Northern Ireland Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Defamation Act 2013: Briefing from Mike Nesbitt MLA on Proposed Private Member's Bill

26 June 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Daithí McKay (Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr John McCallister
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:
Mr Mike Nesbitt MLA Northern Ireland Assembly
Mr Brian Garrett

The Chairperson: I welcome to the meeting Mike Nesbitt MLA and Mr Brian Garrett, a solicitor. Mike, do you want to make some opening comments?

Mr Mike Nesbitt (Northern Ireland Assembly): Thank you, Chair. On behalf of Brian, I make a plea that everyone speaks up a little.

First of all, thank you very much for your time and for the Committee interest in this issue. I begin by declaring an interest with regard to Paul Tweed, whom I know socially and professionally. I hope that that will not change because we appear to be on different sides of the fence on this, although I am not sure that we are that far apart. As he said towards the conclusion of his evidence, it is virtually impossible to get satisfaction under the current regime here, so it seems to me that it may not be a question of whether we should change the law on defamation in this jurisdiction but how we change it. I think that perhaps that is the issue.

If I may, I will touch on the status of my private Member's Bill. I am still in discussion with the authorities on the Bill. As, I think, you are probably aware, we are in a unique situation, because, for the first time, there are more Members trying to bring forward private Bills than there are resources available to push the Bills through. I think that I was first through the door in May 2011 to register for a private Member's Bill. However, as the Bill Office told me, the resource attaches to the Bill, not the Member, so when I switched from what I was going to bring forward to this, I effectively went to the back of the queue. We are still trying to discuss what the implications are for resource with people such as Brian Garrett and Jeff Dudgeon, who is in the Public Gallery. We also have a barrister Austen Morgan who works, on occasion, for Sweet & Maxwell, which Paul mentioned. We have good

resource, but we will, of course, need draughtsmen and other resource from the Assembly. So, we are still working out where we are in respect of the status of the Bill.

I would like to say two things about my motivation for this. First, I was struck by the fact that there was, shall we say, suboptimal consultation on the legislative consent motion within the Northern Ireland Executive, never mind consultation beyond these four walls and the walls of Stormont Castle. So, I am keen that, at a very minimum, we consult with interested bodies, stakeholders and the broader public.

Secondly, I am motivated by my experience of being involved in defamation cases during my previous career as a journalist. I was involved in three in my 13 years in television broadcasting, and, interestingly, all of them involved politicians. That was the only sphere of life that brought defamation to the table. The way it works is that you find yourself at the board table of the media organisation, with three groups of people present. You have the senior executives of the broadcaster, its legal representatives and its insurers, and it is the latter group that has the clout and calls the shots. It is the insurers who make the decision. You expose what has happened by reviewing the tapes and the transcripts, and the lawyers give an opinion. However, in my experience, it is the insurers who come in and say, "Settle this, please. We do not wish this to go to trial, so please make a settlement. Otherwise, we will withdraw our cover, for fear you will lose the case and the jury will make a very substantial award that is disproportionate to the actual words of defamation." Therefore, as it operates, they are the kingpins.

In your evidence session with Mr Tweed today, you looked at the number of defamation cases coming forward, and Mr Weir asked about the number of cases involving scientific journals. The number of cases heard in the courts might be limited, but that is not to say that many cases are not being initiated and many legal letters are not being issued by clients who are initiating or threatening legal action on defamation. I suggest that it amounts to a concerning degree of control of the media by people with money, power and well-connected influence. Indeed, I have contacted Paul previously to ask him to send a letter, not so much with a view to a full process of defamation against an individual or a publication, but because the calculation was that the letter would simply put somebody off repeating. For example, if somebody is blogging consistently against you, should you send the letter from the likes of Johnsons Solicitors, it is quite likely that that person will simply go and pick on somebody else.

There is the factor of whether the current law allows you to put a chill into the decision of whether to publish. As a journalist, there is a rule: if in doubt, leave it out. The current law of defamation encourages journalists to leave it out for fear of the rich and powerful coming back at them. I am also aware that some newspapers — possibly some that operate in this jurisdiction — which deal with matters that we might describe as salacious, make a simple financial calculation about whether to publish. It is nothing to do with the truth; it is a simple financial calculation. They calculate what the publishing of a certain story will add to their circulation in income, and how much of that they will need to pay out in the defamation case. If the result is profit, they are likely to publish. If they believe that it will cost more in defamation than in additional sales revenues, they simply leave it out.

