



Northern Ireland  
Assembly

Committee for Finance

# OFFICIAL REPORT (Hansard)

Defamation Bill: Mr Paul Tweed

1 December 2021

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Dr Steve Aiken (Chairperson)  
Mr Keith Buchanan (Deputy Chairperson)  
Mr Jim Allister  
Mr Pat Catney  
Ms Jemma Dolan  
Mr Maolíosa McHugh  
Mr Matthew O'Toole  
Mr Jim Wells

**Witnesses:**

Mr Paul Tweed

**The Chairperson (Dr Aiken):** I welcome Mr Paul Tweed, a well-known media lawyer, who is here to give oral evidence on the Defamation Bill. Mike Nesbitt is the sponsor of the Bill, but this Committee is taking evidence on it. I invite you to make a 10-minute opening statement. We probably could not afford your fee for talking for much longer than that *[Laughter.]*

**Mr Paul Tweed:** The clock is off today, Mr Chairman *[Laughter.]*

**The Chairperson (Dr Aiken):** I would like you to talk about your submission to the Committee Stage of the Defamation Bill. After that, please explain what you like or dislike about the Bill and how you might like to see it amended.

**Mr Tweed:** Thank you, Mr Chairman. I am very grateful to you and the members of the Committee for giving me the time to talk here. As I said, the clock is not running, so do not worry about that. If I may, I will give you a bit of background and context to my comments before I make them.

At the outset, to set out my position, which you will have seen in my written response, I think that the Bill is (a) a waste of time and (b) will be bad for not only the general public of Northern Ireland but the mainstream media. They do not seem to understand that. I, perhaps, have the advantage, for what it is worth, of practising in three jurisdictions: Northern Ireland, the Republic of Ireland, and England and Wales. I was also on the Ministry of Justice panel that debated the 2013 Defamation Bill before it was made law. I was strongly opposed to that Bill. My views were, perhaps, prescient in that I believed that it did absolutely nothing to solve the number one problem, which is the social media and search engine giants.

Nowadays, most of my work is not against the traditional media but against Google and Facebook and all the companies that they control and operate. We have horrendous difficulty trying to get defamatory

material taken down. Defamatory material also falls into the category and realm of misinformation and disinformation, which is, basically, the cancer of today.

My colleagues and I have tried to take on the media for clients who can afford to do it. Bear in mind that, so far as Northern Ireland is concerned, no legal aid is available for defamation cases. Unlike in the Republic of Ireland and England and Wales, under Law Society regulations, we are not allowed to do a "no foal, no fee", nor are we allowed to do a contingency fee arrangement (CFA). There is a dispute about it, but I believe that we are entitled to accept third-party funding (TPF). When I sat on the defamation panel that was set up by the High Court in Belfast under the former Mr Justice Gillen, we had a bit of a debate and nobody actually agreed on whether TPF is, in fact, legal in Northern Ireland. I take the view that it is, but, having said that, it has never been used.

A fundamental problem for us lawyers — nobody will have an iota of sympathy for me in saying this — is that the legal costs for defamation cases in Northern Ireland are extremely low. They do not come anywhere near what we would be paid in London or Dublin. In fact, I could not run a media practice if it was based on the work that I do in Northern Ireland; it just does not pay. That is a good thing for the public, and it is a good thing for the mainstream media.

In contrast to that — and I have just come out of a fairly major interlocutory battle in London — the costs of determining the meaning of a matter, whether it is a matter of serious harm or whatever, are eye-watering. The costs make the damages seem small in comparison. If the Bill is passed and introduced as legislation, I have no doubt that English lawyers, QCs and barristers will come to practise here. In turn, that will push up the general legal fees, plus all these issues will have to be debated before the substantive hearing. There is a big advantage in having time before the costs start to escalate dramatically.

**The Chairperson (Dr Aiken):** Paul, we have heard that there is no form of libel tourism or defamation tourism, for want of better terminology, here. Is it your contention that, if the Bill goes through, it would change that calculus?

**Mr Tweed:** I do not know if it would change it in terms of libel cases. Nobody can give me an example of libel tourism; not one example. Yet, you read in the media and the papers about this big fear that libel tourists would come here like triffids, and that Northern Ireland would be the libel capital of Europe. That has not happened. There were hysterical reports, particularly in the 'Belfast Telegraph'. It did not happen. They are now concentrating on the latest scenario.

