

Peter McCallion
Clerk to the Committee for Finance
Northern Ireland Assembly
Room 349
Parliament Buildings
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Stormont
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By email to: Peter.McCallion@niassembly.gov.uk

Monday 1st November 2021

Dear Mr McCallion,

Thank you for your letter of 17th September 2021 and the opportunity to provide a written response on the Defamation Bill which is currently before the Committee.

As you may be aware, the Publishers Association is the member organisation for UK publishing, representing companies of all sizes and specialisms. Our members produce digital and print books, research journals and educational resources across genres and subjects. We exist to champion publishing to the wider world and to provide our members with everything they need to thrive. The promotion and protection of freedom of expression, and specifically the freedom to publish, is an integral part of our operations.

Defamation is a significant concern to many of our members – whether they publish, for example, biographies and autobiographies, or work with academics in pursuance of research and academic freedom. The threat of defamation can act as a deterrent – restricting the principles of free speech and escalating the risks of disseminating content; yet it is imperative that libel is not unfairly or unnecessarily used to prohibit works from being published.

The Publishers Association worked closely with the UK Government on the 2013 Defamation Act of England and Wales. Overall, our view was that this legislation improved the environment for publishing in the UK whilst still containing remedies for those defamed. The Publishers Association welcomes alignment in approach across all nations in the UK and to this end we are encouraged to note that the NI Bill is identical to the England and Wales legislation in its material respects.

An issue of importance to publishers is the question of the test for “serious harm”. Our members have previously noted that the test brought in in the 2013 England and Wales legislation had a significant reduction on the number of libel cases being brought against them. It had a material and positive effect on the environment for publishing and freedom of expression as the reduced risk of having to defend legal actions allowed publishers to reassess their strategies, publishing a larger quantity and wider range of titles. Publishers therefore support the case for equivalent protection in NI law. Publishers would highlight the case of *Lachaux v Independent Print Ltd*, which tested the

serious harm provision and created a degree of uncertainty before being ultimately resolved by the Supreme Court as requiring proof of serious harm *as a matter of fact* to establish a successful cause of action. We would encourage the NI Assembly to ensure that the serious harm test adopted achieves its whole intended effect.

Certainty would also be welcome for academic publishers in relation to peer reviewed science. Qualified privilege is essential to peer reviewed journal articles and reports of academic conferences, as academic journal publishers and editors should be able to rely on a strong public interest defence when relaying topical and timely information. The Publishers Association supports the alignment of the Bill with section 6 of the Defamation Act 2013 in this regard.

Thank you for your consideration. If we can offer any further information or clarity, we are at your disposal.

Yours sincerely,

Catriona Stevenson

Catriona Stevenson, General Counsel