As I said, I am minded to consult in the first instance. I am not about just cutting and pasting the 2013 Act from Westminster. There are major issues, which have been well aired by Paul. There are issues about no win, no fee, the question of whether jury trials are the appropriate way to hear defamation cases, and the after-the-event insurance, which Paul mentioned. In bringing forward the Bill, I intend to consult. I see the purposes as improving freedom of speech, encouraging responsible journalism, bringing Northern Ireland into line with GB, and discouraging libel tourism. Again, you can ask how many cases of libel tourism there have been to date, but the other question is this: what is the likelihood that there will be more if GB goes with their Act and we stay as we are? Does that make us more attractive for libel tourism? It will also address the fact that the laws were made 100 years and more before the internet became the big issue.

I think that Brian would also like to make some comments.

Mr Brian Garrett: First, I thank the Committee for the opportunity to speak to you this morning. In advocating this, I feel that I am a mixture of a gamekeeper and a poacher. I am a gamekeeper because I have been a lawyer in this area, and I am a poacher because I have been a journalist in the past as well. Perhaps it is the other way round; I am never sure which is which, but there we are.

In looking for this change in the law, I have to say initially that I do not believe in rubber-stamping all Westminster legislation. However, there are areas in which it is very important to look at the relevance

of legislation being uniform throughout the United Kingdom. Defamation is one of those areas — there are many others — for a variety of reasons. I have come to the same view as the ordinary citizen: libel courts are an arena for very rich gladiators. There are very few poor people in the courts pursuing defamation claims — very few. In fact, there are some defendants — some newspapers — who are having great difficulty with the money that is involved in these cases now. I suppose that libel has become a rich area for public entertainment. The public watch these cases, and people very often behave very foolishly. Then there is the expense, which is not a good thing either for the courts or for the general sense of what we should be doing in guarding reputations. That is the first thing.

One is not seeking to say that the freedom of the press should trump the right to privacy: that is not the position. A good defamation law underpins a good right to privacy. The problem with the current law, which applied prior to the Defamation Act 2013 becoming law, is that it is not only outdated but unworkable. One does not often know whether one can get to a court on a particular issue, because you do not know what public interest will be considered to be and for a variety of other issues. Of course, above all else, the ordinary man has no right to legal aid in these matters, so it is a rich gladiator group that is in there. People can disagree or agree as to how old the current law is. Well, it certainly goes back 150 years. It is a mixture of legislation, such as we have, and case law that has developed over a very long time. However, much of that case law is now very confusing, and it needs to be cleared so that we know where we are and so that the litigants — both sides — know where they are. You cannot say with confidence at the minute that you do know where you are.

There is, of course, the electronic media, and there is a need for some development in that area to control what happens when things are posted on websites. What can be done about that? Can we take the defamatory material down from the website? The 2013 Act allows that. In my view, the Act that has been passed in Great Britain is not in itself a sufficient charter to deal with electronic media, and that will need to be developed. There is an argument that we need a new privacy law. The current situation is that it is rather inchoate. It has been developed partly through common law principles and partly through the European convention, most particularly article 10 with free expression and article 8 for the right to family life. However, it is not a complete law. The difficulty with that is that it is very hard to define what the boundaries of privacy should be. Perhaps the beginning of wisdom at the moment is to allow the courts to try to rebalance that in the setting of a modern defamation law.

The situation under the 2013 Act will not — unlike what some of the critics say — reflect the American first amendment, which broadly gives almost an absolute right to the press. It is not doing that, and it is important to say that. It is trying, in an honest way, to balance, on the one hand, the right to express your opinions honestly and, on the other hand, to have your reputation guarded effectively. It is an attempt to do that. That attempt is a worthy one. It is interesting that, prior to the last election, all three major parties at Westminster brought forward proposals to reform this law. To that extent, there was unanimity on that issue. It is also relevant to say that, during the passage of the 2013 Act, there was an enormous contribution from parliamentarians at every level. Sometimes, legislation goes through on the nod, as it were, but not that. That was carefully considered.

