**NUJ submission to government’s call for evidence on strategic lawsuits against public participation.**

**May 2022**

1. The National Union of Journalists (NUJ) is the voice for journalism and journalists in the UK and Ireland. It was founded in 1907 and has more than 30,000 members working in broadcasting, newspapers, news agencies, magazines, book publishing, public relations, photography, videography and digital media. The NUJ is not affiliated to any political party.
2. The NUJ is a member of the UK Anti-SLAPP coalition, actively campaigning for an end to the use of SLAPPs, and for stronger legislation to ensure protections for those targeted in efforts to shut down public participation. In 2021, the coalition developed proposals for reform to counter legal intimidation and SLAPPs in the UK including anti-SLAPP law supported by the NUJ. We welcome government’s commitment to tackle the use of SLAPPs and other forms of legal threats.
3. In evidence to the justice committee on 10 May 2022, NUJ general secretary Michelle Stanistreet emphasised the use of SLAPPs as a deliberate attempt to stop public interest journalism, influence editorial outcomes and create a chilling effect beyond individual cases.
4. Whilst the abuse of legislation by those in powerful positions is not new, the union is concerned about the increasing use of SLAPPs to deter and stymie journalists in their reporting. Well-known cases including Roman Abromavich’s against Catherine Belton for publication of her book Putin’s People, or Eurasian Natural Resources Corporation against Tom Burgis and the Financial Times over Kleptopia – both of which the union condemns, raised awareness about the impact these lawsuits have on freedom of expression and public interest journalism. It is important to recognise however, that SLAPP cases do not always reach court or receive media attention, so the true number of cases remain unknown.
5. The NUJ believes the high profile SLAPPs cases in the public domain are simply the tip of the iceberg, which does not reflect the volume of threatening letters and interference that takes place pre-publication. Members have told us of the significant financial and emotional distress caused by receiving legal threats including in the form of emails and letters. Journalists ensuring they offer a right of reply, an important step ahead of publication, are then faced with threatening correspondence that fails to answer the questions posed, and is designed to deter and stymie publication. Law firms often send these letters on behalf of their clients, in a manner designed to make the publisher and individual journalist back off. This abuse of process can be drawn out and often goes unreported. Again, this means its true scale cannot easily be captured.
6. The NUJ has recognised the growing trend of journalists directly receiving threats of legal action. Previously, such threats/lawsuits were targeted at publishers considered responsible for publication of content. The impact of this shift in the use of SLAPPs, is to ensure a chilling effect and no doubt instil fear that deters any future journalistic content on an issue. For small publishers and freelance journalists without the backing of large legal teams, financial resources, or support structures, avoiding publication can seem the most appropriate course of action to prevent bankruptcy. Where publication proceeds, reports may be watered down in fear of legal action. This means stories, including those about financial misuse and corruption in the public interest, go untold.
7. Post publication in SLAPPs cases, it is not uncommon for journalists to be targeted in lawsuits, named as defendants without any case being brought against their publisher. By singling out individuals without resources, powerful oligarchs and wealthy individuals/institutions aim to bury journalists under legal costs for prolonged periods of time.
8. The NUJ is aware of a large news publisher receiving letters from lawyers informing them of legal action being taken against a journalist. Whilst not directly threatening action to the publisher themselves, the letters were worded to serve as a warning not to consider publication on the topic in question or face legal action too. This behaviour exhibited at pre-action stage serves to intimidate and prevent reporting on public interest matters.
9. The opportunity costs of defending oneself against a SLAPPs case can be considerable. Doing so redirects time and resources away from stories and reporting that would otherwise have been pursued. Freelances have the added burden of legal action inhibiting their ability to carry out other paid work.