To follow on from your point, Mr Chairman, I will diverge, if I may. One of the main protagonists for the Bill to be introduced into law is the journalist Sam McBride. I have a lot of respect for Sam as an investigative journalist. He has courage, and I would not like to be on the receiving end of one of his investigations. He has to be respected for that. However, he did a report for the 'Belfast Telegraph', which is still on its website, that states:

*"Journalists want to bring the public the truth ... but they need help to do it and it's vital that Northern Ireland's defamation law is changed".*

However, underneath that headline, there is a photograph of Dr Christian Jessen in Belfast, and, under that, it says:

*"Seeking justice: Dr Christian Jessen arrives at Belfast High Court during the libel case taken by former First Minister Arlene Foster."*

Christian Jessen was not coming to Belfast to seek justice. My client was trying to seek justice. He was laughing at her. He had shown absolute disrespect. That is fine for me — I am just a lawyer — but he was showing disrespect to the legal system in Northern Ireland. However, the 'Belfast Telegraph' still cannot help but try to turn it around. That article would not get over the serious harm threshold or the defamation law as it stands, but it is the sort of subtle stuff that we have to deal with daily.

If you want to make it harder for me and my colleagues to deal with defamation, that is fine, as long as everyone understands the consequences in the form of increased legal fees and letting the social media giants get away with it. Clause 5 of the Bill gives absolute credibility to the social media giants' claims of, "We are just a platform. We are not a publisher". Many years ago, in the 1980s, we were battling with 'Private Eye'. Ian Hislop said:

*"If that's justice, then I'm a banana."*

If Facebook, Google, and all the companies that they control along with our lives, are just a platform, then, I am afraid, I am a banana as well. Northern Ireland should not be treated as some sort of poodle that has to follow. Scotland is standing firm and has its own changes that it wants to make. Northern Ireland should be the same. We do not need any change in our defamation law. We do not have libel tourists. If there is a problem with scientific or academic research being interfered with in any way, I am all for preventing that, putting a block on it or whatever. However, I would like one example, just so that I can at least give my opinion on it. The example given by Dr Wilmshurst relates to England and Wales; it does not relate to Northern Ireland. As I said, the way that things stand at the moment, there is no chance of us becoming a libel capital of anywhere. That has not happened and will not happen.

**The Chairperson (Dr Aiken):** OK, thanks.

**Mr Tweed:** If I may, I will turn to the second reason why I think that the Bill is a bad idea. I have already referred to the social media giants. Clause 5 is taken, more or less verbatim, from the English 2013 Act. The full section of that Act has not been included. I assume that there is a reason for that that I have not quite understood. At that time, I said, "What is the point?". On libel, if someone is called a terrorist by a business rival or a political opponent, that will go around the world in seven seconds.

In 2006, we were consulted by a Hollywood personality of the day. The 'National Enquirer' had never apologised to her. We got stuck in. We did not have to issue legal proceedings, but we used whatever, shall we say, assets that were at our disposal. The 'National Enquirer' agreed to make an apology. It had just started a European edition, which was a big mistake. It did not realise that it was subjecting itself to European libel, privacy and data protection laws. However, I thought what use would be what we all call a 'Daily Mail' postage-stamp apology? It would have meant nothing. I put it back onto the internet, and I watched it go from here across Europe, across Asia, across Australia and into LA. We got vindication for her at that stage.

Today, if something is posted on Facebook or tweeted, what are we going to do? Are we going to go to clause 5 and work out what we have to do to, without offending social media, ask them to identify who is behind it? We do not go after them, then, but the person who posted it. That is all very well in theory. There are lots of theories, and I will come back to them in a moment, if I may. However, if your son or daughter is being hammered and you come to me and say, "We need to stop this", am I going to take a few days or weeks to see whether I can persuade those people or even get a reply from them? This would tell them, "You are just a platform. You are not responsible. You are not a publisher". If a letter is published in the 'News Letter' or 'The Irish News', that newspaper is responsible for it. They have to check what is in the letter, and, normally, they do so responsibly. Social media companies do not have to do that.

