

A Scottish Government Consultation on Strategic Lawsuits Against Public Participation

Submission from the Scottish Anti-SLAPP Working Group

May 2025

Background

1. The Scottish Anti-SLAPP Working Group is an informal working group convened by Index on Censorship. While it is affiliated with the UK Anti-SLAPP Coalition, it is focused on securing substantial and meaningful protections against SLAPPs and abusive legal threats in Scotland. It comprises a number of freedom of expression, whistleblowing, anti-corruption and transparency organisations, as well as media lawyers, researchers and academics who are researching, monitoring and highlighting cases of legal intimidation and SLAPPs, as well as seeking to develop remedies for mitigation and redress.
2. Members of the Working Group who are represented in this submission are organisations: Index on Censorship, the Anti-SLAPP Research Hub at the University of Aberdeen, National Union of Journalists, Transparency International UK, Campaign for Freedom of Information in Scotland, Foreign Policy Centre, NewsBrands Scotland and Society of Authors, as well as individuals: Rosalind McInnes (Legal Director, BBC Scotland), Roger Mullin (former MP and petitioner) and Graeme Johnston (former global law firm litigation partner).
3. This submission is also endorsed by the Publishers Association, Scottish Beacon and the Scottish Trades Union Congress.

Question 1: Have you been affected by SLAPPs in Scotland, either personally or in the course of your employment? If yes, please provide details.

4. We have worked with a number of individuals and organisations who have faced legal threats or actions as a result of sharing protected speech or participating in Scottish society. Here below are a number of cases that, in our opinion, bear hallmarks of SLAPPs in Scotland:

Don Staniford

5. Don Staniford films and documents the conditions of salmon in farms in the oceans and sea lochs surrounding Scotland. His photos and Freedom of Information requests have

been used to support media coverage by organisations such as The Daily Record, STV, BBC, as well as featuring in the Netflix documentary, Seaspiracy. In 2017, MOWI, the UK's largest supplier of farm-raised salmon contacted Staniford requesting that he take down videos, graphics and blogs from his website or risk legal proceedings.¹

6. In October 2021, MOWI sought permission for an interdict against Staniford, preventing him from going within 15 metres of MOWI's fish farms, as well as other prohibitions such as flying drones within 50 metres of any farm, recording or speaking to employees or encouraging others to act on his behalf. On 9 August 2023, Sheriff Andrew Berry made a judgment in MOWI's favour. On 12 October 2023, Staniford received a legal letter from Scottish Sea Farms Limited (SSF), another large fish farming company, requesting that he refrain from specific actions including accessing their facilities. The legal letter referenced MOWI's successful interdict but expanded on the terms to include land-based facilities such as buildings and docks. During a hearing at the Sheriff Appeal Court on 1 February 2024, MOWI's legal team agreed to amend and limit the crave to remove the 15 metre exclusion zone around its farms, the prohibition on flying drones and encouraging others to act on his behalf.

Andy Wightman

7. Andy Wightman is a former Green MSP, who, prior to joining Scottish Parliament, was a leading academic looking at issues around land ownership in Scotland. Prior to becoming an MSP, he published two blog posts in 2015 and 2016 that mentioned Wildcat Haven Enterprises (WHE), which was a fundraising vehicle for a community interest company which aims to establish a "haven" for the conservation of Scottish wildcats.
8. While the blog posts were published prior to Wightman becoming an MSP, WHE brought legal action when he was in parliament. WHE claimed £750,000 in damages, alleging serious financial loss as a result of the blog posts. If this were successful this would have been the largest award in terms of defamation in Scotland and Wightman would no longer have been able to act as an MSP due to the rules of sequestration. However, the Court of Sessions ruled in Wightman's favour. The judge held that while Wightman had made some untrue factual statements in his blog posts, the defamation claims made by WHE failed because the meanings alleged were not made out, or available defences applied.

Jennifer McAdam

9. After investing her father's inheritance in the OneCoin cryptocurrency in early 2016, Jennifer McAdam was made aware of the fraudulent claims made by the company and its founder Ruja Ignatova. Committed to raising awareness of the fraud and protecting other investors, she started to coordinate online victim support networks through WhatsApp and

¹ Coalition Against SLAPPs in Europe (CASE) (2023), "Don Staniford – Price for exposing the dark side of salmon farms", <https://www.the-case.eu/latest/don-staniford-salmon-farms-lawsuit/>

other platforms. In 2017, she organised a webinar for other victims and cryptocurrency experts to explore ways to hold the company to account and to warn others.²

10. Three weeks after the webinar, McAdam received a legal threat from OneCoin and Ruja Ignatova via the law firm, Carter Ruck, alleging defamation. The letter included the threat that court action would be pursued if she did not refrain from publishing similar allegations and did not retract the webinar video, which had been uploaded by someone else. Jen has continued her advocacy and support and the webinar video remains accessible. There has been no follow-up to the legal threat.

Oliver Bullough

11. Oliver Bullough is a journalist and author widely known as an expert on corruption. In August 2018, his award-winning book *Moneyland* was published in the United Kingdom, and subsequently in Portugal and many other countries. In the book, Bullough argued that kleptocracy is not confined to any one country, but instead takes advantage of flaws in the global financial system to allow powerful persons to steal money, hide it offshore, and spend it freely.³
12. In March 2021, Oliver Bullough received communication from the Scottish law firm Bannatyne Kirkwood France & Co, objecting to the inclusion of Vice-President of Angola, Bornito de Sousa, in *Moneyland* and demanded the book be withdrawn. After Bullough's lawyer replied that the complaint had no merit, he received no further communication from lawyers in the UK. Legal action was subsequently filed against Bullough and his Portuguese publisher, 20/20 Editora, by Bornito de Sousa regarding the book in Portugal.⁴

Paulo Quadros

13. In 2016, the purchase of the John Hastie Museum, which had been bequeathed to the people of Strathaven was discussed on a local Facebook group. The Facebook group's moderator was Paulo Quadros, a pain management consultant who is based in the town. A local developer, David Bryson brought legal action against Quadros for £20,000 due to allegedly defamatory comments made on the group related to the museum.⁵
14. According to a writ filed at Hamilton Sheriff Court, posts on the Facebook group falsely alleged that Bryson "had been engaged in a criminal conspiracy in concert with a local politician to benefit that politician at the expense of the public".⁶ Quadros, as moderator,

² Siddons, Ed, The Bureau of Investigative Journalism (2023), "Britain's fiercest libel firm can pursue anyone, anywhere", <https://www.thebureauinvestigates.com/stories/2023-12-01/carter-ruck-britains-fiercest-libel-firm-will-pursue-anyone-anywhere-reputation>

³ Council of Europe (2021), "Damages sought from British Journalist Oliver Bullough in Portugal", <https://go.coe.int/WQKHQ>

⁴ Ibid.

⁵ Leask, David, The Herald (2016), "Labour ex-minister's purchase of museum mansion sparks landmark Facebook defamation case", <https://www.heraldscotland.com/news/14440933.labour-ex-ministers-purchase-of-museum-mansion-sparks-landmark-facebook-defamation-case/>

⁶ Ibid.

did not author any of the posts in question. He also claimed that he highlighted to Bryson how he could report any posts to the group admin. According to Quadros, Bryson never took him up on the offer. The defamation claim was also based on an email Quadros wrote to Bryson after an unknown individual came to a property where Quadros occasionally works referencing the Facebook group. Bryson claims that the email included speculation from Quadros that Bryson may have been responsible for the incident. The legal action against Quadros was later sisted and remains so nine years later.

Ian McKay

15. The Exclusive Brethren (or the Plymouth Brethren Christian Church) has about 17,000 British members who follow a doctrine of separation that does not allow them to eat or drink with outsiders. Ian McKay, is a retired Scottish academic and lecturer at the University of Glasgow who left the Brethren in 1969.
16. In 2019, a charity linked to the group, the Bible and Gospel Trust, brought legal action against Mr McKay seeking £100,000 in damages after he published extracts of their leader's sermons online. They also sought to compel him to reveal any sources within the Brethren. The sect claims Mr McKay breached their copyright by quoting from its Ministries and by scanning copies of a church address book.⁷
17. Alongside the charity, an Australian business similarly linked to the Brethren, brought an action against McKay. Alongside costs, the damages sought by both pursuers was over a quarter of a million pounds. In 2019, after court-mandated mediation in Glasgow, the parties settled the claims.⁸

National Collective

18. In 2013, National Collective reported on the donors to the Better Together campaign, one of which was Ian Taylor, the former chair and CEO of oil company Vitol Group, who had donated £500,000. The article cited existing press reporting, which had been in the public domain for a number of years. Following the article's publication, lawyers acting on behalf of Ian Taylor and Vitol Group threatened defamation action against National Collective and two members of the team. The lawyers demanded that National Collective remove the article immediately, publish an apology and agree to never publish the material again.
19. Other outlets, such as The Herald, received similar threats but were able to seek legal advice to keep their articles up. After receiving pro bono legal advice, the blog took down their website, before releasing a statement from lawyer Aamer Anwar stating that the "website is offline only as a temporary measure for a few days."⁹

⁷ Kenber, Billy, The Times (2019), "Exclusive Brethren 'cult' sues over publication of sermons", <https://www.thetimes.com/uk/law/article/cult-sues-over-publication-of-sermons-l9gqfj2hx>

⁸ Blackstock, Russell, The Sunday Post (2019), "Ex-lecturer settles sect legal battle", <https://www.sundaypost.com/fp/ex-lecturer-settles-sect-legal-battle/>

⁹ National Collective (2013), "We Will Not Be Bullied", <https://www.nationalcollective.com/2013/04/18/we-will-not-be-bullied/>

20. Anne, a doctor based in Scotland, met Greg through mutual friends on a night out. Anne and Greg exchanged numbers and texted and met sporadically in the following weeks. After a few months, Greg started harassing Anne online, via text messages and on her social media. As a result, Anne blocked him from her social media and on her mobile phone, but despite this, he showed up at her workplace after she had finished a shift. Anne felt extremely uncomfortable and unsafe, and tried to avoid him. One night, at a mutual friend's party, Greg sexually assaulted Anne. Anne immediately reported the incident to the police but due to insufficient evidence the case was dropped. Greg continued to harass Anne online through fake accounts and withheld numbers.
21. Greg sent a letter to Anne through his solicitor, threatening her with civil legal action if she did not admit that she had made up the allegations and apologise. Feeling pressured, Anne believed she had no choice but to agree to the terms set by Greg's solicitors.

Question 2: If you have experienced a SLAPP, how did the matter resolve (if it has resolved)?

22. Resolution in SLAPP actions can take many forms. SLAPPs that make it to court can result in judges finding for either the pursuer or defender, or alternatively a settlement can be agreed to, the terms of which, including who is liable to cover the legal costs and the status of the complained of speech, can determine the broader impact on protected speech. Crucially, this would only be available for those threats that have made it to court, which only reflects a small proportion of the SLAPP threats that can impact protected speech in Scotland.
23. The full scale of the impact of SLAPPs prior to the commencement of court proceedings is largely unknown due to the lack of a public record of the legal correspondence and the agreements made to avoid further escalation. However, we are aware of SLAPP targets being asked to remove references to individuals or organisations, remove full articles, publish approved apologies, make donations to the pursuer, charities or other organisations, pledge to not repeat the complained of statement or avoid that topic or individual in all future speech.
24. The Daily Record has also recently reported on a legal threat they received in response to their investigation into a telecoms company, two directors of which have been "convicted over a £6m NHS corruption scandal".¹¹ According to the media outlet: "And the Record - who first broke the story of the probe almost a decade ago - can today reveal how Oricom lawyers tried to gag our paper and threatened us with court action after we approached them over allegations of bribery in 2017 - claiming the firm had 'acted professionally and

¹⁰ All names in this case study are pseudonyms to protect the identities of the parties involved

¹¹ Hind, Sally, Daily Record (2025), "The untouchables' Directors behind £6m NHS corruption scandal 'thought they would walk free'", <https://www.dailyrecord.co.uk/news/scottish-news/the-untouchables-directors-behind-6m-35146375>

legally' in all its dealings with health boards.”¹² Like the National Collective case outlined in our answer to Question 1, this did not move beyond a threat. However, it is only due to reporting nearly 10 years after Daily Record commenced their investigation that we are aware of the legal threat they faced.

