PARLIAMENTARY DEBATES

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Public Bill Committee

STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION BILL

Wednesday 8 May 2024

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Sunday 12 May 2024

The Committee consisted of the following Members:

Chair: JULIE ELLIOTT

† Afriyie, Adam *(Windsor)* (Con)
† Begum, Apsana *(Poplar and Limehouse)* (Lab)
† Byrne, Liam *(Birmingham, Hodge Hill)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Collins, Damian *(Folkestone and Hythe)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† David, Wayne *(Caerphilly)* (Lab)
† Davis, Sir David *(Haltemprice and Howden)* (Con)
Fletcher, Nick *(Don Valley)* (Con)
Foord, Richard *(Tiverton and Honiton)* (LD)
† Freer, Mike *(Parliamentary Under-Secretary of State for Justice)*
Lake, Ben *(Ceredigion)* (PC)
Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
Mackrory, Cherilyn *(Truro and Falmouth)* (Con)
† Simmonds, David *(Ruislip, Northwood and Pinner)* (Con)
† Slaughter, Andy *(Hammersmith)* (Lab)
Whittingdale, Sir John *(Maldon)* (Con)

Kevin Candy, Anne-Marie Griffiths, *Committee Clerks*

† attended the Committee

Public Bill Committee

Wednesday 8 May 2024

[Julie Elliott *in the Chair*]

Strategic Litigation Against Public Participation Bill

9 am

The Chair: My selection and grouping list is available online and in the room. We will have debates on two groups of clauses and amendments.

Clause 1

Requirement to make rules of court

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 1—*Purpose and Interpretation*—

"(1) The purpose of this Act is to protect and promote the ability of individuals and organisations to participate in public debate, advance accountability, and speak out on matters of public interest, and to prevent the use of the courts to undermine these rights through abusive legal action.

(2) Provisions in this Act should be broadly construed and applied to advance the purpose defined in subsection (1)."

This new clause places a purpose and interpretation of the proposed Act at the beginning of the Bill.

Wayne David (Caerphilly) (Lab): It is a pleasure to serve under your chairmanship, Ms Elliott. I tabled this private Member's Bill to tackle SLAPPs—strategic litigation, or lawsuits, against public participation—in all their forms, so that any abuse of litigation to attack free speech in the public interest, regardless of subject matter, can be addressed through the courts.

The Bill has had a long gestation. On Second Reading on 23 February, the version that I tabled, with Government support, was unanimously agreed by the House, but hon. Members clearly expressed some concerns and made some constructive comments. I am pleased to say that since Second Reading, a quite remarkable and very positive series of discussions has taken place between the Ministry of Justice and me, and between us and a number of stakeholder bodies. There have also been formal and informal discussions with Members who have taken a keen interest in the subject for a long time, in particular the right hon. Member for Haltemprice and Howden. The result has been not total, but a high degree of consensus on quite difficult and intense issues.

I remind everyone that SLAPPs are abusive or threatened lawsuits that are designed to inhibit free speech. These hostile lawsuits masquerade as genuine claims, but their underlying objectives are far more sinister. Such cases are often brought by powerful individuals and corporations with the aim of avoiding scrutiny by shutting down critical voices that seek to hold them accountable.

Protecting freedom of speech in the public interest is something that all parties in Parliament hold in high esteem. In all debates in this House and in the other place, there has been broad consensus on the need for reform to tackle the harmful effect of SLAPPs. As champions of media freedom, we must ensure that the free press is never made so vulnerable that it resorts to self-censorship on vital matters in the public interest. Grounded, well-researched investigative reporting must be protected, not reined in for fear of legal action. Of course, such protections cannot and must not come at the expense of access to justice, but the fact that claimants can currently exploit the system means that that important balance has not been struck. I have worked with the Government to make sure that the approach underpinning the Bill achieves the necessary protections and balances.

Clause 1 provides that rules of court must be made to provide a means of dismissing SLAPP cases at an early stage. The provisions require that rules are developed to make sure that a claim can be struck out where the court has determined, first, that a claim is a SLAPP, and secondly that the claimant has failed to show that their claim is more likely than not to succeed at trial. That will ensure that a court has the power to dismiss SLAPP claims at the earliest possible opportunity, thereby protecting defendants from unnecessary and intimidatory litigation that is used to silence and suppress articles, investigations and reporting being conducted in the public interest.

The rules of court will also establish the appropriate procedure to be followed so that Parliament's intention to prevent the harm of SLAPPs is properly achieved in such cases. Subsections (2) and (3) provide that the rules will be able to identify what evidence will be considered and the degree to which it will be tested by the court in determining the various matters that it has to address, including the use of presumptions with respect to matters of fact. I will turn shortly to other provisions that will assist the judge, for example by setting out common attributes and behaviours that are characteristic of SLAPP-style litigation.

Clause 1(4) provides for the development of rules to establish costs protection for defendants in cases identified as SLAPPs. The rules will provide that the court must not order the defendant to cover the costs of the claimant in SLAPP cases, unless they themselves have behaved inappropriately. The purpose of this provision is to protect defendants from the exorbitant costs that are currently racked up by claimants in such cases, and from the use of the threat of such costs to intimidate them.

At present, the risks of high costs often force defendants to abandon their legitimate defence against challenges to important reporting in the public interest, because of fear of financial ruin. That is wrong and must be put right. Defendants in SLAPP cases will often not have the same means available to them as claimants; they are therefore commonly intimidated into abandoning cases and/or reporting, even when they know the story in question to be true. They often find that the risks of adverse costs orders, which can result in great personal debt, including having to sell their home or go through bankruptcy, are far too great to contemplate, even for the sake of important stories.

I commend the clause to the Committee.

Sir David Davis (Haltemprice and Howden) (Con): I commend the hon. Member for Caerphilly for his Bill. It has been long in the coming, but it deals with a very important problem, and it is brilliant that he has actually brought it to the House. If I may say so, he has

managed it in a formidably diplomatic way, given the sometimes quite difficult arguments that have gone on. My unreserved congratulations go to him.

The hon. Gentleman has done a brilliant job of outlining the point of the Bill, so I will not reiterate that, save to say that it is a difficult and technical Bill. We are balancing rights—the right to sue for defamation versus the right not to be oppressed and to enjoy free speech—and that is not easy to do. It is a subtle problem. Quite properly, the legal profession, the judiciary and the Ministry of Justice want to maintain that balance. They are very sensitive about that, but we should also remember that the right to sue for defamation is pretty much a rich man's right. Very few of my constituents will exercise it, and very few people in this room will exercise it—perhaps one or two are rich enough. Nevertheless, it is important that it is maintained; I accept that without reserve.

It is understandable that the Ministry of Justice, in its advice on the Bill, seeks to compromise. I generally agree with compromise, but not with compromise between right and wrong. It has to be said that the Ministry will be being lobbied—with how much effect I cannot say—by the Society of Media Lawyers, including such leading lights as Carter-Ruck, Mishcon de Reya and Schillings, the very people who have created the problem that we are now trying to resolve. People have created a multimillion-pound industry out of oppressing the right to freedom of speech and making London the global capital of that. I could pick a ruder word for it, but I will just say that it is the global capital of SLAPPs.

I have one proposal to put to a vote, but first I want to talk a little about the vagaries of the Bill. Throughout all our discussions, the common theme has been, "How will the judge interpret this phrase, or this clause, in the context of what we are trying to do?" We are trying to protect freedom of speech and, at the same time, people's right to look after their own reputation in court.

New clause 1 aims to give judges guidance on interpretation and tell them what the high priority of the Bill is. I will read out the clause in full:

"(1) The purpose of this Act is to protect and promote the ability of individuals and organisations to participate in public debate, advance accountability, and speak out on matters of public interest, and to prevent the use of the courts to undermine these rights through abusive legal action.

(2) Provisions in this Act should be broadly construed and applied to advance the purpose defined in subsection (1)."

I ask the Committee to see that as effectively an instruction to the judges as to how broadly they should interpret the Bill when it becomes an Act. I will press no amendments other than new clause 1 to a vote, because there is consensus on almost everything.

Liam Byrne (Birmingham, Hodge Hill) (Lab): It is a privilege to serve under your chairmanship this morning, Ms Elliott. I congratulate my hon. Friend the Member for Caerphilly not only on securing this opportunity, but on working—as the right hon. Member for Haltemprice and Howden said—with formidable diplomacy to steer us to the Bill we have today.