Therefore, we need to balance press freedom with the right to privacy in a way that builds on the sense of responsibility of our press. It is not to be a charter for the irresponsible press. We have to make sure that we do not allow uncontrolled press activities. Most recently, for example, there were the hacking scandals.

What else should be done in the area? I will not go into any private Member's Bill at the minute or the particular provisions of the 2013 Act, which should be debated through a public consultation. Beyond that Act, we will, at some time, have to look at whether there should be a right to reply in our media. I am not suggesting that; I am just trying to define where we are. One should also look again at whether the Press Complaints Commission, or whatever replaces it, operates effectively in Northern Ireland. In my mind, it does not. We ought to look again at that, and the Committee may be able to look at that in due course. However, that is not a subject of today.

It is of great importance to ensure that academic treatises and scientific journal work are not inhibited by the law that we have in Northern Ireland. Under the 2013 Act, treatises in the academic and scientific areas have protection when peer-reviewed. It would be extraordinary if that protection was not accorded to such work in Northern Ireland. It would be a very bad day indeed if that happened.

We also have to think about the view that would be taken by national newspapers published in London and distributed throughout the UK. What view will they take if they have a genuine defence of responsible journalism in England and Wales but no such defence in Northern Ireland? I think that a

pretty shattering view would be taken in the attitude of those papers to what they should do in distribution. We ought to think about that.

I am not for a moment suggesting that there is a threat of that happening. However, I believe that all people in Northern Ireland have a genuine interest in seeing a legislative consent here to the change, simply because if we are going to protect reputations, we need, alongside the other freedoms in society that we require, a responsible and free press. I hope that is helpful, Chairman.

The Chairperson: Thank you very much.

Mike, you said that you might be flexible to some of the proposals in the original Act. At this time, would you be minded to go with or without a jury in defamation cases?

Mr Nesbitt: I am open to consult on that. As I understand it, the 2013 Westminster Act takes an assumption that there will not be a jury unless the court orders otherwise. I am keen that the consultation has that as a key question, along with no win, no fee, which has much broader implications for the entire legal process in this jurisdiction.

Those are the two areas that you heard Paul identify as potentially critical inhibitors to his support for this, mixed with good evidence as to why what we have at the moment does not work. Here is a guy with a global reputation as a specialist in defamation operating in London, Belfast and Dublin. If he had his choice, he would operate in Dublin first. His second choice would be London and his third would be Belfast. It seems to me that that is as strong an argument for change as any. The question then, as I say, is in what way do you change?

The Chairperson: Obviously, there is the argument that defamation is a process that is taken advantage of most by the rich and famous. However, Paul mentioned a number of ordinary people, for want of a better term, who have taken cases. He referred to the case that John McAreavey took against the 'Irish Daily Mail'. That case hit a nerve with the public, who looked at it and said that it was the right thing to do and that he should have been able to take that case. Paul was arguing that this Bill would take that right away.

Mr Nesbitt: I disagree with Paul on that. The definition of serious harm in the Westminster Act is:

> *"A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."*

I would contend that what happened to Mr McAreavey did cause serious harm to his reputation.

The Chairperson: How do you define serious harm?

Mr Nesbitt: Yes, but how do you define defamation? In my experience of the three cases I was involved in, we ended up in court on one occasion by mistake. The insurers and UTV could not get it settled quickly enough, and we got to the end of the day. The issue was that the judge would make a determination of whether the words in question could be interpreted as defamatory, after which he hands it over to the jury to decide. There is, in law, always an element of interpretation that is, hopefully, more objective than subjective assessment. It comes down to a judge or a jury — an individual or a group of individuals — forming an opinion.

Mr Weir: Thank you, Mike and Brian. I will try to keep my voice loud without shouting.

Just to clarify one of the points that you have just made to the Chair, is it your intention that the consultation on jury status should be a completely neutral question, such as "What are your views on whether there should be a jury?" or is it a question of, "The 2013 Act makes proposed changes to the jury, what do you think?" There is a difference of emphasis between those. Where do you see your consultation going on the issue of juries? Are you expressing an opinion on the jury in the consultation, or is it just "What are your views on the jury?"

Mr Nesbitt: That would not be my intention, Peter. Obviously, you would assume that people who are interested enough to respond will be aware of what is in the 2013 Act. The way to consult is to say that the options would be a jury trial, no jury trial or an assumption that it will be one or the other unless the court decides otherwise. You lay out the various options.