Facebook has decided that being its own judge is not enough; it wants to be the jury as well. It has picked 20 people to form an oversight board; that is its jury. Facebook is now judge and jury. I cite George Orwell's '1984' and Big Brother. That was interesting. I guarantee that, when we think about it in 2024, 40 years later, Big Brother will be the social media and search engine giants, because they will have all our data and all the power; they will be more powerful than government. They are certainly not worried about a £10 million fine.

Northern Ireland has produced US presidents and other people who have made a difference around the world. At the very least, this institution has to show that we will think about this. It may be that, after listening to me — you will be listening to a lot of other people, I am sure — you say, "Look, Paul Tweed is a typical lawyer. It doesn't matter". All I ask is that you think about what I am saying before you do it. Do not be bullied by the media. I am continually bullied, whether it is by BBC Northern Ireland, the 'News Letter' or whoever. Everyone tries to bully their way. Bullying is what this is, in many ways, because they have the platform.

I wrote to Sam McBride about the article that I mentioned earlier. It was not a legal letter; I asked him nicely whether he would mind changing it. It has not been changed yet. However, in fairness to Sam, he did pay a big compliment to the late Liam Clarke, the former political editor of the 'Belfast Telegraph' and Northern Ireland editor of 'The Sunday Times'. Liam Clarke was a great friend of mine, a great journalist, and also my client. He was a successful litigant; people attacked him continuously. One day, I was incandescent with rage. There was an article — I cannot even remember what it was; maybe that shows that I have dementia creeping in — that I was raging about. I rang Liam, and I went absolutely nuts. I said, "This is outrageous. The article is totally unbalanced and unfair". Liam just

laughed, as he was wont to do, which pulled the rug from under me. He said, "Paul, the media do not need to be balanced. We just need to publish the facts and the truth. We can put it however we want". That is absolutely right. However, the public, reading that article, do not hear my point of view or even your point of view.

If you want me to go through the Bill, Mr Chairman, I am more than happy to do so. I could pick out points such as the serious harm threshold, or perhaps you feel that I have done enough to give you my views on it.

**The Chairperson (Dr Aiken):** We are collating information on the clauses. Will you talk in particular about clause 1 on serious harm and, because you mentioned Mr Justice Gillen, clause 11?

**Mr Tweed:** Sure. The clause on serious harm is taken directly, more or less, from the Defamation Act 2013 in England and Wales. What is serious harm? I do not know. I have asked many times, and I get a different answer every time. The courts look at each case on its own merits. Somebody might call me an idiot. That is not serious harm; you cannot really libel a lawyer, can you? However, they might say, "You, Mr Chairman, have been very circumspect with the truth". Whether it is serious harm depends on, one, how broadly it is disseminated; two, whether the recipient took it seriously; and three, the recipient's circumstances at any given time. We all have a period in our lives — it may be that we have just applied for a new job — when a defamatory comment that would normally not be over a serious harm threshold is over the threshold.

There is debate. It is a lawyer's dream. We will have great craic over it. I might come back to Northern Ireland. Only about 5% of my work is here at the moment, but I might come back and spend more time here. We will all get paid more. As I said, we will be taking on our colleagues from across the water.

I do not understand. The courts put us through the mill. I have brought a copy of the judgement of Mr Justice McAlinden in the Arlene Foster case along with me. I urge the Committee, if members have not already done so, to read it. It is quite a lengthy document, but it gives you an idea of the type of scenario that libel lawyers are up against. It covers the whole ambit. You have to work it out; "Is this serious harm? Would it pass the serious harm threshold?". We will have a good old debate about it. In fairness to the judge, it was probably one of the most carefully prepared, copious and, I should say, excellent judgments that I have come across in recent times. He left nothing to doubt, primarily because the defendant was, initially, a personal litigant and then he brought lawyers in. It is very important to —

**The Chairperson (Dr Aiken):** Will you be so kind as to give us a copy of that? We will place it in the record.

**Mr Tweed:** Of course.

**The Chairperson (Dr Aiken):** Thanks very much indeed.

**Mr Tweed:** Basically, that judgement gives a good feel of what we are about.

You cannot write a note and say, "This is serious harm". It depends on individual cases, and that means debate. Bear in mind what I said about the general public. It is all right for a wealthy person to take it and have a pop; if he or she loses, he or she loses. The ordinary person does not have the financial means to pay us lawyers to go through all that stuff. That is an unfortunate fact of life. If you want to introduce legal aid for defamation cases, great; we will do that. However, my view is that it should not be brought into law here.