25. For instance, the legal threat against National Collective never reached court, so the targets were not able to put forward a defence and no judge was able to make a determination on the speech in question. However, due to the lack of legal resources and the nature of the legal threat, the outlet had to take down the website “as a temporary measure”. This demonstrates the censorious impact of SLAPPs that do not make it to court.
26. Being able to secure a favourable outcome to a SLAPP threat or action is not necessarily down to succeeding in court. Increasingly, whether a SLAPP target can secure legal representation will determine whether they can make it to court in the first place.
27. In cases from across Europe, we are aware of SLAPP targets who have identified a defence they would be able to use were the case to make it to court, having instead to agree to pre-trial conditions or terms brought by the party behind the SLAPP threat due to the inability of funding the legal representation they would need to make it to court.

Question 3: If you have experienced a SLAPP, what was the impact on you personally and/or the work you were undertaking at the time?

28. While a SLAPP action can mean ruinous financial implications for the targeted party, the broader impact on the target’s well-being, financial security and their ability to continue their work is also significant. When participating in court actions, the time and resources required to prepare for the hearings, prepare documentation for disclosure and other related acts can distract individuals away from their work and personal lives. For individuals or representatives of smaller organisations, such as local or independent media outlets, this distraction can result in the inability to continue the work they were undertaking at the time.
29. If the SLAPP target is producing public interest reporting or speech, this inability to continue their work impacts others beyond the target itself. Those who depend on this reporting to play a role in Scottish society would similarly be impacted and so the impact of SLAPPs must be interpreted as a threat to the broader information environment that an informed populace depends on, not just the target itself.
30. The investigative journalist, Peter Geoghegan outlined the impact of receiving a legal letter, when openDemocracy was threatened in Northern Ireland for their reporting into Geoffrey Donaldson, and what it meant for the outlet: “We were advised that if we went to court to defend our reporting, we risked bankrupting openDemocracy. We had staff worrying they

¹² Ibid.

would lose their homes. Reluctantly, we took the story off our website. ... Those two years cost us a lot. We spent months dealing with legal letters, burning through thousands of pounds and precious time that would otherwise have been spent on our journalism.”¹³

31. For the threats that never make it to court, the challenges of responding to pre-trial legal correspondence can also require extensive resources, while also being intensified if the target is unaware of what is appropriate and inappropriate behaviour from the other party’s legal representative. This can lead to uncertainty and increased anxiety as to what steps they would have to take to prevent escalation.
32. As reported by the Publishers Association, book and journal publishers also report being affected by SLAPPs. In some cases, they have been directly drawn into protracted litigation in multiple jurisdictions. Publishers invest significant time and resources in reviewing and risk-assessing pre-publication text, which includes actively approaching the subjects of investigations to give them a right of reply. Commonly they describe “self-censoring” at all stages of the pre-publication process in an effort to protect themselves. SLAPPs affect publishers of all sizes but particularly smaller publishers, for whom defending large-scale litigation against deep-pocketed claimants (or even insuring themselves against the risk of having to do so) is simply not an option financially.
33. The impact of SLAPPs runs much deeper than simply the few high-profile cases that reach the High Court and public awareness. For instance, publishers have to make investment decisions about what to publish by reference to the risks of doing so, and the feedback that the Publishers Association has received is that the current legal framework does not offer sufficient protection against the abusive uses of defamation and other laws which characterise SLAPPs.
34. The financial impact of defending a SLAPP action can extend beyond the cost itself. When the former MSP Andy Wightman was sued for defamation related to two blog posts he had written prior to entering Parliament, the pursuer demanded £750,000 for damages. If they were successful in securing those damages, Wightman would have had to declare bankruptcy. Under the rules of sequestration, this would have resulted in him no longer being able to continue as an MSP. As a result, this would have directly impacted his ability to continue his role that he was elected to carry out.

Question 4: Are you aware of, or have you acted on behalf of, an individual or organisation who has benefited financially from bringing a SLAPP? If so, in what way did they benefit financially?

35. Many SLAPP targets deploy these tactics to shield themselves from democratic scrutiny, carried out by a wide range of stakeholders including journalists, campaigners, academics,

¹³ Geoghegan, Peter, openDemocracy (2021), “Jeffrey Donaldson sued us. Here’s why we’re going public”, <https://www.opendemocracy.net/en/opendemocracyuk/jeffrey-donaldson-sued-us-heres-why-were-going-public/>

writers, community groups and many others. If these bodies are unable to carry out their democratic function to record and report on alleged wrongdoing, parties bringing a SLAPP may be shielded from accountability and so are able to continue to benefit, either financially or in other ways, from their continued behaviour. If these legal threats also prevent legal or regulatory action, such as fines or other punitive actions, the benefits of bringing the action could be significant in terms of the amount of money saved.

36. In September 2017, the Organized Crime and Corruption Reporting Project (OCCRP) published an investigation into the Azerbaijani Laundromat investigation, which revealed a “complex money-laundering operation and slush fund that handled \$2.9 billion over a two-year period through four shell companies registered in the UK.”¹⁴ A year later, Javanshir Feyziyev, a sitting Azerbaijani MP and businessman named in the investigation brought a legal action in London against Paul Radu, the co-founder of OCCRP due to the details included in the investigation.
37. In January 2020, the case was dropped on the eve of the trial. The agreed settlement meant the articles that had sparked the defamation claim against him stayed on OCCRP’s website albeit with a qualifying statement that the claimant “categorically denies involvement in money laundering or any unlawful activity.”¹⁵ Based on OCCRP’s original investigation and information that had been sealed in the Javanshir Feyziyev settlement, the National Crime Agency (NCA) commenced an investigation into £15 million of allegedly corruption funds held by the UK-based wife, son and nephew of Feyziyev.¹⁶ In January 2022, a UK court approved the NCA’s seizure of £5.6m from members of Feyziyev’s family.¹⁷
38. Private companies that use SLAPPs to stifle criticism or the sharing of personal experiences that relate to their services oftentimes depend on these abusive tactics to shape how their services are perceived by potential clients or customers. As a result, SLAPPs restrict the ability of potential clients or customers to access the information necessary to make an informed decision as to whether to use the company’s services or seek the services from another provider.

Question 5: Should anti-SLAPP legislation be introduced in Scotland? Please provide reasons for your view.

39. Yes. Scots Law has no existing protections in place to protect against SLAPPs. As a result, abusive legal threats cannot be thrown out prior to legal costs amassing in a manner that would severely impact the defender’s ability to fund and mount a defence in a Scottish

¹⁴ Organized Crime and Corruption Reporting Project (OCCRP) (2017), “The Azerbaijani Laundromat”, <https://www.occrp.org/en/project/the-azerbaijani-laundromat>

¹⁵ OCCRP (2020), “Agreed Statement”, <https://www.occrp.org/en/project/the-azerbaijani-laundromat/agreed-statement>

¹⁶ Patrucic, Miranda & Lozovsky, Ilya, OCCRP (2021), “UK Aims to Seize £15 Million From Family of Azeri Politician”, <https://www.occrp.org/en/news/uk-aims-to-seize-ps15-million-from-family-of-azeri-politician>

¹⁷ Swann, Steve & Casciani, Dominic, BBC (2022), “Court approves £5.6m seizure over money laundering”, <https://www.bbc.co.uk/news/uk-60203664>

court. The Scottish legal system also has inadequate protections against abusive legal threats or ways to limit or cap costs for defenders to guarantee their ability to realise the right to access justice. The status quo in Scotland is not dissimilar to the circumstances found in jurisdictions found across Europe, which led to the EU acknowledging a gap in European law and passing the EU Anti-SLAPP Directive to protect member states' courts from abuse.¹⁸

40. While significant attention has been given to SLAPPs aimed at journalists and media outlets - especially following Russia's unlawful and full-scale invasion of Ukraine - SLAPPs represent a society-wide threat. Across the UK, Europe and the US, SLAPPs have been documented targeting a wide range of stakeholders and topics, including:

- a. survivors of sexual and gender-based violence being sued by their abuser after naming them publicly to protect others;¹⁹
- b. patients of medical care - including cosmetic surgery - who have been sued for leaving critical reviews or comments on social media platforms;²⁰
- c. environmental campaigners challenging the conduct of multinational companies;²¹
- d. tenants commenting on repairs and the actions of their landlords or housing associations;
- e. Social media users engaging on issues of local importance, as well as group moderators even if they were not the author of the complained of speech;²² and
- f. local campaigners criticising local service provision.

41. This demonstrates SLAPPs as a cross-cutting threat to various sectors of society that target those speaking out, while also removing content from the public domain, diminishing the information available to the wider public, upon which they are to make decisions as part of an informed citizenry.

42. SLAPPs threaten a range of fundamental rights that are already protected in Scots Law, through predominantly the Human Rights Act, as well as the broader international legal framework. This includes the right to free expression, the right to assembly and the right to access justice. The impact of SLAPPs on rights outlined in the European Convention on Human Rights (ECHR) was highlighted in the Council of Europe Recommendation on

¹⁸ European Union (2024), "Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')", https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401069

¹⁹ UK Anti-SLAPP Coalition (2025), "Case: In Focus - Nina Cresswell", <https://antislapp.uk/project/nina-cresswell/>
<https://antislapp.uk/project/cosmetic-surgery-patients-and-patient-advocate/>

²⁰ UK Anti-SLAPP Coalition (2025), "Case: In Focus - Cosmetic surgery patients and a patient advocate", <https://antislapp.uk/project/cosmetic-surgery-patients-and-patient-advocate/>

²¹ Allan, Vicky, The Herald (2023), "Scottish salmon farms using SLAPP actions to ban activist", <https://www.heraldsotland.com/news/23959219.scottish-salmon-farms-using-slapp-actions-ban-activist/>

²² Leask, David, The Herald (2016), "Labour ex-minister's purchase of museum mansion sparks landmark Facebook defamation case", <https://www.heraldsotland.com/news/14440933.labour-ex-ministers-purchase-of-museum-mansion-sparks-landmark-facebook-defamation-case/>

Countering SLAPPs, which states: “The central aim of this recommendation, protecting public participation against SLAPPs and prevent the further use of SLAPPs in Council of Europe member States, is to be realised as part of member States’ fulfilment of their broader obligations under the Convention to ensure a safe and favourable environment for participation in public debate, which is an essential feature of pluralistic democratic societies that fully respect the rule of law and human rights.”²³ While not legally binding, establishing an anti-SLAPP law in Scotland would align the country closer to these standards.

43. The EU has moved to address SLAPPs within the 27 member states, through the EU Anti-SLAPP Directive. Following the passage of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, which enables provisions to be made that correspond to provisions in EU law after the United Kingdom's withdrawal from the EU, government policy has outlined an interest in staying aligned with EU law.²⁴ Without establishing a law that establishes similar or equitable protections as those found in the Directive, Scots Law will fall further out of step with EU law, leaving the people of Scotland increasingly vulnerable.
44. The European Court of Human Rights (ECtHR) has also referenced SLAPPs. In the 2022 judgment in *OOO Memo v. Russia*, the ECtHR includes a summary of the Council of Europe’s work to address SLAPPs in member states, within the Relevant Legal Framework section.²⁵ This is the first time the court has referenced SLAPPs and represents a growing acceptance of the concept within legal or judicial processes and the impact they have on fundamental rights and freedoms.

Question 6: Do you have any views or evidence on whether any of the measures in other jurisdictions are working effectively? Please provide evidence or reasons for your view.

45. Anti-SLAPP laws around the world differ widely in the provisions they contain and the threshold tests they use. It does not make sense to look to any one single law to shape a law. However, there is much to learn from each, the approaches they take and the compromises made during their passage to become law.

