

The Honourable Mr Justice McAlinden



Royal Courts of Justice
Belfast BT1 3JF

Your Reference 2021:492

21st December 2021

Dear Peter,

Defamation Bill - Discretionary Powers for Judges

Thank you for your correspondence dated 26th November which was discussed in detail by the shadow Civil Justice Council at its meeting on 9th December, 2021.

The unanimous view of the Council was that it would not be helpful or appropriate for it to comment on the merits or otherwise of this private member's bill. The Council would, however, wish to point out that in September of 2020, the shadow Civil Justice Council considered recommendation CJ21 of the Civil Justice Review "*New pre-action protocols incorporating the best features of England and Wales pre-action protocols and our own pre-action protocols be drawn up.*" The shadow Civil Justice Council formed and sought members for a sub-committee to review and draft a number of pre-action protocols, including one on defamation.

The draft pre-action defamation protocol which is in the process of being finalised encourages the use of alternative dispute resolution in the following terms: "*The parties should consider whether some form of alternative dispute resolution would be more suitable than litigation and if so, endeavour to agree which form to adopt.*" The draft pre-action protocol does not currently address the suggestion that judges should have discretionary powers to order parties to undertake alternative dispute

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resolution or face possible financial penalties nor does it address the issue of judges having an enhanced power to hear defamation cases without juries.

The shadow Civil Justice Council is keen to finalise this draft protocol and present it to the Lady Chief Justice for approval and implementation in the very near future. However, in respect of the issues specifically raised in your correspondence, the sub-committee is of the view that any changes to the protocol which may be rendered necessary following on from the enactment of any of the proposals contained in the Bill should, with appropriate time being given, be possible to effect.

Yours sincerely,



The Honourable Mr Justice McAlinden
Chairperson, Shadow Civil Justice Council

Mr Peter McCallion
Clerk to the Committee for Finance
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**Northern Ireland
Assembly**

Committee for Finance

Mr Justice McAlinden.
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26 November 2021

Dear Sir,

Defamation Bill – Discretionary Powers for Judges

As you may be aware, the Defamation Bill was formally introduced to the Assembly on 7 June 2021 and, following its second reading on 14 September 2021, was referred to the Committee for Finance for the Committee Stage. At the Committee Stage, Members consider possible amendments to the Bill and are set to inform the Assembly shortly, in this regard.

The aim of the Bill is given as reforming the law of defamation in order to ensure that a fair balance is struck between the right to freedom of expression and the protection of reputation. The Bill makes a number of substantive changes to the law of defamation in Northern Ireland.

Further information on the Bill can be found at the following link:

<http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/non-executive-bill-proposals/defamation-bill/efm---as-introduced/>

Written submissions to the Committee Stage, received to-date can be found here:

<http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/finance/bills---committee-stage/defamation-bill/written-submissions/>

The Committee noted a Departmental briefing which referred to the Gillen Review of Civil Justice (2017). At the Department's suggestion, the Committee agreed to write to the shadow Civil Justice Council seeking its views on the Defamation Bill generally and in particular on some of the recommendations of the Gillen Review of Civil Justice (2017) which included suggestions that judges should be granted additional discretionary powers for defamation cases to select trial by judge-only in the case of complex matters

and that judges should also have discretionary powers to compel parties to undertake Alternative Dispute Resolution or else face possible financial penalties, in the event of an unfavourable judgement.

If you require further clarification or explanation, please do not hesitate to have officials contact me.

A response at your earliest convenience would be very greatly appreciated

Yours sincerely,

Peter McCallion

Peter McCallion
Clerk to the Committee for Finance