The Bill is unusual in having commanded a great deal of cross-party consensus, ever since the first debate that the right hon. Member and I had the privilege of sponsoring in the House two or three years ago. It is not common to move this quickly from a Backbench Business debate to legislation. That is to be commended; indeed, it is why the Back Benches in this place should be strengthened further and given far more opportunities to legislate.

The Bill builds on an amendment that I had the privilege to move to the Economic Crime and Corporate Transparency Act 2023. It is outrageous that our courts are being used as arenas of silence to shut down free speech. We have become a place where oligarchs from around the world choose to come, in order to silence truth tellers and journalists who are providing an incredibly important public service.

The Bill is an important step forward, but it is only a step. As the right hon. Member for Haltemprice and Howden says, it cannot be the full solution. In particular, it will not address the plague of pre-litigation action. The number of journalists working in and around this place who tell us of legal letters being sent when they get a whiff of a story to close it down shows that this is a really significant problem. Once the Bill passes, we will need to understand what more can be done to stop the chilling effect of pre-litigation action.

New clause 1 provides us with an important debate. The right hon. Member for Haltemprice and Howden is right to say that part of the delicacy of the Bill relates to making sure that judges have full sight of Parliament's intention. The debates we have in this place will be unusually important in interpreting and applying the Bill in the courts, so he is absolutely right to say that subsection (1) sets out the basic purpose of the Bill: to maximise the latitude for free speech, truth telling, investigations and good journalism, for which this country is rightly famous. If that comes at the cost of the Ministry of Justice opposing the Bill and killing it today, it will be an unfortunate consequence.

I hope that the Committee can unite around a solution that the Government can support, so that the Bill becomes law. This debate is important, and I hope it will run on here and in the other place to ensure we have a balancing test that secures the objectives of the right hon. Member for Haltemprice and Howden, without incurring a ministerial roadblock in the shape of the Ministry of Justice.

Sir David Davis: There were two possible approaches to this Bill. One was what we have before us, which is quite complex but seeks to address issues piece by piece; the other was what is known as the Ontario option, which effectively puts in place a parallel to the American first amendment. One of the reasons why new clause 1 is important is that it straddles those approaches. It does not take us down the first amendment and constitutional route, but it does make it clear what we are trying to do.

9.15 am

Liam Byrne: The right hon. Gentleman is absolutely right. A debate on the effects of a British version of the first amendment would be very welcome.

When the Minister replies, he could helpfully inform the Committee about a couple of things. First, it would be useful if he took the opportunity to tell us more about how pre-litigation chilling action is to be policed. Schillings, Mishcon de Reya and all the others are perfectly capable of moving their investment to the

[Liam Byrne]

pre-litigation phase. They will do their damnedest to find their way around the provisions of this Bill, because frankly they are being paid too much not to do so. I would like to hear from the Minister about that.

Secondly, I would like to hear from the Minister—his words will be important, because they will be read by judges when they interpret the Bill—on whether he will put on the record today, in this Committee, some security around delivering the right hon. Gentleman's objectives. The Bill aims to maximise the latitude for free speech in this country, an important objective that the Minister needs to share with us.

I have further comments to make, but they are probably best dealt with in our debate on clause 2. There are some important issues around the thresholds at which this Bill kicks in and the permissive environment that might be created for bad behaviour that may fall just short of the prohibitions in the Bill, but may none the less be fatal to the humble journalists and news outlets who do such valuable work.

The Chair: Before I bring in the shadow Minister, I remind colleagues that electronic devices should be absolutely silent. Somebody's phone keeps pinging; I do not know whose it is, but could you all check your phones so that it does not happen again?

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship again, Ms Elliott. I am pleased to speak to clause 1 stand part. I commend my hon. Friend the Member for Caerphilly on his private Member's Bill. Its aim to legislate for the remaining SLAPP cases not covered by the Economic Crime and Corporate Transparency 2023 is welcomed by the Law Society, which says that

"it's in the public interest that our justice system works for all people regardless of their means and produces fair outcomes."

I praise the long-running campaign led by free speech organisations, media practitioners and parliamentarians that forms the backdrop to this Bill. Those organisations include the UK Anti-SLAPP Coalition, which was formed in 2021 and has campaigned for changes to the law to address SLAPPs, as well as supporting individuals targeted by SLAPPs.

Clause 1 sets the stage for action that is long overdue. I am sure that all Committee members agree with the Bill's important ambition of preventing abuses of the administration of justice. This Bill is about inequality under the law and how we address it. The Opposition supported it on Second Reading and, significantly, it received endorsement across the Benches. From the Front Bench, my hon. Friend the Member for Cardiff West (Kevin Brennan) noted:

"Labour has long recognised the danger posed by SLAPPs to our democratic values."—[*Official Report*, 23 February 2024; Vol. 745, c. 963.]

I recognise that the Bill could be stronger, but we are content that it is necessary to bring about important change. We would not want to lose the Bill altogether or disrupt its progress. We recognise the importance of striving for a balance between the legitimate right to sue and freedom of expression. We would not want to close the door on individuals getting a remedy in court in appropriate cases.

As we have heard, clause 1(1)(b) will allow claims to be struck out if

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

I am mindful of the Law Society's concerns that this measure will shift the onus of proof to the claimant in applications to strike out a claim:

"This represents a high threshold that a potential claimant would have to reach simply to be able to bring a claim. The test makes no allowances for cases in which a claimant may have a meritorious case but may not be able to demonstrate at the outset sufficient evidence to meet the threshold. This therefore has potential consequences for access to justice."

I invite the Committee to discuss these concerns. Perhaps my hon. Friend the Member for Caerphilly will outline in a little more detail why clause 1(1)(b) is drafted as it is, or perhaps the responsibility for sorting this out falls to the Minister.

I turn to new clause 1. I am pleased, and unsurprised, to see the right hon. Member for Haltemprice and Howden contributing to the Bill. His campaigning against lawfare cases is well known, and I pay tribute to his tireless commitment to shining a spotlight on the issues and calling for action. I heard the concerns that my hon. Friend the Member for Caerphilly has expressed about some aspects of the proposed new clause. I hope that the Minister will provide an appropriate response to the right hon. Member for Haltemprice and Howden and perhaps see how we can help him in his ambitions for the Bill on Report.

The Parliamentary Under-Secretary of State for Justice (Mike Freer): It is a pleasure to serve under your chairmanship, Ms Elliott.

I will not detain the Committee long. I wish to state my support for the hon. Member for Caerphilly in introducing the Bill, and for the approach that he has taken in steering it forward. However, I will try to address all the concerns raised by various parties—not least the constructive and weighty contributions from right hon. and hon. Members.

As we have heard, SLAPPs are the purview of corrupt individuals seeking to stifle free speech and a free press by abusing our courts and our laws, and to undermine our democracy. No matter who brings the case, SLAPPs must always be recognised as an affront to our renowned courts and legal system, and they should be tackled swiftly.

The Ministry of Justice has been keen to ensure swift passage of the Bill, and I pay tribute to the officials who have provided support to the hon. Member for Caerphilly and other Members in trying to fine-tune it. I gently say to the right hon. Member for Birmingham, Hodge Hill that the Department has certainly not been a roadblock—quite the reverse. We have been doing our best to ensure a swift and smooth passage.

Strategic litigation against public participation is a bullying display of power designed to silence investigations and reporting in the public interest. SLAPPs cause harm not only by stifling public comment but by forcing its removal or editing, leaving a sanitised version of events that may far underplay the true severity of the information covered. They discourage journalists, academics and campaigners from investigating issues in the first place, using intimidation to ensure that matters of public

interest remain hidden, and leave the British public in the dark. The effect of SLAPPs is pernicious, and we cannot allow our media to be helpless to act to expose the actions of some people and organisations due to aggressive legal tactics and unlimited resources.

Liam Byrne: I hope the Minister did not mishear me: I was hoping to ensure that the Ministry of Justice does not become a roadblock in the future. I am very grateful for the work that he has done so far. Will he use this moment to put on the record whether he agrees with subsection (1) of new clause 1, tabled by the right hon. Member for Haltemprice and Howden? It provides that the Bill's purpose should be interpreted as being

"to protect and promote the ability of individuals and organisations to participate in public debate, advance accountability, and speak out on matters of public interest, and to prevent the use of the courts to undermine these rights through abusive legal action".