**The Chairperson (Dr Aiken):** OK, thanks. What about clause 11?

**Mr Tweed:** Clause 11 is about the jury trial. Mr Allister is probably the same as me in this regard, and we are probably unusual. I was practising at a time when juries were in for personal injury cases. That was back in the early '80s, before they were abolished. I was on the defence side then, acting for insurance companies in personal injury and employment liability cases. Juries, in my opinion, never got it wrong. Those juries were seven people, drawn at random from the citizens of Northern Ireland. I am of the same view now. We fought a very lengthy libel action for the late Barney Eastwood against Barry McGuigan and Channel 5 Video Distribution way back in the early '90s. Again, a seven-person jury got it absolutely right. I would say that anyway, of course.

Juries get it right; do not ask me to explain why. It is important to bear in mind that, in Northern Ireland, there are very strong religious and political undertones that are, perhaps, not present in the rest of the UK, in Ireland or wherever. I would veer towards keeping the juries, but I would not jump up and down about it. The £125,000 that was awarded to Arlene Foster was the exact figure that I had written on a piece of paper before the decision was given. That decision was made by a judge alone, not a jury. I do not think that it is necessary to get rid of juries. If that makes people feel happier, so be it, but we should be prepared to trust the ordinary man and woman on the street; they are not stupid.

**Mr Allister:** To carry on that theme, the basis of defamation is the damage to reputation in the eyes of your peers. Is there not an affinity between that and having a jury to make the decision?

**Mr Tweed:** That is an excellent point. You obviously have not lost your touch, Mr Allister. In fact, if you bring in this legislation and the fees go up, you might come back to the Bar full time. It might be worth your while *[Laughter.]* That is an excellent point. That is totally right.

**Mr Allister:** The corollary of bringing in "serious harm" is to effectively say what is not serious, albeit it might be irritating and many other things. You can tell the small lie and get away with it.

**Mr Tweed:** Yes. Again, that is a fair point. To go back to the point that I made, it depends very much on the victim's circumstances at the time. Sometimes, a small lie can have a massive effect. If someone is buying or selling a company or applying for a job, or, if it is three weeks before an election, something might be said that is enough to tip the balance. It really depends on circumstances. That all has to be debated and paid for. We could spend days in court going through all that. To me, that is needless.

**Mr Allister:** One of the key issues in judging this legislation relates to social media, and you have spent some time on that. How would you compare how our present law can deal with social media with how the Bill would deal with social media?

**Mr Tweed:** Our present law is also totally ineffective. The law is not geared to deal with social media. When the original legislation was drafted, there was no online threat or problem. The difficulty, at this time, is that the social media companies are able to rely on the e-commerce directive. That is the main thrust at the moment, but I am not sure how that will pan out post Brexit. Section 230 of the legislation in the United States also gives them protection. Both those pieces of legislation were brought into force long before we had Facebook, Twitter or whatever breathing down our necks.

To answer your question, Mr Allister, we need tough laws. I would like to see tough laws against the social media companies. The problem that we have here is that all the social media companies have taken advantage of tax tourism to set up their Europe, Middle East and Africa (EMEA) headquarters in Dublin. Therefore, Ireland has to be the pivotal centre point for taking action against Google, Facebook, Twitter, Microsoft, Amazon etc. That is if we can pin them down there, which is another big issue. If I win against them for an Egyptian company, they come back and say that they have signed up to the United States Facebook Inc., Google Inc. or whatever. There is a battle ahead. Amazon is the same. It is about trying to pin those companies down, and that is horrendously difficult at the moment.

**Mr Allister:** This legislation would give them protection as a mere platform. How do you prove publication generally? Is it sufficient to prove mere publication by a social media giant?

**Mr Tweed:** Again, that is an excellent question. There are two answers to that, and the answer depends on the jurisdiction that you are in. In the Republic of Ireland, the Jameel principle does not apply. There, we have to get somebody to confirm that they downloaded or accessed the post. Here, we have to show a meaningful degree of publication. The client would have to produce witnesses to say, "Look, I saw that. I downloaded it and accessed it".

