trial, the defendant's truth defence had to be abandoned and she apologised. The NCA findings created two periods or 'phrases,' as the court had it, by which to judge the claim. In the first phrase (and prior to the NCA decision), the defamatory statements caused serious harm (under s 1 DA 2013) but were protected by the public interest defence (s 4, DA 2013). In the second phrase, the public interest defence fell away but, according to the trial judge, the claimant suffered no serious harm from the impugned words because they were published only to the claimant's 'echo chamber' (who, it was assumed, had only a low opinion of the claimant in any event). On appeal, Lord Justice Warby, speaking for the Court, held that the trial judge's findings on the second phrase were wrong as a matter of law. It is notable that, at first instance, the court held that 'it is neither fair nor apt to describe this [claim] as a SLAPP suit'[70] despite this point not being the subject of argument at trial, it seems.

10. *Wright v Ver*[71] was a claim relating to a You Tube video and a tweet in which the defendant (correctly as it turns out)[72] accused the claimant of being a fraud. It failed on jurisdictional grounds, the Court finding that England and Wales was not clearly the most appropriate place to bring the action. This action might be understood as a SLAPP but only if an

[65] [2019] EWHC 957 (QB).
[66] Ibid, [40].
[67] Ibid, [3].
[68] https://fpc.org.uk/paul-radu-co-founder-of-the-organised-crime-and-corruption-reporting-project-occrp/.
[69] https://www.nationalcrimeagency.gov.uk/news/public-statement-on-nca-investigation-into-suspected-eu-referendum-offences.
[70] *Banks v Cadwalladr* [2022] EWHC 1417 (QB) [9]. (Later appealed at [2023] EWCA Civ 219)
[71] [2019] EWHC 2094 (QB)
[72] See *Crypto Open Patent Alliance v Wright* [2024] EWHC 1198 (Ch).

especially generous threshold is set for public participation given its subject matter. It seems more accurate to describe it as a dispute between two extremely rich businessman that, whilst no doubt of importance to both, had no real significance to society at large.

11. *Sharif v Associated Newspapers Ltd*[73] was an action in which the Court held that a *Mail on Sunday* article connecting the leader of the Pakistani opposition party, Shebaz Sharif (Prime Minister since 2022), and his son-in-law, Imran Yousaf, to the embezzlement of charity funds, achieved *Chase* level 1 meanings in respect of the former and level 2 in respect of the latter.[74] (The question of whether the statements were defamatory at common law was not in issue because the defendants had already admitted as much).[75] This was not a trial of the issues – nor had the *Mail on Sunday* submitted its defence at this point. The case was settled in December 2022 when the *Mail on Sunday* published a correction and apology.[76] Accordingly, it cannot be a SLAPP.

12. *Fridman v (1) HarperCollins Publishers Ltd; (2) Catherine Belton.* This claim was one of five claims brought against Harper Collins and Catherine Belton in respect of her highly successful book, *Putin's People: How the KGB took back Russia and Then Took on the West*.[77] The book raises important questions about Putin's rise to power, the support he received from his former KGB colleagues, known, in the book, as the *siloviki* or inner circle, and his links to President Elect Trump. The complaints by Fridman concerned allegations that he was connected to the KGB. Harper Collins admitted there was no evidence to suggest that there were such links and amended the book accordingly.[78] Accordingly, it cannot be a SLAPP.

13. *Abramovich v (1) HarperCollins Publishers Ltd; (2) Catherine Belton.* In this case, the Court held, at a preliminary issue trial on meaning, that the book defamed Roman Abramovich, ex-owner of Chelsea Football Club.[79] The main thrust of the book[80] is that Putin engineered a scenario in which his main political rival at the time, Mikhail Khodorkovsky – a rich and powerful oligarch – was imprisoned for tax fraud and deprived of his assets, which reverted to the state. This sent a clear message to other rich oligarchs, especially those, like Abramovich, whose wealth was accumulated under Boris Yeltsin, that the same would happen to them unless they were loyal to Vladimir Putin and did his bidding.[81] The Court ruled that Belton's insinuation that Abramovich is the stooge of Putin and that he was instructed to, first, purchase Chelsea to infiltrate the London market and, later, move to the US to influence Donald Trump was defamatory at common law.[82] The case was subsequently settled and the publishers agreed to amend certain statements in the book and apologised.[83] Accordingly, it cannot be a SLAPP.