Mr Weir: The second key issue was about raising the "serious harm" threshold for libel. Are you proposing that that should be put into the new legislation or would you say that you would support continuing the current situation, in which libel is actionable per se?

Mr Nesbitt: I am minded to raise the bar a little, not least because I have just listened to Paul Tweed's evidence about two gentlemen who ended up in a very unedifying, long and well-publicised case over a chocolate éclair. Are we really arguing that that was a good thing to have happened? Paul himself was arguing —

Mr Weir: You can argue that hard cases make bad law, and you can always prove exceptions. We have, particularly in Northern Ireland, a lot of very responsible journalists, but when it comes to UK-wide publications in particular, the press has been shown to be fairly irresponsible. Surely the argument is that if you raise the bar, you make it more difficult for someone who is defamed to win a libel case. Therefore, by definition, you act as a degree of deterrent on one side for someone to bring a libel case. If they feel that they have less chance of winning it, they are much less likely to bring it. Similarly, you remove a degree of constraint on the media to be responsible because their chances of losing that case become less and, therefore, they are perhaps more willing to chance their arm.

Mr Nesbitt: Absolutely, Peter; I think there is that danger. However, in the broader picture, balancing that is the unseen work that goes on, as I referred to previously. That is the number of cases that are initiated through the threat of action and through legal letters from somebody such as Paul Tweed, which we do not know about. People use this law. If you raise the bar, you will, necessarily, significantly reduce activity in that area.

Mr Garrett: I agree. It is not for me to get into the issue about consultation; that is a matter for members.

Mr Weir: I appreciate that.

Mr Garrett: However, there is a serious issue to be looked at about jury trials. There may be a special case in Northern Ireland to keep them as the norm, rather than not. I am not sure myself, but what one does want is more ordinary people involved in our judicial system. That is one thing. The other thing is that, by its very nature, defamation is about the attitude of the ordinary man to what is said.

Mr Weir: It is a different category.

Mr Garrett: That seems to be a very powerful case. However, the more often that you have a jury trial, the longer it will take to get there and to be determined, and the more expensive it will be. Those are factors that we have to look at.

This is beyond the 2013 Act, but if you are defamed and you want to restore your reputation, you will want it done quickly, if you are genuine. That is not happening under defamation law, and it is probably not going to happen any more adequately under the 2013 Act. That is something that might be looked at in consultation.

Mr Weir: I have a couple of other points to make. I think everyone would accept that there is a need to reform the financial position of the access point. I will take your views on one point. You mentioned that greater options there could be valuable. If we move entirely to a no win, no fee situation, is there not a danger that that could, inadvertently, block certain access to justice? Shall we say that it is not just the newspapers that, with the best will in the world, will look at this from a financial angle? If we move purely to no win, no fee, you will get a situation in which, unless your case is watertight and the solicitor feels that there is, more or less, a guarantee that they are going to win, no solicitor will touch your case with a barge pole. Do you acknowledge that? Clearly, there are wider financial issues to be looked at, but is that a danger of moving in that direction.

Mr Nesbitt: Yes. Again, I think there are no absolute right answers to this.

Mr Weir: I want to make two final points. You made the very good point that, in a lot of cases, the potential deterrent, or otherwise, for a newspaper that deals with more salacious material is the fact that it will make a financial calculation. It will calculate that the risk is that it will get an extra £100,000 through this, as against, say, a 50% chance that it will lose £150,000. So, it does the sums and works

that out. If you shift the threshold for taking a libel case, it means that it is a lot less likely that cases will be taken and a lot less likely that they will be successful. You could say, "Instead of there being a 50% chance that we are going to be successfully sued, because of the additional deterrence of an extra layer, fewer cases will be taken and, indeed, proved, that will go down to 30%." I am plucking figures out of the air. The financial calculation will clearly mean that it will be more frequently advantageous to run the salacious and potentially false story.

Mr Nesbitt: It will be the less serious allegations that will be run. I am sure that if you and I opened up a computer, it would not take us long to find very unpleasant remarks about me, you or any MLAs.

Mr Weir: Maybe by each other.

Mr Nesbitt: Exactly. That goes on. What you do if you raise the bar is you say that you accept that, in the normal run of life, there may be that to-ing and fro-ing of something that is beyond banter, but is not really serious defamation.