England and Wales

46. Following Russia’s full-scale and unlawful invasion of Ukraine, the previous UK Government committed to bring forward anti-SLAPP protections. Following a public consultation in 2022 and statements of support from a number of relevant ministers, the

²³ Council of Europe (2024), “Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)”, <https://rm.coe.int/0900001680af2805>

²⁴ UK Withdrawal from the European Union (Continuity) (Scotland) Act (2021), <https://www.legislation.gov.uk/asp/2021/4/contents>

²⁵ European Court of Human Rights (2022), *OOO Memo v. Russia* (Application no. 2840/10), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-216179%22%5D%7D>

first anti-SLAPP provisions in UK law were given royal assent in 2023, with the Economic Crime and Corporate Transparency Act (ECCTA).²⁶ Sections 194 and 195 of the Act established anti-SLAPP protections for reporting on “economic crime”. This falls significantly short of best practice as it is not universal in scale, only protecting speech as it relates to this specific topic.

47. Analysis by the UK Anti-SLAPP Coalition suggests that many of the prominent SLAPP cases that have received public attention would not have satisfied this definition and so would not have been able to access this protection, were the ECCTA had been in force at the time. Even cases brought by private companies, such as the legal action brought against Tom Burgis by ENRC or Yevgeny Prigozhin’s lawsuit against Bellingcat founder Eliot Higgins may not have been covered as neither related to economic crime.
48. Further to this limited scope, there are further concerns regarding the ECCTA’s anti-SLAPP provisions. Section 195 includes an excessively restrictive and subjective definition of SLAPP, that requires the court to identify both the intent of the SLAPP filer, and that of the defendant in releasing the information about the economic crime. As a result, the ECCTA introduces an unnecessary element of uncertainty into the process. This would likely create a significant amount of satellite litigation at an early stage to ‘prove intent’. This fundamentally undermines the purpose of anti-SLAPP laws, which is to create an early dismissal mechanism to dispose of the case as quickly and cost effectively as possible.
49. The passage of the ECCTA, required amendments to be made to the Civil Procedure Rules. In early 2025, the Civil Procedure Rule Committee (CRPC) made two amendments that came into force on 6 April.
50. The first authorises the court to strike out a claim meeting the ECCTA definition of SLAPP unless the claimant demonstrates that it is more likely than not to succeed at trial. While this is a more stringent merits test than the existing general rule, it remains unclear to what extent courts will make a finding of “bad intent”. Courts in England and Wales have traditionally been wary of making findings about intention and merits without a full and costly trial.
51. The second amendment is that, if a SLAPP does succeed in court, a costs order can only be made against the defendant if they are guilty of procedural “misconduct.” While this could help limit how heavy adverse costs orders can be used by SLAPP claimants, it does not prevent a wealthy claimant from generating extra work to grind the defendant down. The narrow ECCTA definition also significantly undermines the benefits as there will also be uncertainty and satellite disputes about what constitutes a SLAPP and “misconduct.”

The European Union

²⁶ Economic Crime and Corporate Transparency Act (2023), <https://www.legislation.gov.uk/ukpga/2023/56/contents>

52. The recent passage of the EU Anti-SLAPP Directive, while too recent to result in relevant case law as the member states are still within the two-year transposition period, highlights a number of key learnings for the Scottish Government.
53. A central limitation of the Directive is that it is restricted to SLAPP actions “with cross-border implications”.²⁷ Article 5 states that “a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation concerned are located only in that Member State.”²⁸ This could restrict the Directive significantly as targets in wholly domestic SLAPP actions would not be able to access the protections outlined in the Directive. According to the Coalition Against SLAPPs in Europe (CASE) research on SLAPPs in Europe, “only less than 10% of the cases identified and vetted are classical cross-border cases - where the two parties are domiciled in different member States.”²⁹
54. As the Directive only establishes minimum standards for member states, a number of countries have presented draft laws or proposals based on the Directive that expand beyond Article 5 to include domestic SLAPPs. This includes Ireland’s reform of defamation (as this would be restricted to SLAPPs brought by defamation, this proposal does not align fully with the Directive), Belgium, Poland, Romania, Slovenia (the proposals prepared in Slovenia also extend the Directive’s provisions to criminal proceedings such as those involving offences related to honour and reputation) and The Netherlands (their intended transposition of the Directive is limited to a provision introducing the possibility of security for costs into the Dutch civil code but does currently extend to domestic cases). This demonstrates the importance of the transposition process and member states working beyond the text of the Directive to establish meaningful protections against SLAPPs.
55. The EU Directive establishes a two-branch definition of SLAPPs to include “manifestly unfounded” court proceedings and those which are “abusive”. As highlighted by CASE, this distinction is significant, as the Early Dismissal Mechanism (EDM) is only available for those determined to be manifestly unfounded. CASE stated that this means “that even cases recognised as being abusive would not necessarily be subject to early dismissal.”³⁰ The Coalition goes on to state that “By including a definition of ‘manifestly unfounded’ in Paragraph 13(a) of the recital, the Council’s proposal narrowed the application of the EDM to only the most extreme cases.”³¹

²⁷ European Union (2024), “Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’)”, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401069

²⁸ Ibid.

²⁹ Coalition Against SLAPPs in Europe (CASE) (2024), “CASE Analysis of EU Anti-SLAPP Directive’s Cross-border definition”, <https://www.the-case.eu/wp-content/uploads/2024/02/CASE-Cross-border-definition.pdf>

³⁰ Coalition Against SLAPPs in Europe (CASE) (2024), “CASE Analysis of EU Anti-SLAPP Directive’s Early Dismissal Mechanism”, <https://www.the-case.eu/wp-content/uploads/2024/02/CASE-Analysis-of-EU-Directive-EDM-3.pdf>

³¹ Ibid.

56. One provision that was included in the draft Directive but has been omitted from the final version, is the requirement to establish a stay of proceedings while an application for the anti-SLAPP mechanism is adjudicated by the national authorities. According to CASE: “Where procedural rules currently allow for onerous pretrial motions and procedures - in particular, the often resource and cost-intensive disclosure procedure - an EDM will serve little purpose if proceedings are not suspended pending resolution of the anti-SLAPP motion. This is because such procedures can be used to drive up costs or otherwise give effect to the SLAPP (e.g. by harassing and intimidating the defendant) while the motion to dismiss is being considered.”³²
57. The resultant Directive, allowing for flexibility in the transposition process, establishes a series of unanswered questions that could significantly undermine the strength of national anti-SLAPP laws based on the Directive. CASE has raised a number of pertinent questions that the Scottish Government should consider as it seeks to explore alignment with the Directive. For instance: “How will courts define ‘manifestly unfounded’? How much discretion will they allow courts to decide whether to dismiss ‘manifestly unfounded’ cases? Will they ensure, where needed, that proceedings are stayed pending resolution of the anti-SLAPP motion? How effective the EDM will be will depend on how these questions are answered.”³³
58. Beyond the EDM, concerns remain concerning the strength of the Directive’s provisions for remedies, including the provision of security by pursuers, as well as costs, damages and fines. Articles 8 and 14 - 16 of the Directive ensures that defenders in SLAPP cases will be financially compensated for all types of costs, provides for measures to penalise and deter pursuers, as well as the ability to grant SLAPP defenders a security to cover the estimated costs and damages.
59. Due to the EU’s general approach of deferring to national law in member states, many of these provisions are weaker than envisaged. For example, Article 15 from the European Commission’s original draft Directive was omitted in its entirety, leaving Article 16 the only provision that allows for the compensation for damages, “where provided for in national law”. CASE concludes that, as a result, there is “no obligation or guarantee that such compensation of damages is imposed.”³⁴
60. In the same manner, Article 8, which includes the requirement for pursuers to provide security for costs, “is not guaranteeing an effective enforceable right to security. It only opens up the possibility for this.”³⁵

³² Ibid.

³³ Ibid.

³⁴ Coalition Against SLAPPs in Europe (CASE) (2024), “CASE Analysis of EU Anti-SLAPP Directive’s Provisions with regard to remedies (security to be provided by claimant and costs, damages and fines)”, <https://www.the-case.eu/wp-content/uploads/2024/02/CASE-Analysis-of-compensatory-damages.pdf>

³⁵ Ibid.

61. As the UK is no longer a EU member state, it is not legally required to align directly with the Directive and the concerns raised here, in relation to the EDM and the provision of remedies, establishes crucial learnings that Scottish Government must be aware of to ensure its anti-SLAPP provisions are not weakened by these flaws.

Canada

62. A number of Canadian provinces have established anti-SLAPP laws. Due to the similarities between Scotland and Canada, both being common law jurisdictions, their experiences can be illuminating. In its ranking of global anti-SLAPP laws, the Centre for Free Expression (CFE), based out of the Creative School at Toronto Metropolitan University, stated that the anti-SLAPP laws in Ontario and British Columbia are tied as the “highest in the world” using their ranking.³⁶
63. The Protection of Public Participation Act was passed in 2015 in Ontario to “discourage the use of litigation as a means of unduly limiting expression on matters of public interest”.³⁷ The Act establishes a 3-step process for determining whether the case should be dismissed: The expressions related to a matter of public interest, there were grounds to believe that the proceeding had substantial merit and that there were no valid defences and that the harm suffered was not sufficiently serious that the public interest in permitting the action to continue outweighed the public interest in protecting the impugned statements.
64. In 2024, the Supreme Court of Canada declined to hear two appeals of cases involving Ontario’s anti-SLAPP law, leaving in place decisions by the Ontario Court of Appeal, one of which confirmed that there is “obvious public interest in members of the public feeling free to report conduct which is of concern to the police.”³⁸ As the Act does not include a definition of public interest, this decision expanded what can be defined as acts of public interest covered by the anti-SLAPP law and so represents a vital ruling, demonstrating the breadth and diversity of acts that should be included in any anti-SLAPP law.
65. Section 137.2(2) of the Act states that “[a] motion under Section 137.1 shall be heard no later than 60 days after notice of the motion is filed with the court.”³⁹ Paired with a stay in proceedings as outlined in Section 137.1(5), a time limitation like this can ensure the anti-SLAPP mechanism itself cannot be drawn out unnecessarily to increase the costs and stress associated with defending against a SLAPP. However, this limitation only relates to when the motion shall be heard, not when it should be concluded. The absence of any limitation could result in further delays after the hearing of the motion starts. While we appreciate a degree of flexibility is needed to allow for courts to manage their time and

³⁶ Centre for Free Expression (2023), “Global Anti-SLAPP Ratings: Assessing the strength of anti-SLAPP laws”, <https://cfe.torontomu.ca/publications/global-anti-slapp-ratings-assessing-strength-anti-slapp-laws>

³⁷ Protection of Public Participation Act (2015), <https://www.ontario.ca/laws/statute/s15023>

³⁸ Court of Appeal for Ontario (2023), Zeppa v. Rea, 2023 ONCA 668, <https://www.canlii.org/en/on/onca/doc/2023/2023onca668/2023onca668.html>

³⁹ Protection of Public Participation Act (2015), <https://www.ontario.ca/laws/statute/s15023>

caseload effectively, for early dismissal mechanisms to work effectively they must work promptly, before legal costs have accrued.