14. *Rosneft v (1) HarperCollins Publishers Ltd; (2) Catherine Belton.* Rosneft – a previously Russian state-owned but now listed company on the London stock exchange[84] – had complained

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[73] [2021] EWHC 343 (QB).
[74] Ibid, [39].
[75] Ibid, [9].
[76] https://tribune.com.pk/story/2390108/daily-mail-apologises-to-shehbaz-over-funds-embezzlement-allegations
[77] C Belton, *Putin's People: How the KGB Took Back Russia and Then Took on the West* (William Collins, 2020).
[78] https://www.dailymail.co.uk/news/article-9861233/HarperCollins-apologises-businessmen-Roman-Abramovich-claim-connected-KGB.html
[79] *Abramovich v HarperCollins Publishers Ltd & Belton* [2021] EWHC 3154 (QB).
[80] Belton, *Putin's People*, n 77.
[81] n 79, [23]-[31], [48].
[82] Ibid, [96]-[99].
[83] https://corporate.harpercollins.co.uk/press-releases/putins-people-settlement-reached-in-roman-abramovich-v-harpercollins-and-catherine-belton/
[84] *Public Joint Stock Company Rosneft Oil Company v HarperCollins Publishers Ltd and Belton* [2021] EWHC 3141 (QB), [43]-[45].

about four aspects of the book. The court found that one of these complaints did defame the company directly at common law. The other three complaints failed because, in respect of one, the Court was not persuaded that the impugned director, Igor Selchin, whom Belton describes memorably as Russia's Darth Vader,[85] could be understood as the 'alter ego' of the company,[86] and in respect of the other two, that the company was implicated in the impugned activity.[87] The complaint that did succeed, though, was either *Chase* level 1 or 2 in terms of its seriousness. In no sense could this be understood as a SLAPP.

15. *Chigirinsky v (1) HarperCollins Publishers Ltd; (2) Catherine Belton.* There does not appear to be any public judgment or apology in the case brought by Shalva Chigirinsky against Harper Collins and Belton and it is, therefore, unclear as to whether this case can properly be classified as a SLAPP.

16. *Aven v (1) HarperCollins Publishers Ltd; (2) Catherine Belton.* This case concerned a complaint as to allegations that he was connected to the KGB. Harper Collins admitted there was no evidence to suggest that there were such links and amended the book accordingly.[88]

17. *Eurasian Natural Resources Corporation Ltd v Burgis & HarperCollins Publishers Ltd*[89] also concerned a book about alleged kleptocracy (here, Tom Burgis's book *Kleptopia: How Dirty Money is Conquering the World*).[90] Like Belton, Burgis is a successful, well-regarded investigative journalist, formerly of the *Financial Times*. As with Belton, this fact is important. What they write is taken seriously, as it should be, which is why those affected should be so keen to correct falsities. In the libel action, the claimant company complained about *Kleptopia*, in which it features heavily. This action failed, though, because the judge was not convinced the reasonable reader would understand the company itself to be behind the criminal activities that the book documents, specifically the suspicious deaths it describes.[91] The Court noted that the book did defame the claimant in other ways that were not pleaded, such as the insinuation that it was merely a front for criminal activity.[92]

18. *Eurasian Natural Resources Corporation Ltd v The Director of the Serious Fraud Office & Others*[93] relates to the Serious Fraud Office's investigation of the company, which ended when the SFO announced it would not prosecute it. ENRC then brought several claims against the Director of the SFO, John Gibson, the case controller for the ENRC investigation, and John Puddick, 'a senior investigator who was the subject of an internal misconduct investigation as to whether he had leaked confidential case information to investigative journalists.'[94] The present proceedings concerned redactions made to this report by the SFO Director. The classification of this case as a SLAPP is a clear error. It did not concern 'freedom of expression' in any sense and was neither abusive nor meritless.

19. *Kumlin v Jonsson*[95] was a claim in which the first claimant had demonstrated a good arguable case on both defamatory meaning and serious harm in respect of three of the eight impugned articles written by the defendants.[96] The problem with the case was the claimant's inability to claim more than local damages for the libel because the Court's

[85] n 77, xi.
[86] n 84, [24], [52]-[56].
[87] Ibid, [71], [84].
[88] https://www.dailymail.co.uk/news/article-9861233/HarperCollins-apologises-businessmen-Roman-Abramovich-claim-connected-KGB.html
[89] *Eurasian Natural Resources Corporation Ltd v Burgis & HarperCollins Ltd* [2022] EWHC 487 (QB).
[90] T Burgis, *Kleptopia* (William Collins, 2020).
[91] n 89, [36].
[92] Ibid, [38].
[93] [2023] EWHC 2488 (Comm) and [2024] EWHC 1244 (Comm).
[94] [2023] EWHC 2488 (QB), [6].
[95] [2022] EWHC 1095 (QB)
[96] [2022] EHWC 1095 (QB), [117].