Is that basically the intent of the Bill?

Mike Freer: Let me take this opportunity to address two points that the right hon. Gentleman has raised. First, on pre-litigation issues, I will have to write to him to ensure that I get correct the rights that the Lord Chancellor, the Department or the courts will have before a matter gets to court. I will make sure that I get the details so that I do not misinform him.

We cannot support new clause 1, tabled by my right hon. Friend the Member for Haltemprice and Howden. As I have said to him, I am more than happy, between now and Report, to sit down and try to flesh out where we can find more agreement, but at this stage we cannot support the new clause. While we support the whole thrust of what he is trying to achieve, we feel that the Bill has actually—

Sir David Davis: The Minister has now said twice that the Government support the thrust of new clause 1. Given the consensus that we have maintained from the beginning, I would rather not divide the Committee. Alongside me, the right hon. Member for Birmingham, Hodge Hill has been the primary driver on this issue since—I cannot remember the actual date, but it was the day after I called for Boris to go. That is the new reference point: not anno Domini, but anno B, after Boris.

If the Minister agrees with the thrust of the new clause, and if he will come back on Report with an equivalent that makes it plain to the judges what the Bill proposes, I will not press it—but I do need that undertaking.

Mike Freer: I can give the undertaking that I will work with my right hon. Friend and the right hon. Member for Birmingham, Hodge Hill to try to ensure that the Bill meets those objectives. We believe that the Bill creates a balance of rights and responsibilities that ensures that we protect free speech while balancing the rights of both claimants and defendants, so that the bad behaviour that has been documented is addressed. Also, the examples of bad behaviour in the Bill and the explanatory notes are not exhaustive.

Liam Byrne: I am very grateful for that constructive reply, but I want the Minister to underline and crystallise the point for the Committee: he is saying that the Government support the thrust of the right hon. Gentleman's new clause.

Mike Freer: I think the whole Bill supports the thrust of protecting freedom of speech. Equally, as the right hon. Member for Birmingham, Hodge Hill mentioned, we do not have a first amendment, so there is a nervousness about going down a path of establishing some form of first amendment, as the Americans have. We want to ensure that the Bill maintains a balance between claimants and defendants while protecting defendants who cannot protect themselves from the pernicious behaviour that we have all seen and read about.

Sir David Davis: I raised the first amendment issue, and the right hon. Member for Birmingham, Hodge Hill was responding to that. This is not a first amendment clause at all. The Minister knows as well as I do that, throughout the debate, the argument has been about how the judges will interpret every clause. The fact that the hon. Member for Caerphilly will move the other amendments today indicates that we did not get that balance right in the beginning; indeed, we might have made the problem worse. That is what this is about.

As I said, I do not want to divide the Committee if I can avoid it, and I seek an undertaking from the Minister. The alternative is to bring the new clause back on Report and then whip the thing on behalf of our own argument.

Mike Freer: I repeat my offer to my right hon. Friend and the right hon. Member for Birmingham, Hodge Hill: I am happy to discuss how we ensure that we come to an agreement that the Bill delivers what they want to achieve. However, we believe that new clause 1 is not necessary. Of course, if they believe that the Bill still needs it, my right hon. Friend has the right to move it during the remaining stages.

The offer is there: let us try to work together to see whether we can bridge the gap and persuade each other that we are right. At this point, the Department's view is that the Bill creates a balance of rights and responsibilities while addressing the bad behaviour and listing, but not exhaustively listing, what bad behaviour will be curtailed.

Liam Byrne: I am grateful to the Minister for his characteristic generosity. He has just told the Committee that he does not think that new clause 1 is needed and that the intention of the Bill as a whole is to support the objectives of the new clause. The new clause is very carefully drafted. It states:

"The purpose of this Act is to protect and promote the ability of individuals and organisations to participate in public debate, advance accountability, and speak out on matters of public interest".

It therefore falls short of an American first amendment-style provision and, in that sense, has been quite carefully sculpted. I am grateful to the Minister for saying that he does not think it is needed because that is the thrust of the Bill overall, and it is important that that is on the record. I am happy to work with the right hon. Member for Haltemprice and Howden and others to ensure that we have got that beyond doubt.

9.30 am

Mike Freer: We broadly agree, I think, that the Bill is in a good place, but the right hon. Gentleman may wish to take us up on our offer to discuss further why we

[Mike Freer]

believe that the Bill strikes a balance in achieving what he wants to achieve while protecting rights and balances when it comes to claimants and defendants. It will stop the pernicious behaviour that we know has been happening while, equally, ensuring that there are no unintended consequences or problems with other rights and responsibilities that could have resulted from the new clause. Let us park that for now and try to flesh the issues out between now and Report. I realise that my right hon. Friend the Member for Haltemprice and Howden and the right hon. Member for Birmingham, Hodge Hill reserve their right to move an amendment at a later stage.

The Government firmly believe that clause 1 creates the most appropriate and effective framework for courts to deal with SLAPPs, allowing such claims to be dismissed swiftly. There will also be a fair and proportionate assessment of whether any such claim or part of it should be allowed to proceed, and a fair and proportionate costs sanction should it do so. Allied to the other provisions in the Bill, that framework will ensure that courts will be able to properly tackle SLAPPs in a fair and proportionate way, to ensure that justice to both claimants and defendants is done.

Although the Government share the important concerns raised by my right hon. Friend the Member for Haltemprice and Howden and the right hon. Member for Birmingham, Hodge Hill that the purpose of the Bill should be achieved in practice, they consider that the current draft will do so. As I said, we have significant concerns about the possible unwarranted effects of the purpose and interpretation provision in new clause 1. That is why I have made the offer to sit down and work through whether we can find some form of agreement.

I want to put it on the record that we have given careful thought to ensuring that public participation and free speech are protected and that all convention rights are also protected. These reforms are carefully balanced to protect access to justice—a fundamental tenet of our legal system—and to provide the courts with the ability to broadly interpret and apply the principles, to make sure that no devious misuse of litigation is left unaddressed.

Damian Collins (Folkestone and Hythe) (Con): Before the Minister brings his remarks to a close, I would like to go back to new clause 1, tabled by my right hon. Friend the Member for Haltemprice and Howden (Sir David Davis). Does the Minister think it important that, in passing this legislation, the Committee and the House should give some direction that considers that people with a public profile should be subjected to greater accountability and debate and that they are different from ordinary private citizens? Should judges take into account whether the criticism of a high-profile person is fair comment in an open society because they are a public figure and different from a private person who would never seek the public eye?

Mike Freer: I am not a lawyer, so I will not be tempted down the path of discussing whether certain people should be subject to greater or less scrutiny in the eyes of the law. In my view, the law applies equally; it is up to the judges to interpret the intention of the Bill, which we have clearly laid out in what we have said and in the explanatory notes. We are seeking to redress the balance when it comes to the rich and powerful misusing our courts, and to protect freedom of speech. I do not want to say that certain people should have more or less scrutiny; I leave it to the judges to clearly interpret the intent of the Bill and the House through the Bill itself, the explanatory notes and the words that right hon. and hon. Members have spoken.

Damian Collins: Does the Minister agree that one of the challenges that judges will always face is that every claimant will say that their cause is just and reasonable and that great hurt and offence has been caused by what has been written and said about them? It is important that judges have the confidence to know when they can make a call to say that the litigation is strategic rather than legitimate.

Mike Freer: I believe that the Bill itself, the explanatory notes and comments made by right hon. and hon. Members will give clear direction to the judges so that they understand the intent of the Bill, which is not to stifle a defendant's access to justice but to stop the bad behaviour that we have seen. Judges will know the intent of the Bill in respect of those seeking to bring the rich and powerful to account or to shine the light of good journalism—the disinfectant of sunlight—on inappropriate actions; equally, however, everyone must have their right to justice as well.

Alex Cunningham: Will the Minister address directly the concerns of the Law Society in relation to clause 1(1)(b)? The clause states that a claim can be struck out if the claimant

"has failed to show that it is more likely than not that the claim would succeed at trial."

In other words, the onus in terms of proof is shifted on to the claimant rather than the defendant. The Law Society says:

"This represents a high threshold that a potential claimant would have to reach simply to be able to bring a claim."

