

Our ref: PT/BC

19 October 2021

Mr Peter McCallion,
Clerk to the Committee for Finance,
Northern Ireland Assembly,
Room 349,
Parliament Buildings,
Stormont,
Belfast BT4 3XL.

BY E-MAIL: Peter.McCallion@niassembly.gov.uk

Dear Mr McCallion,

Re: Committee Stage: Defamation Bill

I thank you for your letter 20th September, 2021.

If it is an option, I would prefer to give oral evidence before the Assembly in order to not only explain my concerns regarding Defamation Law reform generally, but also to facilitate any questions from MLAs based on my forty years experience as a media lawyer.

Over the years I have represented politicians from all parties in both Irish jurisdictions. I also represent many journalists and, on the defence side, newspapers and other publishers. I like to think that this has given me a good insight into the expectations and requirements of a broad cross section of the population in the UK and Ireland. I have also acted for many Hollywood A-Listers and other international personalities and companies.

Here are a few links by way of background to my work as published in the media in recent times:

<https://www.irishlegal.com/articles/lawyer-of-the-month-paul-tweed>

<https://www.nytimes.com/2018/05/21/world/europe/facebook-libel-paul-tweed.html>

<https://graziomagazine.com/articles/exclusive-meet-the-most-powerful-man-in-hollywood-who-lives-in-belfast/>

<https://thecurrency.news/articles/28786/the-doyen-of-defamation-paul-tweed-on-smear-campaigns-libel-tourism-and-why-social-media-giants-are-abusing-their-power/>

<https://www.businesspost.ie/extra-interviews/a-case-apart-paul-tweed-interviewed-706661f1>

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I also served on the Committee set up by the UK Ministry of Justice to consider the reforms which resulted in the 2013 Defamation Act in England and Wales.

Nowadays, most of my firm's work is directed against the social media and search engine giants who have established their European, Middle Eastern and African Headquarters in Dublin, thereby subjecting themselves to Irish and European defamation, privacy and data protection laws. Indeed, it is the likes of *Facebook* and *Google*, who believe that they should not be subject to the same regulatory requirements as the mainstream media, who should be the focus of any defamation law review.

Accordingly, my view is that the subject Defamation Bill will be to a large extent ineffective, if not meaningless, unless it is amended in order to place the same responsibilities and requirements on the social media conglomerates.

I would be more than happy to make myself available to give MLAs the benefit of my practical experience on the frontline, by appearing in person before the Assembly. In the meantime I would comment on the twelve policy objectives outlined in your letter and following your order, as follows:

- 1) If my experience in England/Wales is anything to go by, the introduction of the serious harm and other thresholds/limitations has significantly increased legal costs, particularly in the earlier stages of litigation, thereby making it much more difficult for the general population to gain access to the libel Courts;
- 2) On the contrary, the 2013 Act has not in any way deterred the wealthy but, as indicated above, has made the Courts more the preserve of what the Bill sponsor describes as the "rich and influential";
- 3) I have no problem with any measures that are taken to exclude trivial claims. The question is how to fairly define and determine what is a "trivial" claim;
- 4) While I would support some form of protection for scientists and academics, I am not aware of any relevant libel action coming before the Northern Irish courts;
- 5) I totally agree that genuine investigative journalism should be given full and appropriate protection;
- 6) I am not convinced that NGOs require additional protection but would have no strong views;
- 7) I hope that this objective in fact refers to the long overdue regulation of the social media and other internet companies;
- 8) As indicated above, I do not believe that this threshold achieves the purpose for which it was intended i.e. by deterring less serious claims that a Defendant will be less financially exposed. In fact, the reverse is the case whereby argument over what constitutes "serious harm", becomes a legal debate, with the lawyers often the only winners and the losing party left with a higher legal bill much earlier in the proceedings than would otherwise have been the case;
- 9) Although I personally favour juries, for this jurisdiction in particular, given the need to ensure impartiality against the background of the political and religious divide, I am equally content to trust an experienced judge to come up with a fair and proportionate adjudication on liability and damages;
- 10) I have no particular problem with this objective;
- 11) This objective is both inappropriate, naïve and most certainly not fit for purpose when you are up against the almost unlimited financial and other resources available to

Facebook et al. I would urge the Committee to seek and consider the views of legal practitioners who have been in the front line in trying to assist victims of online harassment, abuse, threats and misinformation. Unless drastic action is taken to deal with these conglomerates now, I believe that the objectives behind the Bill will be both academic and a waste of time;

12) I think this proposal is sensible and is already applicable in other jurisdictions.