findings on his centre of interests went against him.[97] Although both CASE[98] and the Foreign Policy Centre describe Kumlin's case as a SLAPP[99] there is no complaint about either Kumlin's or his lawyers' conduct in the judgment and it does not appear that any application was made to strike out the case as an abuse.

c) Conclusion

CASE contends that each of these claims is a SLAPP and this contention has been accepted by the UK government. As we have seen, Raab appears to have relied upon this dataset as proof of the existence of a problem.[100] He warned of an 'increasing use of a form of litigation known collectively as SLAPPs.'[101] Presumably, he did so because CASE had warned 'the number of SLAPP cases across Europe is increasing.'[102]

Yet this evidence has not received independent corroboration. As we have seen, much of this evidence is thin as proof of a problem in need of urgent state action. Even if we accepted CASE's numbers at face value – taking, that is, the 19 separate instances that we find in its database, this amounts to barely two instances per year in the period 2010-2023. These numbers are so small and statistically meaningless that no quantitative methods researcher would attribute *any* significance to them.

Nevertheless, Anti-SLAPP campaigners have persuaded Governments and back benchers to take action. Yet, as the analysis above shows, these cases do not present a compelling case that public interest journalism in the UK is under threat. First, if SLAPPs are an abuse of the legal system, then only one of CASE cases – *Subotic v Knezevic* – is properly classifiable as a SLAPP. Only in that case, it seems, did the application for strike out due to abuse (here, *Jameel* abuse) succeed. This route was available to each of the defendants if the underlying claims were truly without merit. Second, if, as CASE also says, that SLAPPs aim to 'shut down criticism and efforts to advance accountability' and are 'a menace to societies' right to know, to freedom of expression, and to the right to public participation,' then entries 1 and 7 must be excluded, in any event, given that they related to unlawful conduct, not lawful protest. Similarly, the disclosure exercise in entry 18 (against officers and former officers of the Serious Fraud Office) must be excluded on the basis that freedom of expression, or any other type of public participation was involved. Similarly, entries 2 and 10 are dubious instances of public participation relating, as they do, to the peer review system in academic journals and the true identity of Bitcoin's inventor – unless, that is, an especially generous notion of 'public interest' is applied. Thirdly, given the court's findings in each of an arguable case (albeit, in *Subotic v Knezevic* not one that the court found would justify further court time and costs, etc), to apply the penalties that anti-SLAPPs campaigner agitate for (including indemnity costs and exemplary damages against claimants for causing psychological damage to the defendants)[103] replaces one social wrong with another in its jeopardization of the right of access to court, to hear legitimate grievances concerning, eg, Article 8 rights to reputation.

Finally, there is the problem of what psychologists call the illusory truth effect in which falsehoods are repeated so often that they become accepted truths. This pattern is already apparent in the way in which cases like *Banks v Cadwalladr*, *Abramovich v Harper Collins* (and the other claims

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[97] Ibid, [224].
[98] n 2, 65.
[99] S Coughtrie, ''London Calling': The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom,' April 2022, 24. https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-publication-April-2022.pdf
[100] n 9, 3.
[101] Ibid.
[102] n 2, 6.
[103] n 37.

concerning *Putin's People*) and *Eurasian Natural Resources Corporation v Burgis & Harper Collins* have been given a received meaning that differs, sometimes drastically, from the outcomes of the claims.

Of these, whilst *Banks v Cadwalladr* did relate to a matter of significant public interest affecting the British voting public (relating, as it does, to the circumstances of Brexit), the moment the Electoral Commission announced that there was no case to answer, the public interest defence disappeared entirely. On any analysis, *Banks v Cadwalladr* cannot be said to be a SLAPP given both the High Court's finding that the term could not be applied to the case and, more importantly, the Court of Appeal's decision to award the claimant substantial damages.

Catherine Belton's complaints about the litigation in entries 12 to 14 and 16 are also significant. All four actions are described constantly as SLAPPs. But all resulted in Court findings that the ordinary and natural meaning of the words were defamatory at common law as a matter of fact. Harper Collins and Belton might have defended these words at the trial but chose to settle. To label them as SLAPPs is disingenuous.