Mike Freer: It was certainly not the view of the hon. Member for Caerphilly or the Department that the amendments should be accepted, because we felt that the arguments put forward by the Law Society were not supported and that our Bill created a careful balance. In a nutshell, we did not agree with what the Law Society put forward—neither the amendments nor that particular argument. We think the Bill creates a careful balance between claimants and defendants, and we support it.

Sir David Davis: On a point of order, Ms Elliott. I have listened to the Minister carefully, and my interpretation is that he will seek to resolve this problem before Report. I will therefore not press new clause 1 today and will seek consensus across the board. However, I give notice that if we do not resolve this issue, it will come back on Report.

The Chair: Thank you. Would Wayne David like to respond?

Wayne David: What can I say? We have had an excellent discussion this morning. It has been very good indeed and has in many ways got to the core of the issue. I want to genuinely thank the right hon. Member

for Haltemprice and Howden for prompting this excellent debate through his new clause. As I said, I brought forward this Bill to tackle SLAPPs in all their forms and provide protection for free speech in the public interest. The fact that SLAPP claimants can misuse the justice system shows that the right balance between access to justice and protections against abuse of process is currently not being struck. The Bill must ensure that balance, and it has.

I want to stress that the Bill has been carefully drafted to ensure that all litigants are able to properly and fairly exercise their rights of access to justice. It will ensure that attempts by claimants to misuse the justice system in order to limit the rights of defendants to free speech on matters in the public interest cannot succeed. This point is crucial: it will do so without unduly and unfairly preventing claimants from achieving their own rights, such as the right to not be defamed.

New clause 1, however, risks and draws into question that carefully balanced approach. It is undoubtedly well-intentioned and many of us would agree with the sentiments expressed this morning, but it runs a risk of undermining the efficacy of the Bill as a whole; that is, of course, opposite to the intention of the right hon. Member for Haltemprice and Howden. The new clause risks that by introducing new and uncertain concepts into domestic law, such as the right to public participation, and requiring a supremacy of those concepts over other established rights. These are big and important issues.

Sir David Davis: I am afraid that, perhaps for the first time in all this, we disagree on something. The right to free speech and public participation is not new in British law: it goes back to Magna Carta.

Wayne David: I am not familiar with Magna Carta, but I suspect our common law has moved on somewhat since then.

The uncertainty about the scope and effect of the new clause also raises the somewhat unfortunate spectre of new and unexpected avenues for litigation, when these measures are intended to do the exact opposite. I am clear that the drafting of the Bill makes its purpose transparent. It is a purpose that is consistent with rights already established in domestic and international law and that addresses the fundamental need to ensure access to justice for both claimants and defendants.

Chris Clarkson (Heywood and Middleton) (Con): Does the hon. Gentleman agree that at the heart of this is the application of the reasonableness test? Although I agree with the thrust of new clause 1, I think there is an opportunity to apply the existing framework to achieve its goals. As my right hon. Friend the Member for Haltemprice and Howden said, the idea of freedom of speech and public participation is already a fundamental part of our common law, but even when we are applying the reasonableness test we often give judges instruction on how they should interpret reasonableness. Does the hon. Gentleman think that there is an opportunity to ensure, before Report, that we have embedded that concept?

Wayne David: I am a very reasonable person—[Hon. Members: "Hear, hear."] I am glad that all Members agree.

Sir David Davis: He's the good cop.

Wayne David: This is a crucial test, which will be addressed, I am certain, in clauses that we have yet to discuss. There is much to be said for providing a clarification, and that is one of the central things that we will come on to in a few moments' time.

Adam Afriyie (Windsor) (Con): I very much support the direction of travel in new clause 1. Would it not be fairly straightforward for the Minister, even at this stage—although perhaps he does not have the words available—simply to confirm the intention, which might then negate any need for the new clause?

Wayne David: In fairness, the Bill's intention is clearly expressed in the clauses that we have before us. I accept that the discussion will be ongoing; nobody is saying that it is the end of the matter, but as things stand, I think it is fair to say that there has been a great deal of discussion and a great deal of investigation of different options, and that this is the best consensual position that we have established to date. Although of course the debate will continue, I have yet to be persuaded that there is a sound and definitive case for changing what we have before us.

I believe that the Bill provides a sound framework and guidance to our independent judiciary to deal with the serious harm that SLAPPs can cause. Judges are well versed in interpreting provisions, assessing evidence and, ultimately, ensuring that justice is done. I believe very strongly that we must be careful here, because unclear direction or too much direction risks creating difficulties—more difficulties than it resolves. Words have to be precise.

Although I thank the right hon. Member for Haltemprice and Howden for his continued commitment on the issue of SLAPPs and his consideration of the Bill, I consider that new clause 1 at the moment goes a bit too far. It risks undermining, and certainly draws into question, the careful balance that the Bill strikes, as well as the efficacy of the provisions, and it potentially complicates unnecessarily the Bill's onward passage, and not just in this House; let us remember that it has to go to the other House as well.

Clarification is always needed, and the debate will be ongoing. I understand that the Government are prepared to provide clarification in the appropriate place, such as the explanatory notes. That is extremely important, because the explanatory notes provide the clarification for the Bill and add substantial meaning to it.

Sir David Davis: May I just say to the hon. Gentleman that I have viewed many court cases in my time and I have heard judges refer explicitly on many occasions to the wording of the law, but I have never yet heard them refer to explanatory notes?

Wayne David: The right hon. Gentleman might not have heard judges refer explicitly to explanatory notes, but I know it to be a fact that judges quite regularly provide interpretations and receive information derived from them, so I suggest to him that explanatory notes are very, very important. The two—the legislation itself and the Government's official explanatory notes—should go in tandem.

[Wayne David]

I am delighted that the right hon. Gentleman has decided not to press his new clause. I can assure him that I, like the Minister, will ensure that the discussion continues, because this is an important debate. We have had a good discussion this morning; this is not the end of the matter, but it is important at this point to affirm that we stand by what has been put forward. I am delighted that the right hon. Gentleman will not press his new clause, because it would be unfortunate to divide the Committee on an issue on which there is so much genuine understanding and consensus. I thank him for not pressing it, and I give a commitment that the debate will continue.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

Meaning of "SLAPP" claim

9.45 am

Wayne David: I beg to move amendment 1, in clause 2, page 2, line 6, at end insert—

"(aa) the claim relates to an expression or potential expression made or to be made by the defendant which discloses or would disclose information relating to a matter of public interest;".

This amendment and amendments 3, 4, 8 and 9 re-order themes in the subsection so that the public interest is referred to before freedom of speech.

The Chair: With this it will be convenient to discuss the following:

Amendment 11, in clause 2, page 2, leave out lines 7 to 18 and insert—

"(a) the information that is or would be disclosed by the defendant relates to a matter of public interest;

(b) the claimant's behaviour in relation to the matters complained of in the claim is such that it is reasonable to conclude that the behaviour has, or is intended to have, the effect of restraining the defendant's exercise of the right to freedom of speech; and

(c) any of the behaviour of the claimant, including leading up to or alongside the claim, in relation to the matters complained of in the claim is such that it is reasonable to conclude that the behaviour is intended to cause the defendant any other harm or inconvenience beyond that ordinarily encountered in the course of properly conducted litigation.

(1A) In subsection (1)(c) the reference to 'harm' includes, but is not limited to, a reference to any of the following—

(a) expense,

(b) alarm,

(c) harassment or distress."

Amendment 2, in clause 2, page 2, line 8, after "claim" insert

"is such that it is reasonable to conclude that the behaviour".

This amendment ensures that the condition in subsection (1)(a) is met if the court determines that it is reasonable to conclude that the claimant's behaviour has or is intended to have the effect in question.

Amendment 3, in clause 2, page 2, line 9, after "exercise" insert

"by that disclosure or potential disclosure".

See the explanatory statement for amendment 1.

Amendment 4, in clause 2, page 2, line 10, leave out from beginning to "and" in line 11.

See the explanatory statement for amendment 1.

Amendment 5, in clause 2, page 2, line 13, after "claim" insert

"is such that it is reasonable to conclude that the behaviour".

This amendment ensures that the condition in subsection (1)(c) is met if the court determines that it is reasonable to conclude that the claimant's behaviour is intended to have the specified effect.