Mr Weir: Mike, if I can ask you finally — and I will not ask about individual circumstances — you mentioned that, on a number of occasions, you have used Paul Tweed as a shot across the bows to prevent something. I presume that, on each of those occasions — and it is not my business to know what the issues were — what was being said about you was, one, untrue, and two, potentially defamatory. Is that correct?

Mr Nesbitt: That is correct, but "potentially defamatory" is the key, Peter.

Mr Weir: So, with respect, you have used the current system to prevent potentially defamatory untrue statements being made about you. Does that not show that, broadly speaking, as a deterrent, it works?

Mr Nesbitt: It works for me because I have the money and the contacts and I have what it takes to access, but you could argue that, on occasion, Paul might say to me, "The chances of that being accepted as defamatory in court are very low, but if you instruct me to send a letter, I will send the letter", and that has an effect.

Mr Weir: It has the effect of preventing untrue material being printed in the press.

Mr Nesbitt: It has the effect of shifting somebody's focus from me to you or from me to Adrian or whatever. It does not stop the activity; it just displaces it.

Mr Weir: It stops, in the specific bit, an untrue allegation being printed about you or whoever. Therefore, the device of saying that if you go ahead with this, there is a potential action against you, if the publisher feels confident that what he has got is true, that is a complete defence against that.

Mr Nesbitt: This is online stuff, and that is different.

Mr Weir: I am not talking about online stuff —

Mr Nesbitt: I am talking about online stuff.

Mr Weir: Is that where you had —

Mr Nesbitt: That was where I was —

Mr Weir: Well, that has clearly acted as a deterrent to people trying to print untrue material. Does that not suggest that that is a reasonable way of going forward? If you lessen the opportunities for someone to take that, whether it is Mike Nesbitt or whether it is a member of the public on the street, surely that will lead to more untrue and defamatory material being published?

Mr Nesbitt: With respect, Peter, maybe I am not making this clear. Let us say that we have an individual who posts 10 comments online that are defamatory in a minor way about me. The letter does not stop 10 defamatory comments being made online by the individual author; it just means that they are not made about me, they are made about you.

Mr Weir: No, it prevents them being made about the person the defamatory comment is about. That does not necessarily mean that the author shifts to making defamatory comments about somebody else. That other person —

Mr Nesbitt: That is the effect —

Mr Weir: No, it is not, in that regard, with respect —

Mr Nesbitt: Peter, with respect, I know the issues that I am talking about and the individual that I am talking about, and that was what happened. He stopped writing about me but he started writing about —

Mr Weir: Presumably that other person could have stopped that part as well. It is not —

Mr Nesbitt: It goes from a to b to c to d.

Mr Weir: It does not work that way, with respect.

Mr Nesbitt: With respect, it does.

Mr Weir: It does not. We are may be in the panto season with relation to that.

Mr Nesbitt: Are you coming in, John?

The Chairperson: John is next.

Mr Nesbitt: Oh, sorry. I thought you made a good point earlier with Mr Tweed.

Mr McCallister: I am happy to have that point, thanks.

I was only going to make a couple of comments, Mike. That was an interesting line about the suboptimal consultation process, given the fact that I do not think that anybody was told that we had turned it down here. It would be interesting to tease out what you wanted to say to me, but also the stuff that Brian mentioned about concerns about circulation of papers here if it becomes a softer part of the UK to deal with. I do not particularly want to see anything more with "Not available in Northern Ireland" on it.

Your point, Brian, about speed is important because if you are looking at this as a client or somebody writes something about me or whoever, if you suddenly think that this process can take a year, 18 months or two years, do you really want to drag it all up again, whatever the story was 18 months ago? So, you are in a quandary about how you deal with that. The important thing about all legislation is finding the balance. We want good, inquisitive and responsible journalism, but we do not want people just going for an easy hit at our politicians or well-known celebrities. I am keen to tease out those areas.

Mr Garrett: I very much agree with that. If you think that this is a subject that is going to go out to consultation, you might consider whether there is a Northern Ireland add-on, namely that we should introduce an early clearance scheme for these cases. That is a suggestion, but it would deal with the question of the speed with which results are achieved. It is a big issue, and it may well be unwise to change the current situation, but I do see a case for that. Putting all this together, you come back to one issue: what are we trying to do in changing the law, if we are going to change the law? We are trying to improve the quality of people's lives, to protect them and to make their lives more informed. It is a difficult balance, and I respectfully suggest that current law does not achieve that in a way that is in any way satisfactory.

