Yes, Slapps are a problem, but they are still pretty rare- Edward Garnier KC in The Times

Edward Garnier KC
Thursday November 23 2023, 12.01am, The Times

There has been plenty of sound and fury in parliament and the press this year about Slapps — strategic lawsuits against public participation. There is now a limited anti-Slapp provision in the Economic Crime and Corporate Transparency Act 2023 and as we near the next general election inevitably any political party hoping to win will want to have the media on side. Creating or advocating press-friendly laws is just one way of appealing to the papers and commentators that have influence over the electorate.

This debate began with complaints about libel tourism. It has been heightened by the issue of whether parliament should make it difficult for rich foreign people to threaten libel litigation amid concern about well-heeled Russians claiming that they had been defamed, around the time that Putin invaded Ukraine and they were about to be sanctioned. Much of the attention paid to them was generated by their apparent closeness to Putin, by their wealth having been acquired from Russian state assets, and by their desire to keep hold of it with Putin's permission, while asking the West not to sanction them.

Concern about the expense of defamation law, never accessible to legal aid, is not new. In the 1970s and 1980s the economics of the media world were entirely different. The print media was riding high. With the unions tamed, owning a tabloid was a licence to print money. I used to be instructed by newspapers to make legitimate pre-trial arguments whose collateral purpose was to starve the claimant out of the claim. The newspapers knew that they had a case to answer on the facts, but they had a technical point to make and they had more money. An individual claimant could not withstand or risk the cost of the interlocutory applications made against them.

The boot is now on the other foot. The print media is no longer as rich as it was; the local press is significantly diminished, and the national press is under strain. Public broadcasters have no money to spare on defending libel actions. Defendants are finding it increasingly difficult to withstand the economic might of those who disagree with what they have to say. Hence the demands for parliament to intervene.

I entirely sympathise with writers such as Catherine Belton and other experts on contemporary Russia, who faced a tidal wave of expensive demands from their complainants. But one should not get the impression that the courts are feeble arbitrators of the disputes before them. For the past half century, long before the term Slapp was invented, abusive or meritless cases have been struck out by the High Court. But just because a defendant complains that they are the victim of a Slapp, the court cannot simply accept the allegation without considering the evidence. The number of Slapp cases is tiny compared with the number of actions issued each year. It is important not to mislead ourselves about the extent of the problem. Legitimate claims have repeatedly been incorrectly called Slapps — and the media has an interest shared with politicians in so describing them. Last year, in Banks v Cadwalladr, Mrs Justice Steyn said: "Ms Cadwalladr has repeatedly labelled this claim a Slapp suit … designed to silence and intimidate her … Although, for the reasons I have given, Mr Banks's claim has failed, his attempt to seek vindication through these proceedings was, in my judgment, legitimate. In circumstances where Ms Cadwalladr has no defence of truth, and her defence of public interest has succeeded only in part, it is neither fair nor apt to describe this as a Slapp suit."I do not want to be misunderstood or to underestimate the trauma and financial strain that comes with being threatened with a libel action. Genuine Slapps are

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a problem, but their prevalence is wildly overstated.

The essential point is that a disinterested judge, calmly looking at the evidence, will make a dispassionate ruling on what he or she has found, as Mrs Justice Steyn did in the Banks case, and as Mr Justice Nicklin did this summer in Amersi v Leslie. He did not need anti-Slapp legislation to dispose of that claim; he dealt with it in trenchant terms criticising the claimant's sloth, his exorbitant approach to the litigation, his desire to "take [the first defendant] 'to the cleaners'" and "for treating this libel action as providing him with an opportunity also to seek to embarrass (and possibly to punish) [an organisation not party to the action] for, as he perceives it, having wronged him. That is not a legitimate purpose of civil proceedings for defamation."

Being sued is expensive, but to suggest that Slapps are a menace just on the evidence of two or three bad cases does not prove the case. We need to get the question of whether a claim is a Slapp and an abuse of the system before the judges more quickly, rather than further increase the ambit of statute law. We need to ask the courts to make indemnity costs orders when a case is struck out for being a Slapp so that the defendant writer or publisher is not left out of pocket.

The emotional demand for more anti-Slapp laws is understandable this close to the election, but it should be resisted.

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