**The Chairperson (Dr Aiken):** What is meant by "meaningful"?

**Mr Tweed:** That is another lawyer's dream. It depends, and we have to argue it.

**The Chairperson (Dr Aiken):** Has there been any case law or anything on that?

**Mr Tweed:** There is a bit of case law on it, yes. Say, for the sake of argument, that the individual who tweeted has 300,000 followers, as was referenced in the Dr Christian Jessen judgement. If we can identify them and show that x percentage of those followers are based in Northern Ireland, that would get us over the threshold. However, you have to prove that there has been publication.

**The Chairperson (Dr Aiken):** Again, the definition of "meaningful" is subject to debate. It is a bit like the serious harm test.

**Mr Allister:** If our current law is inadequate to deal with social media and the Bill is inadequate to deal with social media, what is the answer?

**Mr Tweed:** The answer is that there has to be unified legislation, preferably jointly across Europe. I am not talking about the EU as such. I am saying that countries have to get together on this side of the Atlantic and have a common policy. The e-comm directive has to be amended to remove the perceived protection. Again, I dispute that they have protection under that, but I am stating the social media companies' position on it.

There has to be some form of legislation. Bills on online harm are being debated: there is one in London and another in Dublin. Originally, the Prime Minister indicated that, for here, there would be criminal sanctions against the directors of the social media companies. Maybe it was a typographical error, but I could not find that again — it seems to have disappeared from the Bill — and, now, they are talking about a fine. Again, people are saying that a £10 million fine is nothing to those companies.

**Mr Allister:** The Committee has this Bill in front of us. Some people like it and some of us do not. Is there any way in which it could be amended to give it actual bite in the social media context?

**Mr Tweed:** Yes. It could have actual bite if the Committee were prepared to amend clause 5 to state categorically that the social media and search engine giants will be regarded as publishers. Give them one bite at it: the innocent dissemination defence. Any more than that and it is too late anyway: it will be all around the world, and you will be looking for damages.

**Mr Allister:** You suggest that we reverse the idea that they are mere platforms, decree them as publishers and give them the one bite defence?

**Mr Tweed:** Yes, the innocent dissemination defence. I believe that that is the case based on the current law. They dispute it, but I believe that that is what the law stands for at the moment: you give them notice, give them an opportunity and then act. These companies have algorithms to deal with a lot of this stuff. They could prevent it. It needs to be prevented. The longer-term game has to be to prevent them doing it. However, we must put legislation in place that lets them know that they will be treated the same as the mainstream media. They are taking advertising and investigative journalism from the mainstream media and not paying for it. Yet, the mainstream media do not seem to get that what they are doing, even here, is making it easier for the social media and search engine giants to continue to do what they do.

**The Chairperson (Dr Aiken):** Northern Ireland will be subject to the Online Safety Bill that is going through Parliament at the moment; will it not?

**Mr Tweed:** I am not absolutely certain, but I assume that we will be included in it.

**The Chairperson (Dr Aiken):** We have asked for some clarification from the Secretary of State that that is the case, but we have not heard anything back yet.

**Mr Tweed:** I cannot answer that question — I am sorry — but I assume that that is the case.

**Mr Allister:** I have one other point. Some of the supporters of this Bill say that, if we do not follow the 2013 Act, we will lag behind in jurisprudence, that the authorities coming out of the Supreme Court etc will be of no applicability, and that we will be left floundering on our own. What do you say to that?

**Mr Tweed:** First of all, you would be left floundering with Scotland, as Scotland is not following by the nose. That is absolute nonsense. We have our laws, and many of the laws in Northern Ireland are different from those in England and Wales and in Scotland. We have had this for eight years now. I

have not seen any problems arise in the intervening period and do not anticipate any arising. The law should be kept as simple as possible for the purposes of it being administered effectively and clearly, so that people know where they stand.

To be frank, we are in a scenario in which most of the debate on this is totally outdated. I know that Mike Nesbitt is doing his best — he is a client of mine, so I have to be careful what I say — but this Bill is maybe for 2010, and we are at 2021 and rapidly approaching 2024. It is not fit for any purpose whatsoever, and it is not doing its mainstream media purpose.