Mr McCallister: Brian, would you even say that with the current law? Bear in mind that, according to the research papers, the laws that we are working to date back to the 1950s and 1996. In 1996, probably quite a few of us did not even have an e-mail address. There have been huge changes in the past 16 or 17 years. You are saying that it is not working even with regard to print media, never mind the online dimension.

Mr Garrett: It is working badly. In that sense, it is not working. There used to be an old phrase, "publish and be damned". Big newspapers make the calculation that Mike Nesbitt was talking about with Peter Weir; they probably do make that calculation. I have been acting on the other side for the newspapers, and in a region of small newspapers with limited budgets, it is very often "publish and be slammed" rather than "publish and be damned". So, there is a balance to be got right. The balance is to allow honest opinion and to encourage responsible journalism, and I believe that the 2013 Act does that.

Mr Nesbitt: John, you mentioned the 1996 Act, and, interestingly, before that, there was no distinction between, say, you writing an article and submitting it to the 'News Letter', which reads it and decides to cut and paste it and publish it. It will have had every opportunity to scrutinise, check and, if necessary, take out bits that are defamatory. There was no distinction between that and you going on a live television programme and making a statement. The 1996 Act gave some sort of very limited defence for the broadcaster in that it is live and you might have a reasonable expectation that you were going to say a, b and c but you actually said z out of left field. Where we do not have a distinction at the moment is with the example that you were talking about of, say, the 'News Letter' having a website. At least, if you submit an article, the newspaper has full opportunity to decide whether it will publish it. On TV, there is at least an opportunity to immediately intervene and say that that is not the broadcaster's view, and please withdraw that comment.

With online, is it reasonable to expect the newspaper even to know that you have gone on and posted a comment? If the law says that, yes, you are responsible as the publisher, that is going to have a massive chill factor because the resources that you would need to put in place to moderate any size of a website would be financially prohibitive to an organisation such as the 'News Letter'. So, the 2013 Act is very clear in saying that there is a defence to the publisher or media organisation such as the 'News Letter' of saying that it did not publish that or put that on. Against that, that defence fails if the person who is complaining that they have been defamed cannot identify the author and go after them to seek redress. I think that that is fair. The area where there seems to be room for debate is the four-day rule, which Paul mentioned. Again, as with any bit of legislation, you sit down and come to some sort of reasonable, consensual view on what is a reasonable amount of time. Is it 24 hours? Is it four days? It is a week? It certainly is not the 18 months that it took Paul to get redress for Louis Walsh under the current regime.

Mr McCallister: I agree with that, Mike. I think that it is very difficult, and you would really stifle public comment if you did that. All of us are in political parties, and most of us have websites where people go on and write things — sometimes favourable, and sometimes not so favourable. Are you then suddenly liable for every comment? Most of us use Facebook or Twitter to encourage debate and to engage with those who elected us in order to get a wide variety of opinion. However, if you are going to need to sit and monitor all that, are you stifling debate? I do not tend to take unfavourable comments off my Facebook page; I generally want a debate about things. Sometimes people write kind things, and sometimes they write fairly unkind things, but you do not want to get to a point, and you need to find a way of balancing that.

There is certainly room for having a serious look at where Northern Ireland is on this, because we have completely shut the door on taking on the GB model. Paul commented on the Irish Act, and perhaps aspects of that are worth looking at. Brian, your point was that nobody is jumping up and down and saying that the system we have has been a great success over the past number of years. This, therefore, provides a good opportunity and is a good vehicle to say, "Hang on, we had better look at how we get a balance between personal responsibility, good professional journalism and respecting a person's right to protect their reputation". I think that we can do that.

Mr Garrett: I agree.

Mr Girvan: I am probably coming at this more from an authoritarian approach, as opposed to a libertarian view on this. I believe that we have to legislate to ensure that we do not lower the bar for journalists or the public and that they take on personal responsibility. In doing so, I think that you have to provide more of an opportunity for people to take action against those put up anything — and I mean that — that is defamatory.

