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## MAKING STRIDES TOWARDS UK ANTI-SLAPP LAW AND CRACKDOWN ON ATTORNEYS WHO BRING SLAPP SUITS<sup>1</sup>

By [Laura Prather](#)

In recent years, the European Union and United Kingdom governments have become more attuned to the significant harm SLAPP suits cause to human rights and the rule of law. With the issuance of the EU Model Anti-SLAPP law by the European Commission on April 27, 2022, the continent appears poised to address this unique form of judicial harassment with legislation by 2023-24. Additionally, between the war in Ukraine and the unabashed use of the London court system by Russian oligarchs determined to punish anyone (British citizen or not) who speaks the truth about their ties to Russian President Vladimir Putin or corruption, the UK has also decided to prioritize addressing this affront to the rule of law with Anti-SLAPP legislation and holding lawyers to account.

### **Identifying the Problem: SLAPP suits**

Despite being a well-known haven for defamation plaintiffs, the UK did not begin taking a serious look at this form of judicial harassment until the war in Ukraine began, and it saw the ways in which London law firms, representing Russian oligarchs, were suppressing the narrative surrounding Putin's Russia through the UK court system. It was then that the UK was forced to look inward at how it had catered to Russian oligarchs (and others) who were now using the UK judicial system to harass and silence investigative journalists who uncover the sources of their dirty money, tax havens, and corrupt activities.<sup>2</sup>

High-profile cases like those against journalist Catherine Belton and her publisher Harper Collins by Russian oligarch Roman Abramovich over the book *"Putin's People: How the KGB Took Back Russia and then Took on the West,"*<sup>3</sup> and those brought against journalist Tom Burgis and his publisher the Financial Times by Eurasian Natural Resource Corp. (ENRC) over the book *"Kleptopia: How Dirty Money is conquering the World,"* clearly demonstrate how those in power were using their ill-gotten gains to silence truth tellers as a direct affront to democracy.

The carnage does not end with best-selling authors who reside in the UK like Belton and Burgis; the UK has proven to be the jurisdiction of choice for the most Anti-SLAPP cross-border cases filed between 2010-2021.<sup>4</sup> Recently, a U.S. investigative journalist with *Forensic News*, Scott Stedman, was sued in the UK based on a meager six subscriptions stemming from the jurisdiction. He was sued by British-Israeli security consultant and businessman, Walter Soriano, after reporting on alleged ties to Russian oligarch, Oleg Deripaska.<sup>5</sup>

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<sup>1</sup> Written by Laura Lee Prather, Co-Chair of Haynes Boone's Media and Entertainment practice group, who received a Fulbright Scholarship (2022-23) to research and advocate for global freedom of expression concerns.

<sup>2</sup> The CASE report, *Shutting Out Criticism: How SLAPPs Threaten European Democracy*. Most of the cross-border cases involving forum shopping were recorded in the United Kingdom.  
<https://static1.squarespace.com/static/5f2901e7c623033e2122f326/t/6231bde2b87111480858c6aa/1647427074081/CASE+Report+on+SLAPPs+in+Europe.pdf>, fn. 9 at 23.

<sup>3</sup> Another lawsuit over the same book was filed by Russian state-owned energy company, Rofsnet.

<sup>4</sup> <https://static1.squarespace.com/static/5f2901e7c623033e2122f326/t/6231bde2b87111480858c6aa/1647427074081/CASE+Report+on+SLAPPs+in+Europe.pdf>, p. 23, fn. 43.

<sup>5</sup> <https://ipi.media/lawsuit-brought-against-forensic-news-and-scott-stedman-deemed-a-slapp/>.

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Confronted by the stark reality that the UK judicial system was being abused by powerful individuals fueled by dirty money, on January 20, 2022, the UK Parliament held a debate on “[Lawfare and the UK Court System](#).” Thereafter, on March 17, 2022, the UK Ministry of Justice issued a Call for Evidence on Strategic Lawsuits Against Public Participation (SLAPPs). After receiving 120 responses to its Call for Evidence, on July 20, 2022, the Ministry issued its Response.<sup>6</sup>

Like the European Union, the UK Ministry of Justice recommended much needed reform to stymie this form of judicial harassment. In broad strokes, the report mandates the UK Parliament develop a statutory early dismissal process and costs protection scheme to fight against SLAPPs.

## **Holding Lawyers to Account**

Simultaneously, the UK Solicitors Regulation Authority (“SRA”) also began taking an interest in lawyers’ roles in propagating SLAPPs through legal threats and/or the filing of lawsuits. The SRA was keenly aware that often the legal threat alone stops the publication. This can be further complicated through the unilateral labelling of pre-suit correspondence as “private and confidential.” Through such labeling, the person threatening the action seeks to create silos of silence where victims, the government, and the public at large are not aware of the pattern of abuse.

On March 4, 2022, the SRA issued Guidance to help lawyers understand their ethical obligations and the application of the Principles and Codes of Conduct, as well as to highlight the different duties attorneys owe to the court, to clients, and to third parties (such as witnesses and opponents) in litigation.<sup>7</sup> It clarified the conduct which would attract regulatory sanctions when dealing with disputes. Although the Guidance discussed SLAPPs, describing them as “the misuse of the legal system, and the bringing or threatening of proceedings, in order to discourage public criticism or action,”<sup>8</sup> it did not change any professional responsibilities.