66. The British Columbia anti-SLAPP law, the Protection of Public Participation Act, established in 2019, is similar to the Ontario law.⁴⁰ However, there is no time period within which the motion for the dismissal must be heard and there is no stay of proceedings for an application for an injunction.
67. Concerns have been raised as to the efficacy of the Ontario and British Columbia anti-SLAPP laws in limiting the cost burden for SLAPP targets. Analysis of both laws undertaken by DMG Advocates LLP suggested that “[l]itigating an anti-SLAPP motion costs defendants around \$100,000. In 43 percent of cases, defendants have spent around \$100,000 and have lost the motion because the courts found that the claim should proceed.”⁴¹ However, the same analysis highlighted that both laws have been widely used as “courts in Ontario and BC released 39 decisions related to their anti-SLAPP legislation.”⁴²
68. In relation to the Ontario anti-SLAPP law, as well as the Canadian Supreme Court’s rulings as it relates to the issue, there are question as to whether the second test - the weighing exercise looking at whether the proceeding had substantial merit and that there were no valid defences - has added undue complexity, time and cost to any proceedings. The Court of Appeal judge in *Park Lawn Corporation v. Kahu Capital Partners Ltd.* warned that the weighing exercise “should not involve a trial of the issue or as some have put it, a ‘trial in a box’”, instead approaching more of “a screening procedure.”⁴³

The United States of America

69. Currently 34 US states, as well as Washington DC and Guam, have state-level anti-SLAPP laws in effect. The efficacy of each differs significantly, which allows for wealthy pursuers to shop for a favourable jurisdiction. The Uniform Law Commission (ULC) has stated that this “degree of variance from state to state ... leads to confusion and disorder among plaintiffs, defendants, and courts. It also contributes to what can be called ‘litigation tourism’.”⁴⁴
70. As well as the inconsistency of state-level anti-SLAPP laws, there is confusion and conflicting court judgments as to whether anti-SLAPP protections apply in federal courts.

⁴⁰ Protection of Public Participation Act (2019), <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19003>

⁴¹ Macnab, Aidan, Canadian Lawyer (2024), “Anti-SLAPP motions often an expensive endeavour when unsuccessful: report”, <https://www.canadianlawyer.com/practice-areas/litigation/anti-slapp-motions-often-an-expensive-endeavour-when-unsuccessful-report/387129>

⁴² Ibid.

⁴³ Court of Appeal for Ontario (2023), *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129, <https://www.canlii.org/en/on/onca/doc/2023/2023onca129/2023onca129.html>

⁴⁴ Uniform Law Commission (ULC) (2020), “Uniform Public Expression Protection Act (UPEPA)”, <https://medialaw.org/wp-content/uploads/2022/05/UPEPA-with-comments.pdf>

This level of uncertainty could have a significant chilling effect as public watchdogs may not believe they are protected and so may step back from their protected speech.

71. However, experiences in different US states highlights how these laws operate in practice. As we outlined in our answer to Question 5, while increased public awareness has focused on SLAPPs directed at journalists, they can be deployed against a wide range of public watchdogs. Analysis of the Texas Citizens Participation Act (TCPA) carried out by the Reporters Committee for Freedom of the Press (RCFP) demonstrated that the anti-SLAPP law was used predominantly by individuals, with media defendants of any kind accounting for “only 10.5 percent of TCPA motions in those sample appellate districts and over that time span.”⁴⁵ This highlights that a strong and universal anti-SLAPP can offer practical and accessible protections for everyone who speaks out in the public interest, not just a few specific individuals or areas of work.
72. Previous analysis of the TCPA by RCFP is also illustrative and can support the Scottish Government’s progress on this issue. Opponents to the law had asserted that the anti-SLAPP law had over-burdened Texas’s courts. For instance, the RCFP quoted a witness who asserted that “40% of their docket was TCPA cases.”⁴⁶ However, the analysis highlighted that “the total number of TCPA cases in all 14 Texas appeals courts and the Texas Supreme Court is roughly half-a-percent (0.50 percent) of all the appellate opinions issued by those courts during that 13-year span.”⁴⁷
73. The variance between state-level anti-SLAPP laws, outlined above, led to the ULC to create and disseminate a model anti-SLAPP law called the Uniform Public Expression Protection Act (UPEPA) that states can use as a template when establishing or reforming laws within their jurisdiction. The UPEPA includes provisions to cover all public interest speech, establishes an early dismissal mechanism that stays all ongoing court procedures including discovery, places the burden on the pursuer to “establish a prima facie case as to each essential element of the” action and establishing cost-shifting provisions to further disincentivise the bringing of SLAPP actions.⁴⁸ The ULC states that “[s]tates that do not impose a mandatory award upon dismissal of a cause of action will become safe havens for abusive litigants.”⁴⁹ To date, the UPEPA has been incorporated into the laws of 13 US states.
74. In December 2024, Representatives Jamie Raskin and Kevin Kiley introduced the Free Speech Protection Act, which would establish a federal anti-SLAPP law. Senator Ron

⁴⁵ Babo, Zachary & Rottman, Gabe, Reporters Committee for Freedom of the Press (2025), “Who benefits from Texas’s anti-SLAPP law?”, <https://www.rcfp.org/who-benefits-from-texas-anti-slapp-law/>

⁴⁶ Babo, Zachary & Rottman, Gabe, Reporters Committee for Freedom of the Press (2025), “Texas anti-SLAPP cases make up small percentage of state’s appellate workload”, <https://www.rcfp.org/texas-anti-slapp-special-analysis/#69e7bfb6-1b4b-4dcf-a5cd-82e7b5a57cd6>

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

Wyden led companion legislation in the Senate.⁵⁰ According to David Keating, the President of the Institute for Free Speech: “The state laws often don’t apply in federal courts, so censors frequently file these abusive lawsuits there. This legislation would ensure defendants can quickly end meritless, speech-suppressing lawsuits in federal court and recover their legal costs.”⁵¹ To date, the law has not progressed.

South Africa

75. In 2022, the South African Constitutional Court made two key judgments in response to a legal action brought by the Australian mining company Minerals Commodities Limited (MRC) and its South African subsidiary, Mineral Sands Resources (MSR), against six activists and lawyers. The first judgment confirmed that SLAPPs are an abuse of process, stating in its conclusion that “the common law doctrine of abuse of process can accommodate the SLAPP suit defence ensures that courts can protect their own integrity by guarding over the use of their processes. And, ultimately, it ensures that the law serves its primary purpose, to see that justice is done, and not to be abused for odious, ulterior purposes.”⁵²

76. In relation to damages in defamation actions, the second judgment states that while a private company has “a common law right to its good name and reputation, protected by the Constitution’s equality provisions, and can enforce that right by a claim for general damages”, courts have the power to use exemptions “in cases of public discourse in public interest debates.”⁵³

Question 7: Do you have any views on the applicability or otherwise of approaches in other jurisdictions to Scotland and our legal system? Please provide reasons for your view.

77. Due to the common law basis of the legal systems in British Columbia and Ontario, their experiences establishing and testing anti-SLAPP laws, as outlined above, establish a number of learnings relevant to Scotland.

78. Outlined above, Section 137.2(2) of the Ontario law, outlines the period of time within which a motion shall be heard. While this ensures the motion itself cannot be gamed to extend the time, and therefore cost and distress, of the legal action, it does not offer full

⁵⁰ Free Speech Protection Act,

<https://raskin.house.gov/cache/files/6/8/68205065-ea91-4326-b1dc-403a18cbb2cc/01FF14FA2CE7C5C507D42626E4D2DF2E.free-speech-protection-act-bill-text.pdf>

⁵¹ Raskin, Jamie (2024), “Raskin, Wyden, Kiley Introduce Bipartisan Legislation Promoting Free Speech, Cracking Down on Frivolous ‘Strategic Lawsuits Against Public Participation’”,

<https://raskin.house.gov/press-releases?ID=BCEA1B1C-D997-4646-8A41-1CD0BF2BF83F>

⁵² Constitutional Court of South Africa (2022), Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others [2022] ZACC 37,

[https://collections.concourt.org.za/bitstream/id/62058/\[Revised%20Judgment%20CCT%2066-21%20Mineral%20Sands%20Resources%20\(Pty\)%20Ltd%20and%20Others%20v%20Reddell%20and%20Others%20\(PDF\).pdf](https://collections.concourt.org.za/bitstream/id/62058/[Revised%20Judgment%20CCT%2066-21%20Mineral%20Sands%20Resources%20(Pty)%20Ltd%20and%20Others%20v%20Reddell%20and%20Others%20(PDF).pdf)

⁵³ Constitutional Court of South Africa (2022), Reddell and Others v Mineral Sands Resources (Pty) Ltd and Others [2022] ZACC 38,

[https://collections.concourt.org.za/bitstream/id/62059/\[Judgment%20CCT67-21%20Reddell%20and%20Others%20v%20Mineral%20Sands%20Resources%20\(Pty\)%20Ltd%20and%20Others%20\(PDF\).pdf](https://collections.concourt.org.za/bitstream/id/62059/[Judgment%20CCT67-21%20Reddell%20and%20Others%20v%20Mineral%20Sands%20Resources%20(Pty)%20Ltd%20and%20Others%20(PDF).pdf)

protection as there is no limitation as to how long the court should spend to make a decision based on the motion. Section 2 of the model law included in the consultation, drafted by the Anti-SLAPP Research Hub addresses this by stating that a “motion made pursuant to Section 1 shall be heard and *decided* no later than 90 days after the motion is enrolled with the court” (italics for emphasis). While this can add greater clarity and prevent the escalation of costs, it does allow for judicial discretion if it needs to be increased.

79. However, as outlined above, the weighing exercise in Ontario’s anti-SLAPP law has been criticised for adding complexity, time and cost to the effective utilisation of the law’s protections. There have been comparable concerns within the UK context, as it relates to the serious harm threshold found in defamation law in England and Wales (from 2013) and Scotland (from 2021). While this was envisaged as a method by which abusive defamation claims could be discarded at an earlier stage, and so before legal costs have accrued, in practice, courts have erred against the harm threshold operating as a filter, instead choosing to adjudicate on the seriousness of the harm caused in a full hearing.
80. According to Stephen Bogle and Bobby Lindsay from the University of Glasgow, “the process of determining serious harm is complex and involved – it cannot be done in a cursory manner. ... Particularly where the preference is now to usher serious harm onto a full trial, the costs for both parties has increased due to the introduce [sic] of the serious harm test”.⁵⁴ The Scottish Government can look to its own and the UK Parliament’s analysis of defamation law reform, as well as concerns around the operation of the Ontario Act as to ways to ensure the anti-SLAPP law can operate effectively to dismiss abusive threats in an efficient, early and cost-effective manner.
81. In respect to Article 5 of the EU Anti-SLAPP Directive, which limits the anti-SLAPP protections to those with cross-border dimensions, were Scotland to emulate this approach, it would offer inadequate and severely limited protections against SLAPPs. Of the cases that were outlined in answer to Question 1, only one of the cases - the legal threat aimed at Oliver Bullough - would have been able to access such protection. We would strongly recommend Scotland extends anti-SLAPP protections to all threats aimed at public participation, not just those with a cross-border dimension. EU member states such as Ireland, Belgium, Poland, Romania, Slovenia and The Netherlands have extended the Directive’s protections to domestic cases as well.

Question 8: Are you aware of any other provisions of Scots law that may support someone who is the subject of a SLAPP?

Legal Aid

⁵⁴ Bogle, Stephen James and Lindsay, Bobby (2024), “How serious is the serious harm threshold?” <http://dx.doi.org/10.2139/ssrn.4769366>

82. The Council of Europe recommendation on countering SLAPPs states that “member States should consider providing adequate access to free legal assistance”.⁵⁵ In the context of SLAPPs deployed via defamation, Scotland remains the only legal jurisdiction within the UK where a defender to a defamation action can secure legal aid.
83. However questions remain as to how effective the current provision of legal aid for defending against a defamation claim is. In a 2023 response to a Freedom of Information request, the Scottish Legal Aid Board confirmed that since approximately 2016, only 5 cases have been granted a legal aid certificate and the “total value of the payments made on the 5 cases that have been awarded legal aid certificates to defend defamation cases is £2004.”⁵⁶
84. While this is limited to defamation actions alone, legal aid must be available for all SLAPP targets to ensure they are able to mount a defence. Most SLAPPs never make it to court as the defender cannot fund a defence or representation for all relevant pre-trial processes even if they have a defence they would seek to depend on in court. Ensuring a legal defence is available is a vital way in which SLAPP targets can access justice and so is a guarantor of a fundamental right - Article 6 of the European Convention of Human Rights - that must be protected in Scotland.
85. We acknowledge the broader pressures on the legal aid system in Scotland. The Scottish Human Rights Commission, in its Parallel Report to the United Nations Human Rights Committee on the 8th examination of the United Kingdom of Great Britain and Northern Ireland under the International Covenant on Civil and Political Rights (ICCPR) stated that “[t]he Legal Aid (Scotland) Act 1986 is widely considered to be outdated and an independent review commissioned by the Scottish Government found wide-ranging issues with the current system.”⁵⁷
86. Due to the existing pressures on the legal aid system, it may not be possible to expand legal aid to all targets of SLAPPs. This makes cost-capping and cost-shifting provisions - such as those included in the model law - even more vital.