Sam McBride will tell you that he is very upset that he got a lot of letters about his book. I want to make it absolutely clear that he did not get any from me, just in case he does not make that clear. He was very upset, saying that he was peppered with letters. This Bill will not stop lawyers sending letters to him. This will not stop that. They will still send the letters, because it is all pre litigation. That is unless you were to introduce copyright legislation or something by which a lawyer would be penalised if he sent somebody a notice and failed to follow through on it. I hope that that does not happen. This will not make any difference; it will not help him, and he does not seem to get that. There is another question that I would ask. I have debated with Sam quite a bit. I have a lot of time for him.

The BBC will say the same, by the way. It will say that it gets those letters. I could tell you a thing or two about BBC Northern Ireland, but I will not go there at the moment. You can read about that in my book, which is coming out next year. This will not make any difference to that — none whatsoever — and it will give them an opportunity to rant on for an hour, as I am doing here.

**Mr McHugh:** Tá fáilte romhaibh an tráthnóna seo. You are very welcome. I will hone in on the "serious harm" bit. I compliment you on your presentation. You made the point that the law is there to be easily understood, and I was able to grasp everything that you said. The emphasis that you placed on the different areas in that last bit was very good.

**Mr Tweed:** Thank you for saying that. I must tell my wife. She says that I speak too quickly and that nobody understands me, so you have made my day. *[Laughter.]*

**The Chairperson (Dr Aiken):** You are in the land of hot air, here.

**Mr McHugh:** In relation to the defence of the man on the street against "serious harm", in particular, given that the decision of exactly what "serious harm" means is not objective, the man in the street probably knows the extent of the harm better than anyone else. That begs the question of whether it is given the same emphasis by the courts or whether a judge, who may be from a totally different social class in every respect, is well-placed to make that type of judgement.

**Mr Tweed:** Those are very good points. To be fair to the judiciary, it gets to the bottom of it. I have not had any bad decisions — that I am aware of — made that way. To be fair, they think it through, but you made a very important point, which is the point that I have been trying to emphasise: the definition of "serious harm" depends on the impact on the person concerned. We take on probably two out of every 10 enquiries that come to us on that. Most people in Northern Ireland cannot afford to have the debate of, "Look, judge, it is different for me. This has absolutely ruined my life. My children aren't speaking to me. To other people, it may not be serious harm, but it has devastated me", and I advise them against it. That is happening day in and day out. It is a problem.

What you said is absolutely correct, but who will be the beneficiaries of debating that? The lawyers. We get paid to come in and have the debate. I am lucky. I am at a fortunate stage of my life when I do not need to work and am not looking for work, but we need to try to understand what will be gained from this.

**Mr McHugh:** I am sure that we, as MLAs and so on, experience this, particularly when it comes to media such as radio. The media can toss things out there, allowing the public to arrive at whatever conclusions they arrive at, but the way that the media presents it has an implication that is totally and absolutely erroneous. There does not seem to be any defence with which the man on the street can confront that. It is probably easier to confront that in the North of Ireland, if costs are that much lower than in other jurisdictions. To take that facility away from them would be totally wrong. Therefore, I feel that, in many respects, the legislation is there, if anything, to support media moguls, or whatever you want to call them, such as those who broadcast on radio or all the other social platforms that you talk about.

**Mr Tweed:** That is absolutely right. Again, do not forget that there is no legal aid for people. It is one area of law where you cannot get legal aid. It is important to remember that with regard to ordinary people. As I said when I gave the example of the headline of that 'Belfast Telegraph' article, it is not serious harm, but it twists what a politician says. Someone makes a comment, but it is all about how the media portray it, the emphasis that they place on it, and the context in which it is published. The media have great power.

I act for many journalists. Journalists, politicians and lawyers form a major proportion of my clients. One particular media outlet tells its journalists not to mention my name: "Do not give Tweed the oxygen of publicity". You probably think, "Thank goodness: the way that he is talking here, that is no bad thing." It would be for my own self-interest to have the publicity, because that would advertise, but is it right or fair to do it that way? I do not want anyone to answer that, please.

That is an example of the point that you made about an MLA's comment: it is about how it is put out there. The media give their interpretation of it, and, once it is out, it is difficult to set it right, particularly if you do not have the financial wherewithal to take them on. Stephen Nolan was very clear. He made that point. He said, "I am in a fortunate position here. I can go after the anonymous trolls because I have the funds to do it". Not many people are in the position to do it.