Amendment 6, in clause 2, page 2, line 14, leave out sub-paragraphs (i) to (iii) and insert "any harm or inconvenience".

This amendment and amendment 7 restate sub-paragraphs (i) to (iii) for the purpose of clarifying the condition in subsection (1)(c).

Amendment 7, in clause 2, page 2, line 18, at end insert—

"(1A) In subsection (1)(c) the reference to "harm" includes (but is not limited to) a reference to any of the following—

(a) expense;

(b) harassment;

(c) alarm;

(d) distress."

See the explanatory statement for amendment 6.

Amendment 8, in clause 2, page 2, line 20, leave out "or (b)".

See the explanatory statement for amendment 1.

Amendment 9, in clause 2, page 2, line 23, leave out "(1)(b)" and insert "(1)(aa)".

See the explanatory statement for amendment 1.

Amendment 10, in clause 2, page 2, line 23, leave out from second "the" to end of line 24 and insert

"matters that are of 'public interest' include (but are not limited to) the following—".

This amendment rephrases the opening words of subsection (3) so as to make it explicit that matters of "public interest" are not limited to the specified matters.

Amendment 12, in clause 2, page 2, at end of line 39 insert—

"(ba) the use of dilatory strategies, excessive disclosure requests, disproportionate or unreasonable pre-action threats, or any refusal without reasonable excuse to resolve the claim through alternative dispute resolution;

(bb) the choice of jurisdiction;

(bc) the use of public relations campaigns to bully, discredit or intimidate the defendant;".

This amendment sets out a wider context of SLAPPs.

Clause stand part.

Clauses 3 and 4 stand part.

Wayne David: I will turn shortly to amendment 1 and the other amendments in my name, but I will first address the function of clause 2, which creates a statutory definition of what constitutes a SLAPP claim, so that courts can effectively identify such misuses of our justice system. It will mean that a case will be considered a SLAPP if each limb of a three-part test is met: a defendant has had their freedom of speech restrained, the story is a matter of public interest, and the claimant's behaviour has been harassing, alarming or distressing to the defendant, including by running up inappropriate expense or inconvenience "beyond that ordinarily encountered" in litigation.

Before discussing my amendments, I want to recognise the targeted, constructive efforts by stakeholders who have invested time by providing feedback on the Bill, to ensure that those at risk of SLAPPs receive the backing they need to curtail abusive proceedings in the courts. I am also grateful for the work and support of the Government, who have shown their commitment to cementing the UK's reputation as a jurisdiction that values free speech and broad public participation.

I will start with amendment 1 and will also speak to amendments 3, 4, 8 and 9, which are consequential to it. In short, amendment 1 seeks more prominently to convey the Bill's purpose by reordering the first two of the three components of a SLAPP so that public interest is given the primary position in clause 2, ahead of free speech. The amendment does not diminish or undermine the importance of an expression of freedom of speech or the claimant's misconduct in the identification of a SLAPP. Each of the three components in clause 2 must still be present for a case to be found to be a SLAPP. Public interest considerations are at the heart of SLAPP cases, and amendment 1 reflects that importance. Accordingly, I commend the amendment to the Committee, alongside amendments 3, 4, 8 and 9, which are required for drafting purposes if clause 2 is reordered as proposed.

Amendments 2 and 5 seek to ensure that there is an appropriate degree of objectivity in the intention test when considering the effects a claim has on a defendant's freedom of speech and the misconduct of the claimant in pursuing the claim. That is achieved by introducing the concept of reasonableness. The amendments will allow the court to consider the claimant's behaviour in terms of whether it is reasonable to conclude, based on their conduct, that the claimant intended to restrict the defendant's freedom of speech and to cause harm. Any harm beyond what can be reasonably expected to be incurred in the course of properly conducted litigation—bearing in mind that by its very nature, litigation is stressful and inconvenient—would result in the case being identified as a SLAPP and being struck out.

Adam Afriyie: On a point of clarification: I am not a lawyer either, but under the amendment, if a judge were to determine that a case were a SLAPP and strike it out, could he do so partially? Is there a mechanism by which the claimant can appeal the initial strike-out?

Wayne David: Like the hon. Gentleman, I am not a lawyer—

Adam Afriyie: I apologise for asking the question!

Wayne David: I will seek clarification, as I am a layperson. My understanding is that the judge's decision is definitive and will achieve the desired effect.

The introduction of reasonableness will give the court a clear ability to draw conclusions about a claimant's intention from all the objective evidence before it. That evidence will be from both the claimant and the defendant, and its extent will be controlled by the court. The court will also be able to determine the degree to which it is tested, and will therefore be in a proper position to infer from it whether the necessary intention from the claimant is present, so as to warrant the case being found to be a SLAPP. Amendments 2 and 5 will assist courts in ensuring that an objective and fair assessment is made of whether the case is a SLAPP.

Amendments 6 and 7 clarify the misconduct element of the test to decide whether a claim is a SLAPP. They respond to concerns from stakeholders who said that the original formulation of the clause suggested that there is a level of harassment, alarm and distress that is acceptable to pursue as a tactic to cause intimidation in conducting litigation. That was never the intention, and I wish to make that point firmly and very clearly.

The intention of the clause is to isolate claimants who are perpetrating misconduct in the way in which they are pursuing their claim. It will separate those who are using litigation as a weapon from those who have a legitimate grievance and are behaving properly in conducting their case. These amendments will mean that a defendant will be able to assert that, through improper behaviour, a claimant has caused them harm. In making that claim, the defendant will be able to invoke harm of any sort, including but not limited to harm, distress, expense, inconvenience or harassment. I consider that this new formulation will assuage the legitimate concerns raised by stakeholders and parliamentarians alike. It is therefore extremely important.

Sir David Davis: In many ways, this goes to the heart of the argument that we have had throughout all this. The truth of the matter is that anybody in receipt of normal judicial action in an ordinary defamation case faces distress and expense. A person who receives a lawyer's letter at the beginning of such a claim suffers, if not a nervous breakdown, then something quite close to it, so this is quite difficult to elucidate. I know that the hon. Gentleman takes that point.

Wayne David: The right hon. Gentleman makes an extremely important point that gets to the heart of the Bill. Such cases are extremely stressful and cause all manner of feelings, which are clearly indicated here, and often enormous expense. One of the things that is recognised in this Bill is that in many cases that is quite deliberate. SLAPP cases are often designed to cause a maximum amount of distress, alarm and expense to defendants. That is precisely what we want to iron out of the system to introduce an objective fairness, so that cases are really judged on their merits and not on what quite often happens behind the scenes. I consider this new formulation to be much stronger than what we initially had in mind, and it is therefore very important and appropriate. I very much hope that it receives the full support of this Committee.

Finally, amendment 10 seeks to clarify the scope of "public interest" as set out in clause 2(3). That is achieved by amending the language so that it is clear that the list of matters in the "public interest" is not exhaustive. This amendment will assist the court in the identification of SLAPP claims and ensure that all relevant claims can be dealt with under the scope of this Bill. It brings greater clarity to the definition of "public interest" in the Bill and addresses concerns from parliamentarians that the Bill would not achieve its aim of identifying SLAPP claims as currently drafted. I commend amendment 10 to the Committee.

For completeness, I note that clause 3 will amend the Economic Crime and Corporate Transparency Act 2023 by removing the provisions for SLAPPs that relate to economic crime. Sections 194 and 195 of the ECCTA are no longer required as this Bill's provisions will capture all SLAPPs, including those that feature an

[Wayne David]

element of economic crime. The measures in this Bill will deal with SLAPPs in the round, and not just those related to economic crime currently contained in the 2023 Act. In other words, this is a holistic approach that encompasses all SLAPPs and should be recognised as such.

Clause 4 sets out the legal jurisdictions to which the provisions will apply and the commencement of this legislation. The Bill applies only to England and Wales, as justice is a devolved matter, and it will be for the Administrations in Scotland and Northern Ireland to consider whether and how they wish to legislate to address the challenges that SLAPPs represent in their own jurisdictions; I very much hope that they will follow our good example. Although the Bill will take effect two months after Royal Assent, it will be implemented in full once the necessary rules of court have been developed by the Civil Procedure Rule Committee; those will come into force through secondary legislation.

On that basis, I commend clause 2, as amended by the amendments in my name, and clauses 3 and 4 to the Committee.