Vexatious Litigation Orders

87. Vexatious litigation orders are available where a person has habitually and persistently, without any reasonable grounds for doing so, instituted vexatious civil proceedings or made vexatious applications to the court in the course of civil proceedings.⁵⁸ This is a very

⁵⁵ Council of Europe (2024), “Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)”, <https://rm.coe.int/0900001680af2805>

⁵⁶ FOI Request to the Scottish Legal Aid Board (2023)

⁵⁷ Scottish Human Rights Commission (2024), “Parallel Report to the United Nations Human Rights Committee on the 8th examination of the United Kingdom of Great Britain and Northern Ireland under the International Covenant on Civil and Political Rights (ICCPR)”

<https://www.scottishhumanrights.com/media/2606/iccpr-parallel-report-uk-examination.pdf>

⁵⁸ Courts Reform (Scotland) Act 2014, <https://www.legislation.gov.uk/asp/2014/18/section/100>

high threshold and requires a pattern of behaviour to be established. In view of the need to show a pattern of instituted litigation, most SLAPP cases would fail to meet this high threshold, particularly if litigation is dispersed across jurisdictions.

Summary Decree

88. Where one party believes that the opposing party's case (or some part of it) has no realistic prospect of success, they can apply for a summary decree. This is most commonly seen when a pursuer moves against a defender where the pursuer argues the defences cannot realistically succeed.
89. Applications can be made in both the Court of Sessions and the Sheriff Court. However, we believe this to be an inadequate alternative, found in Scots Law, to an anti-SLAPP EDM. Depending on the court, summary decrees are not available to SLAPP targets or establish a too high threshold for legal actions to be discarded at an early stage.
90. In the 2009 Scottish Civil Courts Review undertaken by Lord Gill, he called the existing provisions for summary decree “not even handed.”⁵⁹ The report went on to state that “[a] pursuer may apply for summary decree, but a defender who seeks dismissal of an action on the ground that it is clearly without merit must incur the cost and the delay of going to debate. The test for summary decree to be granted is also too high.”⁶⁰
91. Summary decrees in the Court of Session are only available to pursuers, unless the application relates to a counterclaim.⁶¹ As a result, it would not be accessible to defenders in a SLAPP action. As the defamation action brought against the former MSP, Andy Wightman was heard before the Court of Session, this was a provision unavailable to Wightman to discard the legal action at an earlier stage or before legal costs had accrued.
92. This has been partially addressed in the Sheriff Court, where “a party to an action may, at any time after defences have been lodged, apply by motion for summary decree.”⁶² However, an application can only be made on the grounds that “an opposing party’s case (or any part of it) has no real prospect of success” and “there exists no other compelling reason why summary decree should not be granted at that stage.”⁶³ Given the complexity and ambiguity of relevant laws (e.g. defamation, privacy) that may be deployed by SLAPP pursuers and the judicial culture of preferring issues to go to trial, the first criteria is an

⁵⁹ Rt. Hon. Lord Gill (2009), “Report of the Scottish Civil Courts Review: Volume 1, Chapters 1 - 9, https://web.archive.org/web/20131025101530/http://scotcourts.gov.uk/docs/default-source/aboutscs/vol1chap1_9.pdf?sfvrsn=12

⁶⁰ Ibid.

⁶¹ Act of Sederunt (Rules of the Court of Session 1994) (1994), <https://www.legislation.gov.uk/ukSI/1994/1443/schedule/2/part/3/crossheading/summary-decrees>

⁶² Act of Sederunt (Sheriff Court Ordinary Cause Rules) (1993), <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court-civil-procedure-rules/ordinary-cause-rule-s/>

⁶³ Ibid.

extremely high threshold for a defender to meet and as a result, will only rarely be met in SLAPP cases.

93. This is a similar threshold found in England and Wales for summary dismissal and the provision of this legal mechanism has done little to prevent SLAPP actions making it to a full and costly court hearing. We are concerned that due to these experiences elsewhere, summary decrees are limited protections for those targeted by SLAPPs brought before the Sheriff Court.
94. While it may be argued that the liberalization of the rules regarding summary decree in the Sheriff Court may offer imperfect, but available, protections for SLAPP targets, the refusal to address the provisions in the Court of Session means any progress is largely symbolic. According to analysis by the Anti-SLAPP Research Hub at the University of Aberdeen, “the Court of Session has jurisdiction over claims above £100,000. This means that SLAPP pursuers who are seeking disproportionate damages will likely come within the jurisdiction of the Court of Session rather than the sheriff court’s more liberalised rules, ultimately placing summary decree outside the defender’s reach.”⁶⁴

Abuse of Process Doctrine

95. Crucially for SLAPPs, “Scots law does not have a developed doctrine of abuse of process or a ‘strike-out’ mechanism”.⁶⁵ However, the judgment in *Shetland Sea Farms Ltd v Assuranceforeningen Skuld* stated that the court had “an inherent power to dismiss a claim where the party pursuing it has been guilty of abuse of process.”⁶⁶ As outlined by the Anti-SLAPP Research Hub, the judgment outlined “the ways in which a litigant may abuse the process of the court, including by pursuing a claim or presenting a defence in bad faith and with no genuine belief in its merits, by fraudulent means, or for an improper ulterior motive, such as that of publicly denouncing the other party.”⁶⁷
96. Referring to the case of *Moore v. Scottish Daily Record and Sunday Mail Ltd*, which “concerned the question whether the court could impose a penalty in court fees for late settlement”, the Rt. Hon. Lord Reed, the current President of the UK Supreme Court, has spoken about the “undoubted inherent jurisdiction” of a court to address abuse of process.⁶⁸ He went further to highlight that it was “well established” that the court’s

⁶⁴ Farrington, Francesca; Borg-Barthet, Justin & Ferguson, Erin, *Juridical Review* (2024), “Should Scotland SLAPP-back? A comment on the need for bespoke anti-SLAPP legislation in Scotland”,

<https://uk.westlaw.com/Document/IF8572980748C11EFACB0DF18C8B3659D/View/FullText.html>

⁶⁵ Lindsay, Bobby, *Media and Arts Law Review*, 23(1), (2019), “The reform of defamation law in Scotland”, <http://eprints.gla.ac.uk/188542/>

⁶⁶ *Shetland Sea Farms Ltd & Ors v Assuranceforeningen Skuld* [2001] ScotCS 178 (2001) <https://www.bailii.org/scot/cases/ScotCS/2001/178.html>

⁶⁷ Farrington, Francesca; Borg-Barthet, Justin & Ferguson, Erin, *Juridical Review* (2024), “Should Scotland SLAPP-back? A comment on the need for bespoke anti-SLAPP legislation in Scotland”, <https://uk.westlaw.com/Document/IF8572980748C11EFACB0DF18C8B3659D/View/FullText.html>

⁶⁸ Reed, Rt. Hon. Lord (2012), “Lies, damned lies: Abuse of process and the dishonest litigant”, https://supremecourt.uk/uploads/speech_121026_c3a309ffe8.pdf

jurisdiction extended to “procedural sanction such as dismissal”.⁶⁹ According to Lord Reed, “[t]he inherent jurisdiction did not however enable the court to require the payment of court fees, since that was a matter governed by statute.”⁷⁰

97. Courts have not been consistent in establishing a robust doctrine. This led the Anti-SLAPP Research Hub to conclude “it is apt to say that the doctrine of abuse of process is underdeveloped in Scotland”, which raises questions “as to whether the abuse of process doctrine could be developed to dismiss SLAPPs.”⁷¹ This lack of clarity and consistency, in our opinion, rules out this doctrine as suitable for addressing SLAPPs. This underpins our commitment to a tailored and specific anti-SLAPP law, with a robust mechanism by which SLAPPs can be discarded at an early stage.

Dismissal for Delay

98. Chapter 21a.1 of the Court of Session rules establishes a process by which a claim can be dismissed due to delay. Crucially this process can be brought in relation to delays “on the part of any party or any party’s agent in progressing the claim” and that “such delay results in unfairness specific to the factual circumstances, including the procedural circumstances, of that claim.”⁷²

99. However, this rule is established for delays that are described as “inordinate and inexcusable”. These terms are not defined in the rule - beyond stating that the “court shall take account of the procedural consequences” - and so parties may have to depend on interpretation by judges on the day without an objective standard of interpretation. We are concerned that an ordinary reading of these terms would establish a significantly high threshold that can only be met in limited but extreme circumstances.

Question 9: Can you envisage any conflicts between the Directive and other provisions of Scots law?

100. There are three primary areas which require additional consideration during the drafting process: penalties and third-party interventions:

101. Penalties: The Directive (and the Model Law) include a provision for the imposition of effective, proportionate and dissuasive penalties on the party who brought the abusive court proceedings against public participation. These are additional to damages and

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Farrington, Francesca; Borg-Barthet, Justin & Ferguson, Erin, Juridical Review (2024), “Should Scotland SLAPP-back? A comment on the need for bespoke anti-SLAPP legislation in Scotland”,

<https://uk.westlaw.com/Document/IF8572980748C11EFACB0DF18C8B3659D/View/FullText.html>

⁷² Court of Session Rules,

<https://www.scotcourts.gov.uk/media/gfihdy0/chapter-21a-1-dismissal-of-a-claim-due-to-delay.pdf>

expenses. Scottish Ministers will need to consider appropriate avenues for imposing penalties in civil proceedings.

102. Security for damages: The Directive provides that security for damages should be available, as permitted by national law. Therefore, Scottish Ministers will need to consider the extent to which this is permissible under Scots law.
103. Third party interventions: At the Anti-SLAPP Research Hub's workshop on a Model Law for Scotland held in March 2025, there was general agreement that human rights institutions, civil society organisations and other relevant bodies have a strong mandate to protect public participation. However, participants recognised the risk that courts, traditionally cautious about third-party interventions, may still resist involving external organisations. Participants stressed that any provision on intervention should strengthen the role of these bodies without undermining the efficiency of anti-SLAPP proceedings. Third-party contributions were seen as valuable for bringing expertise and broadening the court's perspective, particularly in smaller jurisdictions where judicial experience in SLAPP matters may be limited.
104. We would also reiterate that the EU Directive has a number of deficiencies as outlined in parts of this submission. They include its limited scope (excluding purely domestic, criminal and administrative matters among others), its distinction between the remedies available in manifestly unfounded and abusive proceedings against public participation, the reference to the *main purpose* of the proceedings in the definition of "abusive court proceedings against public participation", and the absence of a requirement to stay proceedings while the early dismissal motion is being heard. For more see response to Question 10 below.

Question 10: Are there any features not included in the Directive that should be considered for inclusion in possible legislation?

105. As outlined above, the final EU Anti-SLAPP Directive does not include a stay in proceedings once adjudication on the anti-SLAPP motion has been commenced. This means that legal costs could continue to accrue, further incentivising the drawing out of the anti-SLAPP motion to exert financial-, time- and emotional-pressure on the SLAPP target. However, it is included in the Council of Europe recommendation and establishes an approach that Scotland can follow. The Model Law includes a stay in Section 3(1), which we welcome and encourage the Scottish Government to support to ensure the anti-SLAPP motion itself cannot be used to stifle fundamental rights in Scotland.
106. The working group is concerned with the use of interdicts to limit the realisation of fundamental rights and freedoms in Scotland. The cases against the animal welfare campaigner Don Staniford as outlined in the answer to Question 1 demonstrates the ability

of these to be used to restrict acts that contribute to the information environment that can inform the wider population, while also impacting free expression more broadly.