Paul made a point earlier about access to the likes of Google to get information about who puts certain things on a site. I think that that is vital. I think that IP addresses should be identified. I know that some people say that that is an infringement of civil and human liberties and all that, but I do not come

from that side of the house. I think that we should be able to pursue people who think that they can anonymously put stuff online that is defamatory or basically going to create a problem. So, I do not necessarily want to lower the bar at all. Even from a journalistic point of view, I think that the bar should be high.

Mention was made of the fact that no one respects the press in the United States, because they know that half of it is lies. Yet, if something goes in the papers here, people say, "It must be true, because it has been published." I have always heard people say, "It must be true; it was published in 'The Sun'", or whatever. Irrespective of that, I think that we have to be sure that we get the balance right, and to do so, this has to be looked at.

I do not necessarily believe in just lifting legislation across and saying that it is right or wrong. I believe that jury trials are the right way to deal with stuff. Let us be honest, people have the right to see what is going on, and I think the public have the right. I appreciate that some people feel that that might add to the expense. I also believe that where somebody has had a wrong done to them, access to funding to take a legal case is a prohibiting factor for a large percentage of the population. That needs to be looked at in that the private individual has a right to privacy and the right to be sure that they will not be defamed in any form or fashion in whatever media source. They have a right to take that as well, and it is necessary to allow the public to have a right to seek justice on their issue.

Social media has created its own problems. We hear of people committing suicide because of what is classed as online bullying but could be a whole lot more. It can have, and has had, a dramatic impact on people's mental health. What is your view about lowering the bar, rather than making sure that we keep the high standard that is here now or even raising the bar, where to publish something, you have to be not just relatively sure but 100% sure? That is one way to ensure that you will not be going to court every week.

Mr Garrett: What has happened in the 2013 Act about social media is embryonic in what has to be done ultimately. It is a start; that is all. However, the very nature of those media means that you need some uniformity, whether we like it or not, because of how they are published, where they come from, etc.

I am interested in many of the comments that you made because they say one thing to me, namely that the concerns that you have indicate that the current law is not adequate.

Mr Girvan: It went for too long.

Mr Garrett: I share that view with you.

Mr Girvan: It has taken on new media as well, which is a bigger problem and was never covered before.

Mr Garrett: I am a little concerned that we do not go off on too much of a tangent from what has happened in 2013, although by all means, if there is to be a consultation, let us see what that identifies, I agree.

Mr Nesbitt: What I would say, Paul, is that we need to rebalance the focus of where you go, particularly online. You have Google, the 'News Letter' or whatever, you have your internet service provider, and then you have the author of the comment. The complainant tends to go after the internet service provider, whereas it would be better if they went after the individual.

To go back to the three cases that I was involved with at UTV, the complainant would be suing Mike Nesbitt and UTV. They sued me because the law basically said that they had to sue me because I was the host of the programme, the moderator, the person asking the questions. However, they were also suing UTV because they were the ones with the money and the insurers who were going to write the cheque. Maybe separating those out gets you a purer analysis of who is responsible for the comments.

Mr Girvan: It is not a pounds, shillings and pence issue. Most people whom I speak to who have concerns about this issue are not after money.

Mr Nesbitt: It is reputational damage.

Mr Girvan: It is reputational damage, which is probably more important to them than money in their pocket. Putting something up that has created a problem for them is not the way to deal with it. That can be more hurtful to certain people. To some people, it does not matter what you say about them. They are quite happy to take it on, and it runs off them. However, there are individuals, so you have to legislate to cover all people because, unfortunately, not everybody will have the same thick hide. Some are more sensitive than others.

Mr Nesbitt: It seems to me that perhaps you are saying that if we are consulting on serious harm, there are two definitions: one for bodies that trade for profit, which is maybe fine, and the other is the individual, and where the bar is in serious harm to the reputation of the individual. I would be interested to know what people think. As you say, people will have different interpretations depending on how thick their skin is.

The Chairperson: Just one final point. Is there any idea when you will be going out to consultation on the Bill?

Mr Nesbitt: I am minded to leave it over the summer, because the summer is the summer and you often get criticised for consulting over the summer. We will probably design the consultation format over the summer and start in September and give it a full consultation, which means, hopefully, we will be bringing something forward by the end of the calendar year.

The Chairperson: OK, Mike. Thank you, Brian. Thank you both very much.