

THE **LAW SOCIETY**
OF NORTHERN IRELAND



**Northern Ireland Assembly
Committee for Finance**

Consultation

DEFAMATION BILL – CALL FOR EVIDENCE

**Response of the Law Society of
Northern Ireland**

November 2021

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ABOUT THE LAW SOCIETY

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (Northern Ireland) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,800 solicitors working in approximately 470 firms, based in 65 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients, Government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

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RESPONSE

The Law Society of Northern Ireland ('The Society') welcomes the Assembly's focus on defamation legislation in this jurisdiction as the current governing Acts which date from 1955 and 1996 are long overdue for modernisation so as to be fit for modern day practice. Rather than answer the response template issued by the Committee for Finance, the Society prefers to respond generally.

The Society has taken views from practitioners who represent both plaintiff and defendant clients in defamation actions. Obviously, the views of each will differ according to which party they represent, however, some clear agreed points emerged from discussions.

Two main areas of concern were identified in regard to the proposed legislation. Firstly, inadvertently, or otherwise, access to justice may be eroded by implementing the proposed Defamation Bill. The changing of the threshold and introduction of a 'serious harm' test, will foreseeably result in significantly increased legal costs at the commencement of proceedings (front loading), which will have the effect of prohibiting some parties from progressing a claim. This will be particularly stark when an individual citizen tries to challenge a search engine, Facebook, Twitter etc as such groupings have deep pockets. Some citizens therefore will be unable to challenge online 'wrongs' against them due to limited finances as the proposed legislation will front load the process with expensive pre-hearing stages, rather than allowing the law operate fairly and equally. Such a position cannot be supported by the Society. In effect, only wealthy plaintiffs will be able to litigate as neither crowd funding nor public funding is available in this jurisdiction to support or fund a defamation action. To introduce new legislation which will prevent a citizen of limited means who feels that they have been aggrieved, from advancing a court action cannot be supported as it condones inequality of arms.

Secondly the Society is concerned that the legislation will not introduce boundaries or controls for social media giants to make them more responsible and accountable for publications circulated or published on their platforms. It appears on the face of it that the proposed Northern Ireland Act could assist social media organisations from being more accountable for alleged defamatory publications on their sites. The Society feel that consideration should be given to allowing this piece of proposed legislation to impose some measure of accountability at this point in time. This is particularly so as there is no specific

or focused legislation to tackle this matter on the local horizon. To ignore the chance to introduce some form of regulation at this juncture is an opportunity lost.

In addition, without taking such steps, it is hard to see how policy objective number seven (of twelve), as suggested by the Bill sponsor, could be achieved. Our members confirm that there has been a significant increase in actions against social media platforms for defamation in the last number of years, which is testament to the lack of regulation in this area. Legislation to regulate media operations should apply to all forms of media and not just mainstream outlets, otherwise an unfairness is created by the legislature. If there is a reason to not include social media outlets, then perhaps this should be outlined in the interests of openness and fairness.

Measures to limit trivial challenges in this area are not opposed, however how they are implemented and operated is something which requires clear guidance.

CONCLUSION

The Society welcomes the opportunity to submit a response in respect of the Department of Finance's Consultation on the Defamation Bill.

We would like to be kept informed of any subsequent proposals formed as a result of this consultation and also any changes to the overall policy direction of the topic under discussion along with a stated rationale.