As Juliet Oliver, SRA General Council and Executive Director, explained, lawyers “must not act as a hired gun for their client no matter what. The key ethical principles include obligations to promote the public interest and rule of law and to safeguard the independence and integrity of the legal profession. Where there is a conflict those principles, the public interest prevails over the principle to act in the best interest of your client.”<sup>9</sup>

## **Raising Awareness and Providing a Solution: UK Anti-SLAPP Conference, Model Anti-SLAPP Law and Warning Notice for Attorneys**

On November 28-29, 2022, the second annual [UK Anti-SLAPP Conference](#) was held to raise awareness and build resolve for seeing the UK Anti-SLAPP law come to fruition. In the days leading up to the conference, the UK Anti-SLAPP Coalition launched the Model Anti-SLAPP law in Parliament.<sup>10</sup> The Coalition, which includes English PEN, the Foreign Policy Center and Index on Censorship, published the model Anti-SLAPP law, endorsed by a collection of free speech and anti-corruption organizations, journalists, editors, publishers, lawyers, and other experts throughout the UK.<sup>11</sup>

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<sup>6</sup> Ministry of Justice, *Strategic Lawsuits Against Public Participation (SLAPPs): Government Response to the Call for Evidence*, (July 20, 2022) - [https://data.parliament.uk/DepositedPapers/Files/DEP2022-0625/SLAPPs Call for Evidence Response web .pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0625/SLAPPs%20Call%20for%20Evidence%20Response%20web.pdf).

<sup>7</sup> <https://www.sra.org.uk/solicitors/guidance/conduct-disputes/>.

<sup>8</sup> *Id.*

<sup>9</sup> Juliet Oliver, UK Anti-SLAPP Conference, Panel 7, November 29, 2022.

<https://www.youtube.com/watch?v=1M4M98qRX4k&list=PLkyoi4eRgiLbpZtr3RqTE3ZqqMjcCCR4x&index=12>

<sup>10</sup> UK Anti-SLAPP Coalition: Model Anti-SLAPP Law. <https://www.englishpen.org/posts/campaigns/uk-anti-slapp-coalition-model-anti-slapp-law/#:~:text=The%20UK%20Anti%20DSLAPP%20Coalition,how%20this%20is%20fleshed%20out.>

<sup>11</sup> <https://www.indexoncensorship.org/2022/11/letter-to-justice-secretary-adoption-of-a-uk-anti-slapp-law/>.

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In its presentation, the Coalition outlined three conditions necessary for any law to be effective: (1) SLAPPS must be disposed of as quickly as possible in court, (2) the costs for SLAPP targets are kept to an absolute minimum, providing for a full indemnity (*i.e.* reimbursement of all fees and costs), and (3) costs for SLAPP filers are sufficiently high to deter further SLAPPs, including award of exemplary damages where the claimant has exhibited particularly egregious conduct. The message was clear: Parliament does not need to waste any time, it has been provided with the necessary language, now it just needs to prioritize passage.

Simultaneously, a series of Op Eds ran, including ones from Parliamentary champion for the UK Anti-SLAPP law, MEP David Davis<sup>12</sup> and Editorial Legal Director/Deputy General Counsel, News at *The Times*, Pia Sarma<sup>13</sup>.

Continuing with their commitment to crack down on lawyers who bring SLAPPs, on the first day of the conference, the SRA issued a Warning Notice expressly about SLAPPs, explaining that attorneys have an affirmative obligation to promote the public interest and rule of law.

“We expect you to be able to identify proposed courses of action (including pre-action) that could be defined as SLAPPs, or are otherwise abusive, and decline to act in this way. We expect you to advise clients against pursuing a course which amounts to abusive conduct, including making any threats in correspondence which are unjustified or illegal.”<sup>14</sup>

The Warning Notice was issued just before a conference panel on “[Legal intimidation, legal ethics & the role of lawyers](#).”<sup>15</sup> The panel focused on the impact of pre-suit demands, often labelled “confidential.” Panelist Dan Neidle (with Tax Policy Associates) spoke about the impact of [publishing a threatening lawyer letter](#), where his initial post that drew the legal complaint was read by 2000-3000 people and the lawyer letter that was marked “confidential and not for publication” that was published on the internet was read by 4 million people. One of the key goals of the person threatening suit through intimidating “confidential” letters is to create silos of silence where people fear retribution and one cannot detect patterns of abuse. By publishing the letter, Neidle thwarted this objective and helped raise awareness of this tactic.

Stay tuned for more developments in the near future from the UK in addressing SLAPP suits and those who bring them.

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<sup>12</sup> <https://www.theguardian.com/commentisfree/2022/nov/29/oligarchs-british-courts-law-slapps-lawsuits>.

<sup>13</sup> <https://www.thetimes.co.uk/article/we-must-stem-attempts-to-threaten-freedom-of-speech-rcf0wt76s>.

<sup>14</sup> <https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice/>.

<sup>15</sup> Alongside the Warning Notice, the SRA published a companion piece for SLAPP victims about how to make a report to the SRA and how to obtain legal support. <https://www.sra.org.uk/consumers/problems/fraud-dishonesty/legal-threats-solicitor/>.