Belton has also criticised the decision of Fridman, Aven, and Chigirinsky to bring GDPR claims rather than libel claims (on the basis that 'issue[s] of reputation rather than accuracy'[104] were at stake). This is a strange criticism to make. If it is a valid criticism, then the fault must lie with the law and not the claimants since it has been held that the GDPR can be used in this way. Indeed, the claimants have availed themselves of this, successfully, on another occasion in which they had been accused of criminality during Putin's ongoing regime.[105] In that case, they were awarded compensation and an order of rectification.

4. RESOLUTION

Anti-SLAPP campaigners have made much of the inequality of arms between claimant and defendant. This is especially noticeable when the claimant sues the journalist personally. Campaigners label this unfair. *Banks v Cadwalladr* has attracted particular criticism in this regard, noting that Cadwalladr had made the same or similar comments about Banks whilst writing for *The Observer* which were not the subject of legal claims.[106] However, Cadwalladr did make the impugned statements herself and was, in law, liable for their publication. Banks would not, in practice, have been able to obtain any remedy against TED in the United States. Whilst inequality of arms is, rightly, of concern (as a matter of principle, if not of reality), it cannot be used as the sole or principal means of identifying a SLAPP without undermining the principle that *all*, regardless of wealth, are entitled to access to the courts. It *might* be of some value in determining whether the conduct of proceedings has been abusive – but, that analysis is surely a matter of fact determined by the conduct of the litigation not by a measure of the claimant's wealth. Even the poorest claimant (who is, typically, a litigant in person) can conduct proceedings abusively and put the defendant to great cost in dealing with voluminous complaints.[107]

Similarly, campaigners make much of the costs of libel litigation. Although claims about the huge disproportion between English libel costs and those in comparable jurisdictions are based on flawed evidence,[108] it is true that legal costs are extremely high in this jurisdiction. This is a problem in all types of civil litigation and is not unique to defamation cases. A variety of reforms have had a limited impact and clearly further work is required. Nevertheless, the position remains that person who is defamed or whose privacy is invaded is entitled to vindicate their position in the Courts and must use the Court system as it is presently constituted.

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[104] https://fpc.org.uk/catherine-belton-journalist-and-author-of-putins-people-how-the-kgb-took-back-russia-and-then-took-on-the-west/.
[105] *Aven et al v Orbis Business Intelligence Ltd* [2020] EWHC 1812.
[106] Coughtrie, 'London Calling,' n 99, 21.
[107] See, eg, *El Naschie v MacMillan Publishers Ltd* [2011] EWHC 1468.
[108] See D Howarth, 'The Costs of Libel Actions: a sceptical note' (2011) 70 CLJ 397-419.

Campaigners also say that the prospect of losing represents, of itself, a chilling effect upon speech and that meritless threats may be acceded to on these grounds. Clearly, this is a problem – across all areas of the law. The law already contains provisions for disposing of meritless or abusive claims. But if the claim is arguable then a claimant has a constitutional right for it to be heard by a court. Anti-SLAPPs laws that would weaken the claimant's right of access to court, so as to better protect not the actual but potential contribution that the story might make to the public interest risk substituting one social wrong for another.

Campaigners rarely put the argument for greater protection in such terms. What they do say, though, is that, in genuine SLAPPs cases, the claimant has sufficient resources that overwhelm the defendant and also ensure that the prospect of losing represents no real concern. In this sense the SLAPPs claimant, they would say, is distinguishable from the ordinary claimant who fears losing with the same sense of dread at the prospective financial ruin as the defendant does. This is an important concern. Yet the law must tread carefully. The right of access to court, for both rich and poor, is a precious one. Even the super-rich are entitled to a reputation and private life.

Finally, in this regard, campaigners regularly complain that about 'the UK's plaintiff-friendly defamation laws' and the 'weaponisation' of law that this is said to allow.[109] This criticism gives insufficient recognition to the substantial shift in the defendant's favour created by the Defamation Act 2013 which, aside from making it much harder for claimants, and companies specifically, to pursue claims, also provided much greater protections for defendants through, for example, the s. 4 public interest defence

Nevertheless, CASE, for example, complains that 'the burden of proof remains on the defendant to prove a statement is true or substantially true.'[110] It has been suggested that the burden should be shifted such that the claimant should have to prove, instead, that the words complained of are false.[111] The arguments on this issue have been well rehearsed but challenges to this rule in the Courts have not been successful.