At the risk of repeating myself, I cannot over-emphasise the importance, and fundamental relevance, of focusing any change in our Defamation laws on dealing with online perpetrators before the situation becomes irretrievable.

Please do not hesitate to contact me if you require any additional clarification at this stage.

Yours sincerely

Paul Tweed

Our ref: PT/BC
Your ref: 2021: 508

13 December 2021

Mr Peter McCallion,
Clerk to the Committee for Finance,
Northern Ireland Assembly,
Room 373, Parliament Buildings,
Ballymiscaw, Stormont,
Belfast BT4 3XX.

By Email: Peter.McCallion@niassembly.gov.uk

Dear Mr McCallion,

I thank you for your letter dated 3rd December, 2021.

Unfortunately due to pressure of work on my part and the tight timeframe you have allowed for a reply, my response will have to be brief and to the point, and supplementing the concerns that I have already expressed in my evidence to the Committee.

As I explained to the Committee, the proposed Section 5 of the Bill would not only be totally ineffective in terms of providing a remedy where offending comments are disseminated around the world in a matter of seconds, but, perhaps inadvertently, also affords some credibility to the assertion that these companies should not be treated on the same footing as the traditional media.

I would therefore submit that for the Bill to have any effectiveness in the modern internet era, it should clearly and unambiguously treat the social media and the search engine giants as publishers, as opposed to giving tacit approval to their contention that they are merely platforms. Please also bear in mind that in any event they currently have the protection of a Section 1 *innocent dissemination* defence, which affords them an opportunity to take down the offending material before they incur legal liability.

I also believe that parallel legislation is essential in the form of an Online Harms Act and/or Communications and Decency legislation, that imposes not only a duty of care but also effective penalties for breaches that go beyond financial fines which, given the wealth of these companies, offer no credible deterrent.

Indeed, the Committee may decide that given the ongoing debate amongst legislators around the world at the present time, who are considering how to deal with these online conglomerates, the current Bill is not only outdated and not fit for purpose, but you should wait to assess any legislative changes implemented in jurisdictions, including Australia and the EU.

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On another note, Sam McBride has, to his credit, asked that the Hansard record be changed to correct the error he had made at the beginning of his evidence and which he has written to you about in detail. At the present time, anyone viewing or reading the evidence would be unaware of Mr McBride's admission, which in turn, while the allegation remains uncorrected, serves to undermine the credibility of my earlier evidence. This mirrors an ongoing problem my clients often have with the inadequate prominence of subsequent corrections/clarifications by the media generally.

On another point of correction, I take serious issue with Mr Matthew O'Toole's outrageous assertion that I am "an enthusiastic deployer of legal intimidation", which he claims I "described" to him. This totally unfounded allegation has been mentioned to me by several concerned colleagues and I would request that the record be set straight at the earliest opportunity. Indeed, I will be encouraging my journalist and other clients to liaise with Mr O'Toole for him to explain his comments and offer alternative suggestions to provide an appropriate remedy to these clients, who often come to me distraught and seeking immediate assistance.

Finally, I would refer to Mr David Attfield's evidence in which he appeared to maintain that there is no procedure for a *Meanings* Application in this jurisdiction, which of course is not correct (See Order 82 Rule 3A). This procedure is in fact available and is often utilised in both Irish jurisdictions. I would submit that this is a critically important point that the Committee should seek to correct in clear terms.

I would be most grateful if you would acknowledge receipt of this letter.

Yours sincerely,

Paul Tweed

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