

What is the latest thinking on SLAPPs and litigation behaviour - in light of potential disciplinary action for lawyers who run them?

Defamation, Privacy & Data White Paper Conference

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- 1. THE STORY SO FAR**
- 2. SPOTTING A SLAPP**
- 3. AVOIDING GETTING SLAPPED**

1. THE STORY SO FAR

(how we got here and where we're going to)



- Complaints to the SRA increased from 25,689 in 2013 to 36,887 in 2023 (43.51%). The no. of solicitors increased from approximately 127,000 to more than 160,000 in the period (26%)
- Complaints to the BSB increased by 54% between 2021 and 2022 (albeit there was a marginal decrease in complaints from 2023 to 2024)

Where we are

- the statutory position:
 - i) Economic Crime and Corporate Transparency Act 2023 (ECCTA)
 - ii) SLAPPs private members' bill (2nd reading)
- the regulatory position: updated SRA warning notice

Beyond England & Wales

- Anti SLAPP provisions in 38 US states
- April 2024, Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings was published in the *Official Journal of the European Union*.
- Member states will have to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by May 2026.
- By May 2030, member states will provide the Commission with data on the application of the Directive, to measure its efficacy.

2. SPOTTING A SLAPP



i) The statutory context: ECCTA

195 Meaning of "SLAPP" claim

- (1) For the purposes of section 194 a claim is a "SLAPP claim" if—
- (a) 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,
 - (b) any of the information that is or would be disclosed by the exercise of that right has to do with economic crime,
 - (c) any part of that disclosure is or would be made for a purpose related to the public interest in combating economic crime, and
 - (d) any of the behaviour of the claimant in relation to the matters complained of in the claim is **intended** to cause the defendant—
 - (i) harassment, alarm or distress,
 - (ii) expense, or
 - (iii) any other harm or inconvenience,beyond that ordinarily encountered in the course of properly conducted litigation.

[...]

(4) In determining whether any behaviour of the claimant falls within subsection (1)(d), the court may, in particular, take into account—

(a) whether the behaviour is a disproportionate reaction to the matters complained of in the claim, including whether the costs incurred by the claimant are out of proportion to the remedy sought;

(b) whether the defendant has access to fewer resources with which to defend the claim than another person against whom the claimant could have brought (but did not bring) proceedings in relation to the matters complained of in the claim;

(c) any relevant failure, or anticipated failure, by the claimant to comply with a pre-action protocol, rule of court or practice direction, or to comply with or follow a rule or recommendation of a professional regulatory body.

Updated CPR - June 2025

3.4— Power to strike out a statement of case

[...]

(d) that, in the case of a claimant's statement of case—

(i) the claim is strategic litigation against public participation, being a SLAPP claim within the meaning of section 195 of the Economic Crime and Corporate Transparency Act 2023 ; and

(ii) the claimant has failed to show that it is more likely than not the claim would succeed at trial.

44.2.— Court's discretion as to costs

[...]

(9) In respect of a SLAPP claim, a court may not exercise its discretion so as to order a defendant to pay a claimant's costs except where, in the court's view, misconduct of the defendant in relation to the claim justifies such an order.

ii) The regulatory context: SRA warning notice

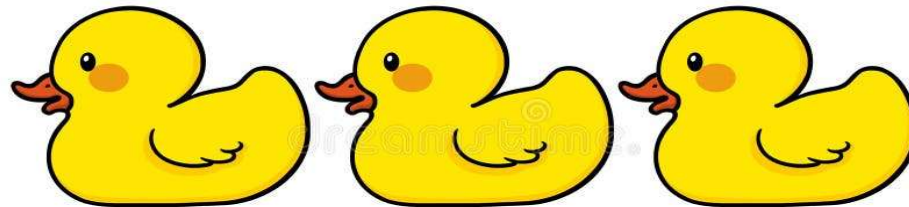
*“The key aim of a SLAPP is to prevent publication of information that relates to a matter of public interest, such as **academic research, whistleblowing or campaigning or journalism**, by preventing the publication of public interest information or by removing information from the public domain.”*

*“The case is characterised by an **imbalance of power**, often financial, often involving a wealthy individual or corporate claimant able to fund litigation to evade lawful scrutiny in the public interest distort the accurate record in their favour and silence lawful criticism.”*

- Making claims or assertions without merit
- Bringing cases in an oppressive manner
- Improper purpose
- Pre-publication: The 'right to reply' process
- Post-publication
- Labelling correspondence: “not for publication”, “strictly private and confidential” and/or “without prejudice”

iii) The common sense context

"if it looks like a SLAPP, walks like a SLAPP, and quacks like a SLAPP, then it probably is a SLAPP"



- Litigation threatened in multiple jurisdictions?
- Solicitor shopping?
- Private investigators, reputation managers influencing strategy?
- Aim to suppress publication pre-action avoiding scrutiny and publicity of proceedings?
- Legal spend disproportionate to legal remedy?

Gotti v Perrett [2025] EWCA Civ 1168

- Medical whistleblower.
- Interim injunction (harassment and defamation) with no claim form issued.
- Claim for defamation brought in the County Court & interim injunction obtained in spite of *Bonnard v Perryman* [1891] 2 Ch 269
- Harassment injunction obtained under s.3 PfHA in spite of C being outside jurisdiction when suffered alleged harassment.
- no reference to s.12 HRA or INDO Practice Guidance.
- C threatened D with contempt proceedings, imprisonment and private prosecution.
- D an L-I-P.
- C had subjected a previous whistleblower to similar conduct in previous proceedings.

3. AVOIDING GETTING SLAPPED



RISK ASSESSMENT

- Legal basis for claim:
- Evidence reviewed:
- Merits:
- Type of defendant (e.g. L-I-P)
- Client's purpose and objectives:
- Public interest considerations:
- Power imbalance assessment:
- Risks explained to client:
- Reason for proceeding/not proceeding:

DUE DILIGENCE

- Know SRA warning notices on SLAPPs and NDAs.
- Know SRA principles, Code of Conduct for Solicitors, RELs and RFLs and Code of Conduct for Firms
- Have a written policy on identifying SLAPPS
- senior partner responsible for SLAPP oversight
- partner-level sign off in high-risk matters
- Template correspondence that avoids SLAPPS pitfalls
- SLAPPS training
- maintain professional independence in managing pushy clients
- Document every stage of decision-making

PROFESSIONAL MISCONDUCT THRESHOLD

for an allegation to meet the standard of professional misconduct, *"it ordinarily needs to have some inherent seriousness and culpability... depend[ing] on the particular core principle in issue and on the evaluation of the circumstances of the particular case as applied to that principle"* [156] and that, *"whether a breach of the rules should be treated as professional misconduct depended on whether it would be regarded as **serious and reprehensible by competent and responsible solicitors and on the degree of culpability.**"* [157]

SRA v Martyn Day & Ors [2018] EWHC 2726 (Admin)
(Davis LJ, Foskett and Holgate JJ)