107. The first interim interdict secured against Staniford by MOWI extended to behaviour that had yet to be proved, including flying drones over the fish farms and “instructing, procuring, encouraging or facilitating others to so act”. These provisions, as well as the 15 metre exclusion zone around the fish farms, were ultimately removed from the interdict against Staniford following a Sheriff Appeal Court hearing in 2024.⁷³
108. While we appreciate the need for interim interdicts to be secured in a timely fashion to respond to an emergent or urgent need, we are concerned they can be drafted and secured broadly in a manner that is disproportionate to the harm it was sought to address and so can significantly threaten free expression. For instance, the ambiguity of *encouraging* others to act could chill all acts of public scrutiny into the actions of MOWI - an issue of significant public interest - due to the difficulty of establishing whether any act - direct or indirect - on behalf of Staniford could be construed as encouragement. If it could be interpreted that any piece of media produced by Staniford, such as a video or written website update, was able to encourage others, this interdict could impinge Staniford’s broader right of free expression.
109. It is worth noting that the interdicts secured against Staniford by two other salmon farming companies - Bakkafrøst and Scottish Sea Farms - contains the same provisions as MOWI, before they were removed and so extends this censorship risk across a larger cross-section of Scotland’s sea farms. They even go beyond the MOWI interdict by also preventing Staniford from accessing land-based facilities.
110. In the Scottish context, to allow for individuals to be notified of applications for interdicts being brought against them they can apply for a Caveat. However, these can only be granted for applications made within a 12-month time period for specific geographical areas at a cost. So an individual would be required to spend a significant amount of time and money to secure coverage across Scotland to ensure they are notified of any application.
111. A way this could be addressed is to establish a Universal Caveat, which once secured would cover all of Scotland. This would limit the cost and time needed to ensure an individual is notified of any interdict application, affording them the right and opportunity to mount a defence.
112. While injunctions or interdicts based on defamation are increasingly hard to secure, Scotland must be alert to the abuse of interdicts based on other causes of action but can still impact fundamental rights. In England, a number of cases have been documented

⁷³ Sheriff Appeal Court (2024), MOWI Scotland Limited v. Don Staniford SAC (Civ) 8 OBN-A20-21, <https://www.scotcourts.gov.uk/media/q0ldihqm/2024sacciv8-mowi-scotland-limited-against-don-staniford-14-march-2024.pdf>

where pursuers have utilised the Protection Against Harassment Act 1997 (PAHA) as the legal basis for injunctions aimed at protected speech from, for example, a critic of a private company's service. While injunctions based on PAHA were intended to prevent harassers from continuing their abuse against another individual, we have documented their use by representatives of private companies, such as directors, using them to restrict acts of public participation.

113. A number of high-profile SLAPP actions in England include the use or threatened use of injunctions by SLAPP claimants to further restrict the rights of their target. For example, a Glasgow-based cosmetic surgery clinic sued a number of former patients who had posted negative reviews or comments about their experiences on online review sites and Facebook groups. As well as threatening defamation actions, they applied for injunctions. In one case, a former patient, offered to “stop posting on the Facebook group as she ‘couldn’t afford to get solicitors’. However, he [the pursuer’s solicitor] responded by telling her that he would reject her offer and suggested that the fear of imprisonment for breach of an injunction was the only way to stop Tracy’s ‘itchy fingers’.”⁷⁴

114. The Stoke-on-Trent County Court ruled against the application for an interim injunction. The judge stated that “[i]n my judgment, the posts relied on, which are said to amount to a course of conduct of harassment, do not come anywhere near meeting that test”. As a result, the Judge certified the claim as being “totally without merit”. The judgment also includes an analysis of the Clinic’s conduct, as well as the correspondence from their solicitor. Referring to the threat of bankruptcy and imprisonment, the judge was “satisfied the communications from the applicant would undoubtedly have caused her very significant distress, worry and fear.”⁷⁵

115. Our answer to Question 20 outlines a way by which applications for interdicts can be incorporated into the definition of SLAPPs outlined in the Model Law.

Question 11: In your view, are there any other relevant factors that Scottish Ministers should consider if EU alignment in this area is to be considered?

116. While the UK’s exit from the EU has removed the legal requirement to transpose the EU Anti-SLAPP Directive, Scotland’s commitment to remain aligned with the EU allows us the flexibility to move beyond the Directive and respond meaningfully to the flaws in the Directive outlined above and by civil society organisations, legal bodies and many others.

117. Article 20 of the EU Directive requires member states to compile, on an annual basis, data related to the number, type and date of SLAPP actions. This can aid the EU in analysing trends and building knowledge across Europe. While Scotland does not have the same

⁷⁴ UK Anti-SLAPP Coalition (2025), “Case: In Focus - Cosmetic surgery patients and a patient advocate”, <https://antislapp.uk/project/cosmetic-surgery-patients-and-patient-advocate/>

⁷⁵ Ibid.

obligation, we would recommend a similar approach to data collection and explore ways it can be shared with other relevant bodies including the EU and Council of Europe. Section 13 of the Model Law includes this provision, which we support.

Question 12: Are you content with the provision on security for costs and damages set out in Section 4? If not, please give your reasons.

118. Yes, Security for costs AND damages are vital to address the inequity in arms found in the majority of SLAPP threats and actions. This would also move the Scottish law closer in line with the Council of Europe recommendation on countering SLAPPs, which states that “Member States should introduce rules, in line with national law and practice, to ensure that in court proceedings against public participation, judicial and other competent authorities have the power to require the claimant to provide security for procedural costs, or for procedural costs and damages”.⁷⁶

Including a provision that covers damages, as well as costs, is vital to acknowledge the impact of being targeted by such abusive legal actions. It would also act as a significant disincentive for pursuers to use SLAPPs as they would know ahead of proceedings of this requirement and the possibility of losing access to the funds based on the court’s decision on the early dismissal application for the claim.

119. The need for security for costs in SLAPP cases is further illustrated by Andy Wightman’s experience. Andy Wightman was awarded £170,000 in costs after winning his defamation case.⁷⁷ However, £60,000 went unpaid when the judgment debtor was liquidated.⁷⁸

120. However, the fact that a defender may be able partially to recover its costs if it is successful does not change the impact of receiving a SLAPP threat – it still has to reckon with how to fund its costs to trial. One small publisher described to the Publishers Association having to incur thousands in legal fees in England to defend a claim that was baseless and eventually dropped, but never being able to recover the fees. Had it been forced to go to trial it would have had to abandon the book, even though it had every confidence in the author’s veracity and research, because the costs would simply have been prohibitively expensive.

121. There are existing powers in Scots Law for the Court of Session or the Sheriff Court to order a party to find caution for expenses as a condition for continuing with a case. This can be

⁷⁶ Council of Europe (2024), “Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)”, <https://rm.coe.int/0900001680af2805>

⁷⁷ https://www.holyrood.com/news/view-andy-wightman-wins-defamation-case_15219.htm

⁷⁸ Morrison, Hamish, The National (2023), “Wildcat Haven Enterprises: Firm folds with Andy Wightman 'owed' £60k”, <https://www.thenational.scot/news/23727567.wildcat-haven-enterprises-firm-folds-andy-wightman-owed-60k/>

granted if the “defender can demonstrate that there are reasonable grounds to believe the pursuer could not, if required, meet the defender’s expenses of the claim.”⁷⁹

122. In the Court of Session in *Ewing v Times Newspaper Ltd.*, the pursuer submitted that the granting of caution against him violated his Article 6 rights and that it had been granted too early in the legal proceedings as “the Lord Ordinary pre-empted the pursuer’s opportunity to put his pleadings into proper Scottish form and to defend them at a hearing on relevancy.”⁸⁰ However the court disagreed, stating that Article 6 “is subject to the rights of the other party to be protected against being put to irrecoverable expense by an impecunious and irresponsible litigant”.⁸¹

123. The court also disagreed that the order for caution was granted too early, stating: “[i]f the pursuer is impecunious and if it seems unlikely that the action will succeed, it is right that the court should require caution at an early stage. If the court could consider that question only after there had been a debate on relevancy, the purpose of the caution would be defeated.”⁸²

124. However, the powers to order caution for expenses is too limited and so we support Section 4 of the Model Law to establish the requirement for the respondent to provide security for costs and damages. According to analysis by the Anti-SLAPP Research Hub at the University of Aberdeen: “It is noteworthy that, the circumstances in which a court will grant caution are limited to instances where it is likely, from a consideration of the pursuer’s circumstances, that they will be unable to make good on the costs of litigation. In contrast, the EU Anti-SLAPP Directive empowers courts to require the claimant to provide security for the estimated costs of any court proceedings involving public participation.”⁸³

125. Depending on such a narrow provision will do little to address the inequity of arms at the centre of SLAPPs or build confidence in public watchdogs targeted by SLAPPs as to their ability to maintain and fund a defence.

Question 13: Are you content with the remedies made available to defenders in Sections 5 and 7? If not, please give your reasons.

126. Yes. Sections 5 and 6 give effect to Article 14 of the EU Directive and Paragraph 38 of the Council of Europe recommendation. As a general rule, expenses are awarded to the party that succeeds in the claim. Typically, the winning party can claim expenses for money

⁷⁹ HFW (2024), “Litigation in Scotland. What you should know: 10 Key Features”, <https://www.hfw.com/app/uploads/2024/04/004536-HFW-Client-Guide-Litigation-in-Scotland-2022.pdf>

⁸⁰ Court of Session (2010), *Ewing v Times Newspaper Ltd.*, <https://www.casemine.com/judgement/uk/5a8ff84860d03e7f57ebdd59>

⁸¹ Ibid.

⁸² Ibid.

⁸³ Farrington, Francesca; Borg-Barthet, Justin & Ferguson, Erin, *Juridical Review* (2024), “Should Scotland SLAPP-back? A comment on the need for bespoke anti-SLAPP legislation in Scotland”, <https://uk.westlaw.com/Document/IF8572980748C11EFACB0DF18C8B3659D/View/FullText.html>

spent on: travelling to court, time off work, any required reports for evidence, funds for witnesses to come, and costs of using a solicitor. Scots Law also provides for uplifts in judicial expenses when a party has acted unreasonably.

127. Section 7 of the Model Law operationalises and gives expression to Article 15 of the EU Directive and Article 41 of the Council of Europe recommendation. Establishing remedies that include damages that takes into “account any distress and anxiety caused to the applicant”, is a significant disincentive to SLAPP pursuers as they would be aware of the financial risk for carrying forward their threat. It also acknowledges the importance of making the defender “whole” following the experience of defending the abusive action.

128. Article 41 of the Council of Europe recommendation outlines that damages should cover “both pecuniary and nonpecuniary damages, such as loss of income and emotional distress as well as compensation for costs and expenses, for example to cover legal and administrative costs.”⁸⁴ This should encourage the Scottish Government to establish an expansive interpretation of Section 7 in the Model Law. To ensure the law is clear and easily accessible for SLAPP targets and other public watchdogs, Section 7 could establish explicit language outlining that these damages can also take into account “loss of income” and “administrative costs”, as well as “distress and anxiety”.

Question 14: Are you content with restricting SLAPP pursuer’s entitlement to expenses as set out in Section 6? If not, please give your reasons.

129. Yes. Much of the “sting” from SLAPP actions is not the amount of damages a defender may be liable for were they to lose the court action, but the cost of mounting a defence and the risk of being liable for the pursuer’s expenses. Without the ability to restrict a SLAPP pursuer’s entitlement to expense, SLAPPs can continue to threaten people into silence due to their inability to cover these costs.

Question 15: Are you content with imposing penalties on SLAPP pursuers as set out in Section 8? If so, what would be an appropriate penalty in Scots law? Please provide reasons for your view.

130. Yes. For the law to be effective in tackling SLAPPs, pursuers must be dissuaded from this course of action. Establishing and imposing penalties is a vital part of the set of dissuasive tactics that any robust anti-SLAPP law should contain.

131. While we support the imposition of penalties as set out in Section 8 of the Model Law and Article 15 of the EU Directive, it is not clear precisely how these would be formulated and the extent to which penalties are permitted in civil litigation in Scotland.