**Mr McHugh:** Finally, I know that the point has already been broached in relation to clause 5 and publishers — not a mere platform, as such — being held responsible in that respect, but the question that I intended to ask you is this: apart from the draft legislation, what other legislation could one develop or implement? You mentioned that it needs a Europe-wide strategy, in a sense. How could someone come forward with legislation locally that would even contribute to that European debate?

**Mr Tweed:** Personally, I would push for a new communications decency Act; get it in there, start from scratch, and make it applicable to the modern day. Make it applicable to the 2020s. I would obviously start by making it absolutely plain that social media and the search engines are responsible for their content, subject to that one opportunity that they have — what is currently the section 1 innocent dissemination defence — to take it down. Put pressure on them to put algorithms in place. Impose a duty of care, which the online harms Bill proposes to do, right across the board. I believe that they have a duty of care at the moment, for instance, with Instagram, where young girls have been slashing their wrists because of online bullying, or whatever. They have a duty of care. I feel very strongly about that. If we get it codified into pan-European legislation, we could do it. We will never get agreement with the United States, for instance, because, already, Facebook is trying to get all the data shipped out to what it regards as the safe haven of the United States. To be fair, the Irish Information Commissioner is holding firm and trying to stop that happening. It is a problem. Google is so powerful that I do not know what we do here. We may be at 2024 already: I just do not know. Certainly, I do not think that we should make it any easier.

**Mr McHugh:** Thank you. Go raibh maith agat.

**The Chairperson (Dr Aiken):** It is interesting. Paul, you mentioned a communications decency Act. Would you like to let the Committee know some of your views on that — not now, but in writing? That might be quite useful for our deliberations, particularly with regard to where we move forward on that.

**Mr Tweed:** I will, certainly, Mr Chairman.

**The Chairperson (Dr Aiken):** Thanks

**Mr O'Toole:** Thank you for your time today, Mr Tweed. Apologies: I was slightly late for the beginning of the hearing. I will declare an interest as the chair of the all-party group on press freedom and media sustainability. Thank you for your written submission and oral presentation. I do not disagree with what you have said about the power of social media companies and tech companies in general. This is one of the biggest challenges of this century in how we manage privacy and a whole range of other things that they have not been a positive influence on.

You seem to be quite confident that these reforms will not help local media here. Before we get on to social media, I am interested in local media, because they are under extreme pressure here. Lots of our local papers do not have many staff any more, and the staff that they do have are usually paid relatively modest wages to report on things such as courts and councils, and they are under a lot of pressure. Most of them are in favour of some kind of reform of our defamation law because they feel that there is a chilling effect. They feel chilled. Are they wrong?

**Mr Tweed:** I believe that they are wrong. I should say that I act for a number of the local publishers in both Irish jurisdictions, although I do not speak for them. You have summarised their position very accurately; they are all of that view. I have tried to explain to them that this is not the answer. They will end up paying more in legal costs than they will be paying in damages. As far as we are concerned, certainly in Northern Ireland, I do not believe that there is a problem as such. I take the point that they are all very up in arms about getting letters from lawyers and so on, but this will not answer that problem.

All that I can say is that that is my view. I have to be careful in the same way that I cannot go too hard on the Bill because Mike Nesbitt is a client of mine. I am sort of hampered in what I can say because of the local media's position, which you have outlined. However, I urge them to think about what they wish for. This is not the answer to it. I am probably the arch-hypocrite of our times, because I am now taking it upon myself to try to protect the print media because I love reading papers. I do not like the online stuff, and I probably buy more newspapers than anyone else in the Province, not just professionally but because I enjoy reading them. It would be an absolute tragedy if we were to lose them. What they are wishing for is playing into the hands of Facebook, Google and the other online giants. They have to concentrate on putting themselves into the position where they can maintain their current status. They can pull back on the advertising, get their advertising in, maintain their importance and try to avoid a situation where they are having to pay out high levels of legal costs.

There is a tendency here to bring in legal counsel. For instance, we had a case that we fought that could have been settled very early on, and the local newspaper brought in Sir Edward Garnier, the former solicitor general, to take us on plus a barrister from London chambers and English lawyers. The case could have been resolved, and, ultimately, it was. I cannot seem to get it across to them that they need to try to look at this, and I agree that this is a big problem. I act for many journalists, and they are absolutely first-class people. I emphasise what I said about Sam McBride. I have nothing but the utmost respect for him as an investigative journalist. However, they do not seem to be following a logic. They are just following the old mantra about libel tourism. That is gone; we could not get any examples of that. They need to protect themselves, but they need to do it in a way that will be tangible and which will protect them from social media. Social media and Google are their enemies, not the libel lawyers.