Sir David Davis: I have just looked with amusement at the selection list. The grouping of amendments under clause 2 reads:

"1 [David] + 11 [Davis]…10 [David] + 12 [Davis]"

I am not responsible for all of them—the hon. Member for Caerphilly and I are brothers in arms, but not brothers. I agree with every single amendment that he has tabled in his name; they will all improve the Bill. They also demonstrate that the Bill was very flawed before, as indeed was the Economic Crime and Corporate Transparency Bill, to which there is also an amendment here. I am afraid that that demonstrates that the Government's original approach was not as thought-through as it should have been.

The two amendments in my name both seek to do the same thing: to broaden the view of the judge, when they are making a ruling on whether a case is a SLAPP case, to the extrajudicial behaviour outside the court room, included in which is the selection of forum. If someone were to pursue a court case in London rather than in their domestic court, that would be an indication that they were seeking to exploit our laws in pursuit of a SLAPP.

In some ways, the point about extrajudicial action is even more important. It is that the actions taken against the individuals on the receiving end of SLAPPs are intimidatory and bullying in a whole series of extrajudicial ways. I should think everybody on the Committee knows about the cases of Tom Burgis, Catherine Belton and our erstwhile colleague Charlotte Leslie. Intimidatory social media campaigns, threatening phone calls, not-so-subtle surveillance, hacking—the list goes on and on.

10 am

For the Committee's benefit, I have also picked out a couple of other cases that iterate that and show quite how widespread the behaviour is. For example, during the course of a five-year investigation into Wirecard, Dan McCrum, a journalist at the *Financial Times*, stated that he was subject to

"furious online abuse, hacking, electronic eavesdropping, physical surveillance and some of London's most expensive lawyers."

I have another two, which, frankly, are the most chilling of all. The first was a target of legal action brought by a property investment trader, who was the victim of misogynistic harassment. That included a website being launched that smeared her reputation, multiple misogynistic videos uploaded and shared online, the offering of rewards to the claimant's followers if they contacted her, as well as her details being shared online, presenting her as a sex worker. That led to numerous unsolicited phone calls at her home address. The other person was targeted through a social media channel on Twitter, which exclusively tweeted at the defendant while a legal case was ongoing. We do not know that that was done by the plaintiff, but it was notable that the channel disappeared once there was a settlement.

We also have Clare Rewcastle Brown, the journalist who was instrumental in uncovering the Malaysian 1MDB scandal. She gave evidence to the House of Lords, in which she stressed how much the legal intimidation

"is actually pre-action litigation that people do not hear about."

She outlined how she was subject to a smear campaign, online harassment and surveillance as a result of her work, on top of many legal threats.

Finally, the International Press Institute has spoken out about how damaging online harassment and smear campaigns are to journalists' reputations. That is important, because journalists live on their reputation and the public's trust in them. An assault on that reputation is a strike at the very heart of free speech and a free press in our country.

That is why I have tabled amendments 11 and 12. I do not propose to press them to a vote today, because they are flawed and do not take on board the changes that have taken place since our last meeting with the Department. However, I ask the Department and the Minister to look very hard at them, because I would prefer to table an agreed set of amendments on this matter on Report. I do not think anybody could fail to agree that there is a problem here that the Bill does not explicitly address. It is true that the judge could look outside; however, there is no requirement in the Bill for them to do so. I believe that there should be, because this is in many ways the nastiest element of SLAPPs.

Apsana Begum (Poplar and Limehouse) (Lab): I commend my hon. Friend the Member for Caerphilly for bringing this important Bill to the House and getting it to this stage. Like many colleagues, I was at the first debate on lawfare in January 2022 and I am now most grateful to serve on this Committee. I also thank campaigners for what they are doing to prevent the misuse of litigation to suppress freedom of speech, including the campaign groups and campaigners working against the use of the law to silence survivors of domestic abuse and violence.

Democratic and press freedoms are fundamental to our rights and to challenging corruption and the abuse of power. That is why I remain concerned that the Bill has been drafted with too much focus on attempting to balance competing interests within the legal profession, instead of protecting public participation and the fundamental rights of free expression and access to a fair trial. Indeed, we know that the Government have been heavily lobbied by—and, as has been mentioned, have had substantial input from—the very lawyers who bring SLAPP claims.

In particular, colleagues will be aware that the Anti-SLAPP Coalition takes issue with the wording of clause 2(1)(c) because it argues that the wording assumes that there is an acceptable level of "harassment, alarm or distress", and harm, that a claimant can intentionally inflict on a defendant. It also has a narrow scope, focusing only on conduct directly related to litigation, which leaves claimants free to continue with much of the pre-litigation conduct, and abusive behaviour conducted in tandem with litigation, that make SLAPPs so egregious and hard to monitor.

I am minded to agree with campaigners that it must be clear that claimant behaviour that is intended to harass, alarm and distress, and that harms, is combined with other factors in clause (2)(1)(c) indicative of a SLAPP claim, and that there should be no threshold below which this behaviour is acceptable. Likewise, abusive claimant behaviour prior to and alongside the claim itself should be in scope.

I place on the record my support for amendments 2 and 5, which stand in the name of my hon. Friend the Member for Caerphilly, which seek to ensure that a court can reach a conclusion about a claimant's intent based on a reasonable and more objective interpretation of their behaviour, rather than rather than an overly subjective inquiry into their state of mind. That would retain the test of a claimant's intention while mitigating the threat of complex, costly and lengthy satellite litigation, which has already been discussed. I am concerned that campaigners and experts are warning that without these amendments, there is a risk that this Bill's early dismissal mechanism could render the legislation redundant.

As chair of the all-party parliamentary group on domestic violence and abuse, and having had first-hand experience of how SLAPPs can be used to silence women, I want to ensure that we consider the ability of abusers to weaponise litigation. Back in 2021, the UN special rapporteur on freedom of expression, Irene Khan, warned about gendered censorship taking place around the world. I have also spoken extensively about this issue, and she rightly pointed out that there is currently an imbalance in the system between "his" right to reputation and, usually, "her" right to free speech.

Having spoken extensively about defamation and public interest defences in this regard, I think that we should aim to have a future free from perpetrators being able to abuse the courts and pursue litigation in this way. I therefore support my hon. Friend's amendment 10 on the definition of "public interest". It seeks to ensure that the Bill does not privilege certain types of public interest speech and create an unnecessary and problematic hierarchy that could, as I understand it, cut across principles in the Defamation Act 2013 and data protection law, making it harder for defendants to use the full scope of available defences.

Adam Afriyie: I will not keep the Committee too long. I just want to say that I have sat on many Committees in my 19 years here, and I think that this Committee is a testament to the strength of Parliament in scrutinising legislation that clearly we all want to see. It highlights the nuances of differing views on constitution versus freedom of speech versus public interest, so I very much understand the reason for each one of these amendments.

There is a lot of debate around each amendment, but I suspect that actually the Government and pretty much every MP would agree with the intention of all of them. The question is about the precision of how they are delivered. I rise, to be honest, to speak in support of all the amendments in this grouping—not necessarily the precision of them, but the intention behind each and every one. In particular, I speak in favour of amendments 11 and 12, which stand in the name of my right hon. Friend the Member for Haltemprice and Howden.

It does seem to me that as MPs, we see all sides of this issue. We see attacks on ourselves from people trying to suppress what we are about to say on the Floor of the House or elsewhere, but we also observe in our local media that the two little journalists stuck in a local regional newspaper are suddenly facing a massive court case if they write something that, to be honest, is in the public interest and fairly innocuous. We can see things from both sides, which is why, particularly in the debate about these amendments, we are all being very gentle in how we approach things: because we know that there are subtleties that we need to address.

However, I am very keen to see that those who have disproportionate power—whether that is financial power, or in business structures, or in access to lawyers—are kept in check when it comes to behaviours that are clearly designed to harass, intimidate, frustrate and frighten people on the receiving end, whether they are local journalists or media, or even, to be honest, mainstream newspapers that may have financial challenges as well, or individuals such as our former colleague Charlotte Leslie, whose life was made an absolute misery. Nobody in any party would want to see or witness that kind of behaviour, no matter which former MP was experiencing it.