⁸⁴ Council of Europe (2024), “Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)”, <https://rm.coe.int/0900001680af2805>

132. Recital 42 in the Directive outlines a compelling reason for establishing penalties in the context of SLAPPs: “The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. ... Where the court has found the proceedings to be abusive, such penalties or other equally effective appropriate measures should be determined on a case by case basis, should be proportionate to the nature of, and to the elements indicating, the abuse identified and should take into account the potential for a harmful or chilling effect of those proceedings on public participation or the economic situation of the claimant that has exploited the imbalance of power.”
133. Generally, Scots Law avoids the concept of penal damages. However, penalties can be imposed in the context of contempt of court, including in relation to civil proceedings. All Scottish courts may punish contempt in both civil and criminal proceedings. Scots courts may decide to make an order of contempt based on the common law concept or where empowered by statute. Contempt is punishable by a fine or prison sentence.
134. Common law contempt, which includes contempt for abuse of process,⁸⁵ may be dealt with by way of a procedural sanction (such as dismissal or an award of expense) or punished as contempt (such as a prison sentence or fine).⁸⁶ The essential question for establishing contempt for abuse of process is whether the action compromises the integrity of the court’s procedures.⁸⁷ Typically, the courts are more inclined to impose a procedural sanction than to make a finding of contempt, except in an extreme case.
135. Alongside common law contempt, there are also numerous statutory provisions which enable the court, normally the Court of Session, to impose penalties for contempt of court. This includes investigative or regulatory matters, under company law and insolvency law, as well as bankruptcy.⁸⁸
136. Therefore, it may be appropriate to include a contempt of court provision in a Scots anti-SLAPP law in cases that compromises the integrity of the court’s procedures.

Question 16: Are you content with allowing public interest interventions as set out in Section 10? Please provide reasons for your view.

137. Yes. This is a vitally important provision that we support. SLAPPs work to isolate the target, cutting them off from support as they are expected to bear the brunt of the legal risk. The legal action brought by Arron Banks against Carole Cadwalladr, which in the opinion of the

⁸⁵ See *Macphail's Sheriff Court Practice* (4th, 2022) [2.23].

⁸⁶ *Macphail's Sheriff Court Practice* (4th, 2022) [2.23]; citing *Hunter* [1982] A.C. 529; *Castanho v Brown & Root (UK) Ltd* [1981] A.C. 557, per Lord Scarman at 571; [1980] 3 W.L.R. 991; [1981] 1 All E.R. 143.

⁸⁷ *Macphail's Sheriff Court Practice* (4th, 2022) [2.23]; citing *Hunter v Chief Constable, West Midlands Police* [1982] AC 529 at 536B–536C, [1981] 3 All ER 727 at 729, HL

⁸⁸ The Laws of Scotland: Stair Memorial Encyclopaedia (Lexis Nexis)

UK Anti-SLAPP Coalition bore the hallmarks of a SLAPP, related to comments she made during a TED Talk and a number of social media posts. Importantly, this was aimed at Cadwalladr as an individual, not TED or The Observer, which had published her reporting.⁸⁹ This cut her off from potential avenues of institutional support or expertise, requiring her to shoulder the burden herself. Allowing public interest intervention would help address the inequity of arms between defenders and pursuers, allowing those targeted to benefit from the expertise of the wider civil society of Scotland and internationally as needed.

138. However, to facilitate the active engagement of interveners and to ensure they are able to plan and engage appropriately, there must be a way by which details of court hearings are published online in an open and accessible manner. This would allow potential interveners to prepare their submissions, while also aiding in the achievement of the Scottish Government's commitment to open justice.

139. The publication of ongoing SLAPP cases online could be integrated into a broader visualisation of the issue of SLAPPs in Scotland to build public awareness of the issue. Alongside a record of ongoing cases, this portal or online resource could also satisfy Section 13 of the Model Law and the Council of Europe recommendation by hosting data collected on abusive court proceedings against public participation.

Question 17: Are Sections 11-12 sufficient to prevent cross-border SLAPPs? Please provide reasons for your view.

140. No. Sections 11-12 do not necessarily prevent all cross-border SLAPPs. Section 11 requires a Scottish court to refuse recognition and enforcement of a judgement arising out of a SLAPP case, while Section 12 empowers Scots courts to remedy harm incurred by a SLAPP defender during the course of defending SLAPPs outwith Scotland.

141. In 2010, the US SPEECH Act, introduced a similar provision which made foreign libel judgments unenforceable in US courts, unless either the relevant foreign legislation offers at least as much protection as the First Amendment or the defender would have been found liable under US law.⁹⁰ During the bill's passage, cases brought in the UK, such as the action against Dr Rachel Ehrenfeld by Sheikh Khalid bin Mahfouz in 2008, were prominently discussed in the US Congress. Congressman Steve Cohen said: "England has become the favourite destination of libel tourists from around the world, especially wealthy tourists from countries whose own laws are downright hostile to free speech".⁹¹

⁸⁹ UK Anti-SLAPP Coalition (2025>, "Cases: In Focus - Carole Cadwalladr", <https://antislapp.uk/project/carole-cadwalladr/>

⁹⁰ Securing the Protection Of Our Enduring And Established Constitutional Heritage Act, <https://www.congress.gov/111/plaws/publ223/PLAW-111publ223.htm>

⁹¹ Hirsch, Afua, The Guardian (2009), "US Congress presses Britain to amend 'harmful' libel law", <https://www.theguardian.com/uk/2009/feb/23/us-congress-britain-libel-law>

142. However, Sections 11-12 main deficiency is that they do not prevent a SLAPP pursuer from initiating or continuing proceedings outwith Scotland. As such, further consideration could be given to the power of Scottish courts to grant an anti-suit injunction i.e. an interdict preventing a party from pursuing a SLAPP outwith Scotland.

Question 18: Does the Model law give adequate expression to the EU Directive and Council of Europe recommendation while taking account of the specific character of Scots law? Please provide reasons for your view.

143. Yes - mostly, but with some qualifications.

EU Anti-SLAPP Directive

144. We support the way the Model Law has incorporated the provisions of the EU Directive while responding to legitimate concerns and criticism related to the final text of the Directive. By avoiding the dual definitions of SLAPPs - those of “manifestly unfounded” proceedings and those described as “abusive” - the Model Law establishes a clear and easily understood method by which SLAPPs can be defined and thusly how the early dismissal mechanism can be accessed.
145. The bifurcated nature of the EU Anti-SLAPP Directive embeds confusion into its anti-SLAPP provisions, both in terms of the EDM as outlined above and in terms of limiting the scope of its protective measures. As a result, we support the Model Law’s divergence from the Directive on these key points. As a result, we believe the Model Law gives adequate expression to the spirit and intentions of the Directive and satisfies the Scottish Government’s commitment to align with EU laws.

Council of Europe Recommendation

146. We are satisfied that the Model Law gives adequate expression to the Council of Europe recommendation but we would like to draw the Scottish Government’s attention to the non-legislative aspects of the recommendation that should be addressed by the Government’s broader response to this issue.
147. In addition, we recommend that a non-exhaustive list of SLAPP indicators, such as those outlined in Paragraph 8 of the recommendation, are included in Scots law. As outlined in our answer to Question 20, we support including these indicators as an aid to courts and judges. However, it is vital that any move to use the Council of Europe’s approach includes the provision that the acuteness of the indicator, as well as the presence of a number of different indicators is incorporated. While many SLAPP actions deploy a wide range of tactics of abuse, some will only depend on a singular indicator.

Question 19: Can you envisage any conflicts between the Model law and other provisions of Scots law? Please provide reasons for your view.

148. As outlined in our answer to Question 15, we acknowledge that Scots Law avoids the concept of penal damages, except for a limited number of circumstances outlined in the answer to the previous question. We maintain our support for penalties to disincentivise SLAPP pursuers and to acknowledge the harm caused by abusive legal threats and so would recommend concerted effort to address this potential conflict.

Question 20: Are there any features not included in the Model law that should be considered for inclusion in possible legislation? Please provide reasons for your view.

149. It may be worth considering the inclusion of a non-exhaustive list of SLAPP indicators in any anti-SLAPP law. A list of indicators may support judges and the court in distinguishing between the early dismissal mechanism and other dismissal mechanisms (e.g. summary decree and abuse of process doctrine). The list would further support applicants and respondents in early dismissal proceedings and provide clear directions to both judges and litigants.

150. The Council of Europe recommendation includes such a list. Crucially, Paragraph 9 states: “While SLAPPs do not necessarily include all these indicators, 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.” Any use of indicators must protect against them being used to restrict interpretation by being treated as an exhaustive not illustrative list. It should also not be interpreted as if a case only meets the definition of a SLAPP only if there is a larger number of indicators present. Some SLAPPs exhibit a smaller number of indicators but the acuteness of them justify it meeting the definition. For this reason, if the Scottish Government was to emulate the approach outlined in the recommendation it must maintain both aspects of Paragraph 9 i.e. the number of indicators or the acuteness of the behaviour.

151. As outlined in our answer to Question 10, interdicts can be deployed as a mechanism to target public participation. During the Anti-SLAPP Research Hub’s workshop on a model law for Scotland in March 2025, participants raised concerns that it may not be sufficiently clear that the Model Law captures actions for interdicts. Legal experts emphasised that applications for interdicts are particularly vulnerable to abuse in the Scottish SLAPP context given their relative speed and low requirement of proof. Therefore, it was suggested that the application of any anti-SLAPP measures to interdicts should be made explicit. This could be resolved by amending the definition of “abusive court proceedings against public participation” in the Model Law as follows:

- a. an “abusive court proceeding against public participation” means, regardless of intent, a judicial application (including an application seeking interim measures) or

pleading that is disproportionate, excessive, unreasonable, causes prejudice to another person, or defeats the ends of justice, particularly if it operates to restrict another person's public participation on a matter of public interest;

152. To ensure ex parte interdicts cannot be used to curtail free expression rights, we would also support provisions that establish a Universal Caveat that would cover the entirety of Scotland as a more cost- and time-effective manner by which people can be notified of applications of interdicts made against them.

153. Responding to SLAPPs should also include non-legislative approaches such as training of judges to ensure restricting criticism, reporting and other forms of protected speech cannot be used as the justification for an interdict and that the provisions in Section 12 of the Human Rights Act are interpreted to reflect the expansiveness of free expression.

Question 21(a): Do you prefer the definition of “public participation” as set out in Article 4 of the Directive or Section 1(4) of the Model law or neither? Please provide reasons for your view.

154. The definitions of “public participation” in the Directive and Model Law are nearly identical, except that the model law includes “preparatory, supporting or assisting action substantially linked” to the act of public participation, as opposed to just those that are “directly linked”. We support the Model Law definition over the one found in the Directive as it would expand protection to actions that are in-directly linked to the act in question. This will be vital to ensure the anti-SLAPP law can be interpreted expansively to protect free expression.

155. The language in the Model Law would also avoid time being spent in court establishing whether there was a direct link between the “preparatory, supporting or assisting action” and the act of public participation itself. Any language that adds uncertainty to the functioning of the anti-SLAPP law could dissuade people from realising their rights to free expression if they cannot confirm that they will be protected, while also establishing a part of the legal framework that can be abused by SLAPP pursuers to further draw out proceedings.

Question 21(b): Do you prefer the definition of “matter of public interest” as set out in Article 4 of the Directive or Section 1(4) of the Model law or neither? Please provide reasons for your view.

156. Article 4 of the Directive establishes a number of criteria that can be used by member states when defining, if necessary, what is a “matter of public interest”. While we support the inclusion of illustrative criteria to enhance judicial understanding of this topic, we are concerned that it could inadvertently narrow the scope of a proposed law, if a member state focuses on these criteria in an exhaustive, not illustrative manner.

157. In the context of Scotland, common law has responded to this definition in a manner that can support the drafting of an anti-SLAPP law in Scotland. For example, the explanatory note for the Defamation and Malicious Publication (Scotland) Act 2021 states that public interest “is a concept which is well-established in the common law.”⁹² For this reason, we support the definition found in the Model Law as it is better equipped to respond to common law standards and existing judicial approaches in Scotland, while encouraging an expansive approach to this issue.