Still, Paul Radu complains that English law is unfair to defendants because of the single meaning rule.[112] That rule has been the subject of criticism over the years.[113] Yet the terms of Radu's attack upon it are entirely disingenuous: 'Investigative journalists are usually in the business of presenting facts, rather than drawing conclusions as to what they might mean.'[114] It is entirely appropriate that the law should consider how the ordinary reasonable reader will interpret the words. As the cases analysed above demonstrate, the courts have worked hard to ensure that any such interpretation is not unduly analytical. Nor will the court attribute to the ordinary reasonable reader a zest for scandal. Accordingly, it is hard to imagine how much more sympathetic the law can make that reader toward responsible journalism.[115]

Finally, given the definitional and evidential issues signalled by the foregoing discussion, no further legislative changes should be implemented until the Law Commission has had the opportunity to review whether, and to what extent, SLAPPs *is* a problem in need of state action. Unless that happens, there is a serious risk that the government shall implement changes based

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[109] n 2, 65.
[110] Ibid, 66.
[111] https://fpc.org.uk/paul-radu-co-founder-of-the-organised-crime-and-corruption-reporting-project-occrp/
[112] As the name suggests, this rule dictates, somewhat artificially, that there is only one correct interpretation of the contested words, which either the parties decide between themselves or else the court decides for them. As recently as 2019, the Supreme Court endorsed the rule as a 'practical, workable solution' to the problem of resolving disputes, *Stocker v Stocker* [2019] UKSC 17, [34].
[113] A Scott, ''Ceci n'est pas une pipe': the autopoietic inanity of the single meaning rule' in AT Kenyon, ed, *Comparative Defamation and Privacy Law* (Cambridge University Press, 2016), 40.
[114] n 111.
[115] As Mr Justice Tugendhat warned, in *Ajinomoto Sweeteners Europe SAS v Asda Stores Ltd* [2009] EWHC 1717 (QB), [31], to alter that rule risks *undermining* freedom of expression rather than strengthening it.

upon incomplete or misleading lobbying, and so create different (and further) problems in need either of additional Parliamentary time or else satellite litigation to resolve them.

5. CONCLUSION

Anti-SLAPP campaigners pay close attention to the impact that prospective litigation has on stories, noting, with concern, that threats of litigation may be sufficiently daunting to prevent some stories from being published. There is clearly some force in this argument but the practical impact of such threats is difficult to assess and, as far as I am aware, no proper research on this issue has been conducted. There are two further points which have not been addressed by campaigners. First, there is the point that in some cases non-publication of stories may be in the public interest. One only need consider the damage done to, say, criminal trials, police investigations, and private lives through ill-judged stories supposedly in the public interest to take the point. The press's tendency to stretch the meaning of the term 'public interest' is a serious problem in this regard. Journalists contribute enormously to democratic participation but 'doing their jobs' means, in the first instance, satisfying the editor's demands, and the editor, ultimately is responsible to the newspaper's shareholders for whom the first order of business is, and must be, turning a profit.

Secondly, aside from the legal process there are no effective mechanisms for ensuring the press *does* satisfy the needs of democratic participation. An informed electorate needs a *complete* picture. This means not only starting the story but finishing it. In this sense, rights of reply, correction, and apology all *contribute* to democratic participation in obvious and vitally important ways. They contribute to the public receiving the correct account and not something incomplete, inaccurate, or misleading. In this way, it is right that those affected by inaccurate journalism should have access to the courts so that their version of events can be heard and the public record corrected. It remains the case that the mere fact of a judgment in the claimant's favour is a valuable source of vindication.

There is a clear risk, demonstrated by events in other jurisdictions such as California that, rather than provide quick and simple processes to expedite false claims, an anti-SLAPPs law will create new and unintended delays in resolving claims through a process that is burdensome both to genuinely arguable claims and to the court's (already stretched) workload. California has had anti-SLAPPs law in place for almost thirty years and its Supreme Court is *still* hearing cases addressing the most fundamental questions about the meaning of a SLAPP.

The current public debate about SLAPPs remains worryingly one-sided. This was vividly demonstrated by the Parliamentary debate of 21 November 2024, in which politicians of all political colours implored the government to address the SLAPPs 'problem' urgently. Not one of these politicians *defended* the right of access to court, so that legitimate grievances may be heard, to the same degree as they attacked it, and so, not one recognised the risk that anti-SLAPP legislation will imperil that right. Likewise, not one recognised that not all 'public interest' journalism in fact serves the public interest. Like everyone else, journalists make mistakes. As Article 10 of the European Convention on Human Rights reminds us, the exercise of the right to freedom of expression 'carries with it duties and responsibilities.' Protection for public interest journalism must be balanced by protection for the rights of those who are the subject of journalistic investigation.