**Legislative reforms**

1. Any statutory definition of SLAPPs must be broad and consider the tactics deployed in their use, alongside the characteristics that feature across cases. These include threats against individuals instead of those they work for; a review of previous history of legal intimidation using the same law firms; issuance of legal threats at right to reply stage and lengthy and complex communication prior to publication. A rigid definition could mean cases fall outside scope, increasing threats to journalism as loopholes are found.
2. As not all SLAPPs cases are brought using defamation law, any amendment to a new right of public participation should be a free-standing measure. Cases against journalists and publishers are also being based on data protection and privacy laws. The recent Bloomberg v ZXC judgement means claimants can now seek damages for misuse of private information. The use of this defence instead of the serious harm defence in current defamation law is of huge concern to the NUJ. Journalists may continue to see an increase in the use of privacy arguments in SLAPPs cases at pre-publication and pre-action stages.
3. A Defamation Defense Fund has been created by the US Agency for International Development, described by the White House as “to help protect investigative journalists against nuisance lawsuits designed to prevent them from doing vital work”. The creation of a similar fund in the UK accessed by groups including journalists, publishers and NGOs would offer protection from astronomical legal bills should lawsuits used as legal intimidation be filed against them. In April 2022, the EU Anti-SLAPP directive was announced by the European Commission to tackle the use of abusive lawsuits against journalists and human rights defenders.
4. There should be an opportunity to strike out a SLAPPs application at an early stage in the litigation process. Once a lawsuit is determined as a SLAPP, a judge should have the power to prevent any further abuse of legislation. The NUJ has long campaigned for low-cost arbitration solutions to settle genuine disputes and would welcome any moves to ensure journalists and media outlets no longer face prohibitive costs and deliberate intimidation by wealthy litigants with the deepest of pockets. For too long the super-rich have got away with abusing the law to bully journalists and undermine media freedom.
5. High legal bills involved in bringing a SLAPPs case do not currently act as a deterrent to wealthy individuals. Instead, the ability to tie journalists in knots, recognising cases can often proceed for years, is a tactic used. A focus on reducing costs throughout the process, and a costs cap on the damages claimants can seek would be positive reform.
6. Efforts to prevent SLAPPs being used as a way of responding to criticism and not defamation should be considered. The broad nature in which defamation law can be applied means it is often used in SLAPPs cases where reputational damage is cited. Reform that ensures defamation defences are strengthened is welcome.
7. Greater oversight on ethical standards must be given to UK law firms supporting claimants in SLAPPs cases. It is often the same firms who have built a network of clients and reputation for filing these lawsuits without challenge. In guidance regarding conduct in disputes, the Solicitors Regulation Authority has referenced SLAPPs and provided information on unacceptable behaviours; asking solicitors to ensure they do not use ‘improper tactics.’
8. Government must ensure funding of anti-corruption teams/measures are in place to robustly defend abuses of legislative processes.

1. Although arbitration can be used in SLAPPs cases, only a small number of cases have been through the process with regulator, Impress.

**The defence of truth**

1. As the truth defence in defamation cases means the burden of proof falls on those subject to SLAPPs action, cases are able to move forward with little pressure on claimants. Reversing the burden of proof is likely to reduce the abusive use of legislation.

**Public interest defence**

1. Reform to legislation and any consideration of anti-SLAPP law should include a clause that enshrines the right of journalists to publish information in the public interest. Enshrining a statutory public interest defence would be cross-cutting and a major advance in protecting journalists and public interest journalism.

**Libel tourism**

1. The appropriate jurisdiction test requires reform to ensure a reversal in the current view of the UK as an attractive place to file SLAPPs suits. Journalists around the world are defending themselves against lawsuits filed in the UK and face not only daunting legal costs and lengthy process times, but must also attempt to gain an understanding of UK law.
2. An example of libel tourism is Kumlin v Jonsson. In May 2022, a High Court judge dismissed the majority of Swedish businessman Svante Kumlin’s legal claim against Swedish business news site Realtid, its editor and two journalists. Despite living in Monaco, he was able to file a lawsuit in London and have the case proceed in British courts – a case that would have had no legal standing in Sweden. Kumlin’s case is not the first of its kind.
3. SLAPPs cases in the UK have also been linked to financial crime. Previous investigations into how cases have been financed have found links to corruption and ‘dirty money’. Used to prevent publication of stories, such cases negatively impact media freedom. A survey by the Foreign Policy Centre in 2020, found “63 journalists working on financial crime and corruption in 41 countries identified the UK as the leading international jurisdiction for legal threats. More than 60% of respondents were working on corruption investigations with a direct or indirect link to the UK.”
4. SLAPPs type litigation clearly presents an abuse of process, as it is used with the intention of causing financial and emotional harm to defendants. The NUJ would welcome the use of strike-outs in such cases at an early stage to guard against this abuse.
5. Without UK Anti-SLAPP law, those wealthy enough to bring lawsuits in will continue to restrict media freedom and inhibit the work of journalists. Public interest journalism is a vital service and adequate reform will ensure better protection for journalists and others who seek to report on such matters.