This issue needs to be dealt with and I thank the Government for dealing with it. I also thank all hon. Members on this Committee for examining what needs to change. I am very keen on this group of amendments, because they aim to clarify and define more closely what it is we are trying to deal with. The worst kind of legislation is the kind that we have not scrutinised carefully to ensure that when a judge approaches a matter, they have clear directions and a clear understanding of the intention of this House in forming that legislation.

I hope that in Committee and on Report, we will finally get to a resolution on each of the issues that have been raised here, because it is really important that this piece of legislation gets on to the statute books. However, it is equally important that freedom of speech is defended and that the little guy or the little girl in our society—the small media outlets—are protected from deeply wealthy and deeply aggressive litigants.

Andy Slaughter (Hammersmith) (Lab): It is a pleasure to see you in the Chair, Ms Elliott. I can be fairly brief, as harmony appears to have broken out across the Committee. I would not want to disturb that harmony in any way.

Sir David Davis: Go on!

Andy Slaughter: Well, just a little, maybe.

I congratulate my hon. Friend the Member for Caerphilly on his Bill and particularly on his amendments. They not only clarify the Bill but strengthen it a great deal, especially in relation to the objective test, which, as we

[Andy Slaughter]

discussed at some length on Second Reading, is a necessary change. Without the amendments, the danger is that one of the vices that the Bill seeks to prevent would become apparent in another way—through satellite or preliminary litigation—because we were trying to delve down into what was in the mind of a claimant in the process of bringing a suit. That is a good start.

The right hon. Member for Haltemprice and Howden mentioned pre-litigation risks about actual harassment of defendants and other ways of manipulating the court processes. I find amendment 12, which he tabled, attractive from that point of view. It certainly is the case, and libel cases are the best example, that whole swathes of defendants' lives can be taken up simply by the manipulation of the litigation process.

Above all, and most commonly, this is an issue about costs. We can all imagine what Tom Burgis, Catherine Belton and Charlotte Leslie felt when they received those letters. It is not just about the allegations or the possible reputational damage; it is about the real risk of bankruptcy, or at least having to pay out huge sums of money. It is just common sense that that is bound to suppress free expression and hobble investigative journalism. If the Bill goes some way towards preventing what is commonly described as the chilling effect of such litigation, it will be doing an extremely good job.

It is also true that the use of the justice system to pursue SLAPP claims undermines the rule of law and undermines confidence in the judiciary. There is a question as to whether courts have been manipulated. They have stuck to the rules and dealt with the law as it is, but have been unable to do much about claimants who bring cases for malicious and devious purposes. I often agree with the right hon. Member for Haltemprice and Howden, my right hon. Friend the Member for Birmingham, Hodge Hill and my hon. Friend the Member for Stockton North; I do not agree as often with the Government or the Ministry of Justice, so that is a great pleasure.

10.15 am

I will leave one question hanging in the air that the Minister may want to address. The Government are clearly committed not just to the Bill as it stood on Second Reading, but to the amendments tabled by my hon. Friend the Member for Caerphilly, which I understand they will support. Can he therefore explain why, at the very same time, the Government are legislating in the Media Bill to repeal section 40 of the Crime and Courts Act 2013?

For every Tom Burgis, there is a Kate and Gerry McCann; for every Catherine Belton, there is a Christopher Jefferies; for every Charlotte Leslie, there is a family like Milly Dowler's. However the courts are used to bully or prosecute with ulterior motives designed to silence defendants or make their lives unbearable, the same can be done by any bullying organisation. It can be done by media conglomerates as much as by oligarchs. I see that as a contradiction in the Government's approach, but I am sure the Minister can explain it fully in his response.

Liam Byrne: I have just two points to make on this excellent group. First, I wholeheartedly support the amendments to clause 2 that my hon. Friend the Member for Caerphilly proposes. The Opposition amendments to the Economic Crime and Corporate Transparency Act 2023 were very much a tactical strike on the statute book: here was a Bill that gave us the chance to ensure that we had road-tested similar provisions. Given the narrow scope of that Bill, it was possible to sketch only amendments that tackled economic crime at their core, so I am glad that this Bill gives us the opportunity to go well beyond that and take the holistic approach that my hon. Friend set out in his excellent opening speech.

My second point, which perhaps the Minister or my hon. Friend will address, relates to the concerns that have been well set out by the UK Anti-SLAPP Coalition. It gives me the chance to congratulate the coalition on its extraordinary and steadfast work; I am not sure that we would have arrived at quite the same speed without it. The coalition usefully highlights concerns about clause 2(1)(c), the drafting of which appears to suggest that there is a threshold for the "harassment, alarm or distress"—harm, if you like—that can be permitted. That is not something that we would want to support in this place. I realise that it is difficult to get the balance right, but my hon. Friend the Member for Poplar and Limehouse has spoken eloquently about the risks of creating a space in which there is a level of distress and harm that is permitted. It would be useful for both Front Benchers to crystallise how that issue will be tackled by the amendments in this group.

Alex Cunningham: As we have heard, consensus has broken out. It is all very pleasant, unlike some issues that I have debated with the Minister in the past. I welcome amendments 1, 3, 4, 8 and 9, which will reorder the themes so that public interest is referred to before freedom of speech. My hon. Friend the Member for Caerphilly has more than adequately outlined the necessity of the clauses, and I support his efforts to improve the Bill's application.

I am also pleased to see amendments 2 and 5, which will ensure a more objective approach to the identification of intent. As we have heard, requiring the courts to engage in a subjective inquiry into the mind of a claimant or defendant would create uncertainty and might be practically and evidentially difficult to assess. These requirements could create satellite litigation and uncertainty at an early stage and might have the unwanted effect of introducing further delay and driving up costs.

The definition in the Bill should, at a minimum, include an objective element so that it relates to claims concerning disclosures that are or would be made on matters of genuine public interest. That would make the text similar to section 4(1)(a) of the Defamation Act 2013. I know that the amendments have the backing of the Law Society and the UK Anti-SLAPP Coalition. The News Media Association, a member of the coalition, says that the amendment is required to allow a judge to define a case as a SLAPP based on a reasonable interpretation of a claimant's actions, rather than a complex inquiry into a claimant's state of mind. It agrees that the latter would result in complex, time-consuming and costly legal wrangling that would defeat the object of a Bill intended to dismiss egregious SLAPP cases swiftly.

Amendments 6 and 7 restate sub-paragraphs (i) to (iii) of clause 2 for the purpose of clarifying the condition in subsection (1)(c). They have our support.

Clause 2(3) attempts to set out a definition of "public interest" to help with identifying SLAPP cases. That includes matters such as illegality, false statements, public health and safety, the climate or the environment, or investigations by a public body. Concerns have been raised to me that the original drafting lacks clarity and risks creating problems for implementation; it also proves contradictory in relation to the Defamation Act 2013. I therefore support my hon. Friend's amendment 10, which will go some way towards addressing those issues by making it clear that the list set out in the clause is not exhaustive, and that other matters not specified in the Bill can be considered by the court to be of public interest.

It would not be appropriate to privilege certain types of public interest speech and create an unnecessary and problematic hierarchy. Without amendment 10, the examples in the definition of "public interest" in clause 2(3) would cut across principles in the Defamation Act and in data protection law, making it harder for defendants to use the full scope of defences available at trial. That is because it would naturally be difficult for a court to decide that an article was not in the public interest under the Bill's narrow definition but then take a different course at trial. We are happy to support amendment 10.

Mike Freer: If I may, I will address a few points raised by hon. Members and then make some final remarks.

On the issue raised by my hon. Friend the Member for Windsor about whether it is possible to strike out all or part of the claim or seek an appeal, he is absolutely correct.

I am grateful that my right hon. Friend the Member for Haltemprice and Howden is not pressing his amendments. I reiterate that I am happy to discuss his remaining concerns about the Bill and how it needs to be tweaked before the remaining stages.

On the issue raised by the hon. Member for Poplar and Limehouse, the Department has engaged extensively with the UK Anti-SLAPP Coalition. It is fair to say that we can never get all stakeholders entirely happy, but I am advised that the coalition is broadly supportive of the Bill. On the issue that she raised about behaviour, particularly with respect to domestic violence issues, of course it is not expected that the Bill seeks to facilitate behaviour, as she has outlined, in domestic violence issues. She has specific concerns as to how she believes domestic violence is being facilitated by elements of the Bill. I am more than happy to meet her to go through them in more detail, but we do not believe those concerns will be borne out by the Bill.