158. We also support the reference to “case law of the European Court of Human Rights” as this will allow the definition to continue to evolve in line with the ECtHR’s judgments and broader approaches to this issue.

Question 21(c): Do you prefer the definitions of “abusive court proceedings against public participation” as set out in Article 4 of the Directive or Section 1(4) of the Model law or neither? Please provide reasons for your view.

159. The definition found in Section 1(4) of the Model Law includes a reference to “regardless of intent” and this is a vital inclusion to ensure courts depend on an objective test, instead of being required to identify the intent, purpose or mindset of the SLAPP pursuer to define a SLAPP.

160. This addresses a central flaw in the anti-SLAPP provision in the Economic Crime and Corporate Transparency Act (ECCTA), which establishes limited protections for reporting on economic crime. Section 195 (1)(a) of the Act outlines criteria for a threat being a SLAPP if “the claimant’s behaviour in relation to the matters complained of in the claim has, or is intended to have, the effect of restraining the defendant’s exercise of the right to freedom of speech”.⁹³

161. As outlined in our answer to Question 6, the requirement of the court to identify the intent of the SLAPP filer introduces an unnecessary element of uncertainty into the process. This would likely create a significant amount of satellite litigation at an early stage to ‘prove intent’.

162. The definition found in the Directive includes a similarly vague framework as it requires the “main purpose” of the SLAPP action being the “prevention, restriction or penalisation of public participation”. We are concerned that, like the subjective test at the heart of the ECCTA, this could open up uncertainty and drawn out satellite litigation to determine whether the restriction on public participation was the *main purpose* of the legal action. If it was determined to be a secondary purpose or a byproduct of another purpose, we fear

⁹² Explanatory note, Defamation and Malicious Publication (Scotland) Act (2021), <https://www.legislation.gov.uk/asp/2021/10/notes/division/3/1/2/2>

⁹³ Economic Crime and Corporate Transparency Act (2023), <https://www.legislation.gov.uk/ukpga/2023/56/contents>

the SLAPP target would not be able to access the protections found in the Directive. Anything that adds uncertainty and undermines clarity threatens to draw out legal proceedings and increase costs.

163. For these reasons, it is vital that the Scottish Government, when looking to establish a potential anti-SLAPP law, look to an objective not subjective test to ensure court time and the resources of the parties to the action are not wasted trying to identify intent or purpose.
164. While the provision in the Directive is flawed, a number of the indicators are important as they reflect contexts that should be incorporated into any potential anti-SLAPP law in Scotland. This includes the “existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters; intimidation, harassment or threats on the part of the claimant or the claimant’s representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases; and the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith.”⁹⁴
165. These indicators identify a number of key dimensions to SLAPPs that must be considered by the Scottish Government. This includes requiring any determination as to whether the action is a SLAPP is informed by behaviour and actions deployed by the pursuer before the proceedings as well as during. This is important to capture aggressive or disproportionate demands, incorrectly labelled legal correspondence and other examples of harassing or intimidating behaviour deployed to encourage the target to agree the pursuer’s terms before any court hearing.
166. Similarly, a list of indicators should make it clear that a common feature of SLAPPs is the bringing of legal actions against an individual, even when the complained of speech originates from an organisation, such as a media outlet or an NGO. This is a common tactic deployed to isolate individuals from avenues of support and force them to bear the brunt of the legal threat - including the financial costs, if their employer or contracting organisation does not step in to support.
167. These indicators can be an important aid for judges to navigate this new legal mechanism while differentiating the anti-SLAPP provisions from the existing but limited abuse of process and vexatious legal proceedings doctrines (see our answer to Question 8).

Question 22: Do you prefer the approach to early dismissal of proceedings as set out in the Directive or the Model law or neither? Please provide reasons for your view.

⁹⁴ European Union (2024), “Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’)”, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401069

168. As outlined in the answer to Question 6, the Early Dismissal Mechanism (EDM) in the EU Anti-SLAPP Directive is fundamentally flawed as it only relates to the court proceedings that are “manifestly unfounded”. This embeds uncertainty within the Directive as SLAPP targets would not be able to be sure that the threat they are facing can be discarded at an early stage and so may step back from their act of public participation.

169. As outlined in response to other questions in this consultation, we also believe the lack of a stay in proceedings in the Directive is a significant failing that could leave the EDM vulnerable to being drawn out and potentially exploited by a SLAPP pursuer seeking to raise the costs of defenders mounting a defence.

170. The EDM must be available for all SLAPPs and protected against being weaponised. So the EDM as outlined in Section 1 of the Model Law should be prioritised above the approach outlined in the Directive.

Question 23: Should there be a time limit for an expedited hearing on a motion for early dismissal of proceedings? If so, is 90 days sufficient?

171. We support a time limit for an expedited hearing on a motion for early dismissal to ensure that the anti-SLAPP mechanism itself cannot be gamed or drawn out by SLAPP pursuers seeking to drain the resources of their target. When paired with a stay in proceedings as outlined in Section 3 of the Model Law, this is a vital provision that limits the costs incurred by SLAPP targets while also expediting the process through the courts.

172. We support the flexibility in the model law for judicial discretion when seeking to extend the time limit, although we would be cautious as to the latitude given when judges decide to extend the time limit. To address this, while also maintaining the clarity and discretion available to judges, we would recommend an amendment that gives judges the ability to extend this period when “the interests of justice require”, but only in 30-day increments with a review at the end of this period as to whether it should be extended again or whether a decision can be made within that time. If the extension is open-ended, this would significantly undermine the intention of this time limit to ensure the early dismissal mechanism is effective and operating as intended.

Question 24: Do you have any views on whether this guidance should extend to include other civil society actors, for example authors, academics, environmental campaigners? If so, please provide any comments on how it might be extended?

173. Due to the well documented use of SLAPPs to target journalists, media workers and outlets, we support a tailored approach to protecting media freedom from judicial harassment. This should include the guidance outlined in the consultation, as well as greater coordination and collaboration between state actors, as well as relevant stakeholders such as the National Union of Journalists, outlets, editors and journalists as

well as other media watchdogs such as NGOs. This should also incorporate a specific focus on freelance journalists and independent outlets. This collaboration must respect editorial independence, while also offering meaningful engagement.

174. Progress to establish the Scottish Public Interest Journalism Institute, which was proposed by the Public Interest Journalist Working Group has stalled after the Scottish Government welcomed the proposal in 2022.⁹⁵ However, this could be a valuable institution to coordinate and monitor the effectiveness of this guidance and all other support offerings established by the Scottish Government as it relates to SLAPPs that target public interest journalism.

175. However, guidance that only focuses on journalists will miss the broader impact of SLAPPs, as well as the tactics deployed by pursuers targeting non-journalist targets. By establishing guidance that is not restricted by the identity or role of the target, the UK and Scottish Governments would be better placed to analyse the society-wide impacts of SLAPPs and identify support for everyone realising their right to free expression and their public interest speech.

Question 25: What more, if anything, could be done outwith legislation to tackle SLAPPs?

176. SLAPPs cannot be addressed without examining the role played by those who facilitate or enable them. As a result, the regulation of law firms and solicitors is a vital part of the issue that should be addressed.

177. While we appreciate the differences between Scotland and England as to how legal services are regulated and express no opinion as to the regulatory structure in place, experiences from the Solicitors Regulation Authority (SRA) are relevant.

178. In 2022, the SRA established a warning notice focusing on SLAPPs, which was updated in 2024 and have carried out two thematic reviews of those it regulates to identify firms' and lawyers' knowledge of SLAPPs, the training in place and whether any have facilitated SLAPPs.⁹⁶ It also encouraged those targeted by SLAPPs to lodge complaints to be investigated by the SRA. As of May 2024, "71 cases or reports of SLAPPs ... have been referred to the SRA to date."⁹⁷

179. This approach - the first of its kind in Europe - has given SLAPP targets an avenue to raise concerns of abusive behaviour facilitated by law firms and solicitors, while also establishing a unique dataset of potential SLAPPs.

⁹⁵ Scottish Government (2022), "Support for a Scottish Public Interest Journalism Institute", <https://www.gov.scot/news/support-for-a-scottish-public-interest-journalism-institute/>

⁹⁶ Solicitors Regulation Authority (2024), Warning Notice: Strategic Lawsuits against Public Participation (SLAPPs), <https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice/>

⁹⁷ House of Lords, Communications and Digital Committee (2024), "Corrected oral evidence: The future of news: impartiality, trust and technology", <https://committees.parliament.uk/oralevidence/14782/pdf/>

180. However, concerns have been raised as to the efficacy of the SRA's approach and the time they are taking to make decisions on specific complaints. Crucially, the SRA has itself highlighted the limitations of regulation working without a legislation framework. On 24 March 2025 it published a statement stating: "The main way to address the problem of SLAPPs is through a robust legislative solution that gives the courts more powers".⁹⁸

181. We would support regulatory progress being made on SLAPPs in Scotland crucially through the Law Society of Scotland, the Faculty of Advocates and the Scottish Legal Complaints Commission. While this will take a different approach to that established by the SRA due to the different regulatory framework, there are a number of learnings the Scottish regulators can look to, crucially that regulatory and legislative developments are both necessary to stamp out SLAPP and that regulators should work proactively to address this issue with dedicated provisions to support those they regulate and accessible ways by which SLAPP targets can lodge complaints.

182. In many cases documented across Europe, SLAPPs are accompanied by a wide range of threats aimed at protected speech. This includes online harassment, coordinated smear campaigns and physical threats. Chapter III of the Council of Europe recommendation on countering SLAPPs acknowledges this by identifying a range of support options that should be available to SLAPP targets, as well as "secondary or indirect victims of SLAPPs, such as family members, associates or lawyers of the targets".⁹⁹ Alongside the legislative measures the Scottish Government can establish to stamp out SLAPPs, we recommend a broader approach to establish protections for all who speak out.

Question 26: Does Article 19 and sections 13 and 14 of the Model law provide an adequate legislative basis for the Scottish Government to bring in additional supports for someone who is the subject of a SLAPP? If not, please provide reasons.

183. We support Sections 13 and 14 of the Model Law and believe them to be an effective way to integrate Paragraphs 1 and 3 of Article 19 of the Directive. As outlined in our response to Question 16, the collation and visualisation of data related to SLAPPs, included in Section 13 of the Model Law should not be limited to the collation of quantitative data published after the fact. It should also present information about ongoing court proceedings that relate to SLAPPs to support and facilitate the intervention of civil society in support of defenders seeking to access anti-SLAPP protections.

184. As outlined in our answer to Question 8 and in line with Paragraph 2 of Article 19 of the Directive, we believe that legal aid should be available to all targets of SLAPPs to ensure that they can access legal representation. This is a vital step toward ensuring they can

⁹⁸ Solicitors Regulation Authority (2025), "Statement: Our approach to SLAPPs cases", <https://www.sra.org.uk/sra/news/press/approach-slapps/>

⁹⁹ Council of Europe (2024), "Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs)", <https://rm.coe.int/0900001680af2805>

realise their right to a fair trial and mount a robust defence of their act of public participation. However, we acknowledge the broader pressures on legal aid in Scotland and continue to reiterate the cost-shifting provisions in the Model Law as an alternative and meaningful way by which costs can be managed.

185. The Council of Europe recommendation on countering SLAPPs also recommends the creation and maintenance of a “public register of cases that have been classified as SLAPPs”.¹⁰⁰ This would add important context to the broader data collected through Section 13 of the Model Law. It would also establish a rich source of information for researchers and service providers who can better target and tailor their support by analysing the trends present in the cases that have been identified as a SLAPP.

186. A public register will also act as a significant disincentive for those who may consider bringing a SLAPP action or threat. If they know that their name would be publicly accessible as part of the register they may seek other ways of addressing what they perceive to be a threat to their reputation or desist altogether knowing that being identified as a SLAPP pursuer would be a significantly more damaging threat to them.

¹⁰⁰ Ibid.