On the issue raised by the hon. Member for Hammersmith, I confess that I am not exactly au fait with the Media Bill, but I will be more than happy to write to him about his specific points.

On the points that the right hon. Member for Birmingham, Hodge Hill raised about clause 2(1)(c), of course all litigation causes alarm, but as paragraph 31 of the explanatory notes states, the

"behaviour must be intended to cause the defendant harassment, alarm, distress, expense, or any other harm or inconvenience, beyond that which would ordinarily be encountered in properly conducted litigation."

That broadens it. Of course when someone gets litigation or letters from a lawyer, people are naturally alarmed or distressed, but what is the intent? To what extent does that behaviour meet the criteria and those descriptors in paragraph 31 of the explanatory notes, which clarify the behaviour we are seeking to curtail?

I reiterate that the Bill will protect the individuals and organisations that engage in important public debate. It will advance accountability for those who would obfuscate their dealings, and it will ensure that speaking out in the public interest is given the support that it deserves. The Bill will safeguard our courts, ensuring that our highly regarded legal system is protected from the insidious abuse of process that could undermine its reputation of achieving justice for all.

The amendments tabled to clause 2 by the hon. Member for Caerphilly will ensure that public interest is kept at the heart of the issues, as its suppression is a key hallmark of SLAPP cases. The introduction of the reasonableness component of the test will ensure that inappropriate behaviour and weaponised processes are identified and tackled at the earliest possible opportunity. The centring of the behaviour of the claimant will ensure that it is abundantly clear to those who would use SLAPPs that they cannot act poorly and remain unchecked and unchallenged, whether that behaviour happens in the courtroom, via privately funded surveillance or a social media campaign to undermine the credibility of an author, academic or whistleblower. The Government are content fully to support all 10 of the hon. Gentleman's amendments, which we believe will strengthen the Bill.

With respect to amendment 12, tabled by my right hon. Friend the Member for Haltemprice and Howden, the Government laud his intention to ensure that the Bill is properly drafted so that it captures all SLAPPs. I hope I have reassured him that the matters he raises are in many respects already covered by the existing draft of the Bill for a number of reasons. I repeat my offer to meet him to reassure him further, if necessary.

Sir David Davis: To be clear, I do not think that the Bill, as drafted, meets the requirements. I will not press my amendments to a vote, because they are flawed, but I will table something on Report to deal with the issue. I hope that we can agree on what it should be.

Mike Freer: I thank my right hon. Friend and reiterate my offer to sit down with him and go through this in detail, whether for me to reassure him that the Bill meets his objectives or for him to convince me that we need to go further.

Clause 2(1)(c), to which amendment 12 would add, is broad: "any" behaviour can be considered by the court as evidence of misconduct. Subsections (4) and (5) give examples, but are certainly not intended to be exhaustive lists. Furthermore, many matters in the amendment are covered by clause 2(4). For example, the reference to

"disproportionate reaction to the matters complained of in the claim"

will cover excessive disclosure requests and dilatory strategies, as well as questions regarding the choice of jurisdiction.

The Government expressly support the amendments of the hon. Member for Caerphilly to clause 2 and the reasonableness test. We will not support the amendments that my right hon. Friend the Member for Haltemprice and Howden has tabled but not moved, as we believe that materially they cover the same ground. However, I repeat my offer to meet and see where we can agree.

[Mike Freer]

I reiterate my thanks to the hon. Member for Caerphilly for promoting this important Bill, and I confirm the Government's continuing support for it. The Bill will ensure that all those who speak out against corruption, hold the powerful to account and guard our freedoms through raising their voice are protected.

Wayne David: I thank hon. Members for their contributions. The hon. Member for Windsor is absolutely correct that what we have experienced today and previously highlights the fact that this is a good process. There should be more private Members' Bills and more time allocated to them in the procedures of this House. That is an important point to make.

I am extremely grateful for the knowledgeable contributions from hon. Members, particularly my hon. Friend the Member for Hammersmith and my right hon. Friend the Member for Birmingham, Hodge Hill. I have very much relied on their experience and good advice in the passage of the Bill so far. I also thank my hon. Friend the Member for Poplar and Limehouse for her excellent contribution about her personal experience, which shows clearly why the Bill is required.

It is worth noting that the Bill has changed remarkably during its passage. The amendments to which we are in the process of agreeing will substantially strengthen the legislation. A number of stakeholders have been intimately engaged in the process. The Anti-SLAPP Coalition, to which several hon. Members have referred, has done a remarkable job and many of its suggestions have been directly incorporated into the legislation.

May I particularly thank the right hon. Member for Haltemprice and Howden for his amendments? He noted that it looks rather strange to see the names "David" and "Davis" together on the amendment paper. The only conclusion is that we must both have Welsh blood in our veins—there must be some commonality that transcends our party political differences. His amendments show that his careful consideration has enhanced our process enormously.

On amendment 11, I wholly agree in principle with the right hon. Gentleman's proposal to give the public interest element of clause 2 greater prominence. Indeed, that is why I have tabled amendments 1, 3, 4, 8 and 9, which have the same aim. In view of the specific language in clause 2(1)(a) and (b), I consider that the formulation used in amendments 1, 3, 4, 8 and 9 will better achieve that purpose.

The right hon. Gentleman's amendment 12 was drafted to expand the categories of conduct that show wrongful behaviour on the part of the claimant, in turn expanding the misconduct element of the test to establish whether a case is a SLAPP. The current drafting was purposely designed on the basis of evidence gathered, from stakeholders across the spectrum of views, in the Ministry of Justice's call for evidence. The list is non-exhaustive and allows the court to take into consideration any matter that may be relevant. On that basis, I believe the categories of wrongful behaviour under clause 2 to be more than sufficient to identify whether the behaviour of the claimant amounts to misconduct.

I thank all hon. Members again for their contributions and their participation. I particularly thank the right hon. Member for Haltemprice and Howden for tabling his amendments but not pressing them, which has ensured an excellent debate this morning. I look forward to cross-party unanimity being expressed clearly at the end of our deliberations.

Amendment 1 agreed to.

Amendments made: 2, in clause 2, page 2, line 8, after "claim" insert

"is such that it is reasonable to conclude that the behaviour".

This amendment ensures that the condition in subsection (1)(a) is met if the court determines that it is reasonable to conclude that the claimant's behaviour has or is intended to have the effect in question.

Amendment 3, in clause 2, page 2, line 9, after "exercise" insert

"by that disclosure or potential disclosure".

See the explanatory statement for amendment 1.

Amendment 4, in clause 2, page 2, line 10, leave out from beginning to "and" in line 11.

See the explanatory statement for amendment 1.

Amendment 5, in clause 2, page 2, line 13, after "claim" insert

"is such that it is reasonable to conclude that the behaviour".

This amendment ensures that the condition in subsection (1)(c) is met if the court determines that it is reasonable to conclude that the claimant's behaviour is intended to have the specified effect.

Amendment 6, in clause 2, page 2, line 14, leave out sub-paragraphs (i) to (iii) and insert "any harm or inconvenience".

This amendment and amendment 7 restate sub-paragraphs (i) to (iii) for the purpose of clarifying the condition in subsection (1)(c).

Amendment 7, in clause 2, page 2, line 18, at end insert—

"(1A) In subsection (1)(c) the reference to 'harm' includes (but is not limited to) a reference to any of the following—

(a) expense;

(b) harassment;

(c) alarm;

(d) distress."

See the explanatory statement for amendment 6.

Amendment 8, in clause 2, page 2, line 20, leave out "or (b)".

See the explanatory statement for amendment 1.

Amendment 9, in clause 2, page 2, line 23, leave out "(1)(b)" and insert "(1)(aa)".

See the explanatory statement for amendment 1.

Amendment 10, in clause 2, page 2, line 23, leave out from second "the" to end of line 24 and insert

"matters that are of 'public interest' include (but are not limited to) the following—".*—(Wayne David.)*

This amendment rephrases the opening words of subsection (3) so as to make it explicit that matters of "public interest" are not limited to the specified matters.

Clause 2, as amended, ordered to stand part of the Bill.

Clauses 3 and 4 ordered to stand part of the Bill.

Bill, as amended, to be reported.

10.35 am

Committee rose.