**Mr O'Toole:** I agree that social media is their enemy in that it cannibalises content and all that. I think that that is true. To play devil's advocate, someone might say that that is a separate issue about how content is paid for. You talked about out-of-court settlements. If my terminology is wrong at any point, you can correct me. You talked earlier about pre-litigation letters. Would someone be wrong if they said that the use of those might in itself be an example of the defamation law gone wrong because, if people are willing to or are advised to settle out of court really quickly, it is proof that they are too afraid to allow the courts to test the law because the law is either too stringent or perceptions of it are too stringent? There is a proliferation of out-of-court settlements, which is in itself chilling.

**Mr Tweed:** First, I do not think that there is a proliferation of settlements. It may be that I am not involved in all the cases.

**Mr O'Toole:** I do not know whether there is. That is why I am asking.

**Mr Tweed:** I think that the point that you are making is about whether a letter from a lawyer is a threat that encourages settlement.

**Mr O'Toole:** Yes.

**Mr Tweed:** My answer to that is that, if you have published the truth, you have nothing to fear. You have absolutely nothing to fear whatsoever if you are sure of the facts. If you are not sure of the facts, delay publication and do the checks. There is a scenario that I find frustrating. A journalist can sometimes take a couple of weeks to research a story, with the intention of running it on, say, a Sunday. The client could get a raft of questions on a Friday night, or a Saturday morning; the journalist could say, "I'm going to publish this within 24 hours. Here are the questions. Answer them". That is where the problems arise. The subject is not given the same opportunity or time as the journalist had to do research. That is the sort of thing that I oppose.

As I said, I do not agree with letters being sent that have no legal basis or concerns. When Sam gives his evidence, you might want to ask him whether the letters that he received about his book related to questions that he had put to the potential subjects prior to publication, or whether they were about

actual statements that he was putting in the book. Sometimes, you get a broad question from a journalist or an author that covers everything, and you will get a reply back from a lawyer, saying, "Look, we warn you to be very cautious here. If you publish an inaccuracy, we'll sue". There is a big difference between that and somebody trying to stop the book. The truth is the biggest sword of defence that any journalist can have.

**Mr O'Toole:** On the point about the truth, in England and Wales, where there is, as advocates of it would say, a clearer harm test that can be tested in court, when there is an allegation of defamation and a writ has been issued, because that clearer test for the court exists in law, the proprietor of the media — the publisher — is more likely to say, "Hang on. We're going to stand behind this story. We're going to stand behind what we've published and go to court because we think what we've published is legitimate". The law in Northern Ireland, certainly going by accounts of the media, is less clear about what that harm is. It is more likely to have a chilling effect. At the first sign of a legal letter, even if it is not, as you say, a letter grounded in substantive legal arguments but, rather, a kind of, "Watch yourself, we're a bit annoyed" letter, they are more likely to either settle out of court or not publish the thing in the first place because it is not worth the hassle.

**Mr Tweed:** The position is not clearer in England. It is back to the point about what serious harm is. Costs are front-loaded, so, even if the ordinary litigant has been genuinely harmed and is in the right, because of the costs, they are knocked out at once; they cannot do it. It is about getting that balance between media, where it is not a threat, and, basically, what you are saying. A lot of small publishers in Northern Ireland do not have insurance, so they cannot test serious harm, either. They are in no better a position than the subject of an article. That is not the answer. As I said, we have had serious harm for eight years now in England. I still do not know what it is, but, as I said, I am not the brightest, so it is maybe my fault. That is not the answer. It does not provide that solution. I take your point — it is very valid — but it is not the solution.

It is perhaps not an obvious solution, but the journalist should be certain of his facts. I am very proud of our newspapers in both Irish jurisdictions because of our defamation laws. They are careful. We can believe what we read, in most cases. In the United States, you cannot believe anything because of First Amendment protection and the difficulties with suing. You can write anything. When somebody reads something in the United States, they could think, "Yeah", "Maybe", "No, not really", or whatever. Here, we believe that the media are publishing the facts and the truth. We may not agree with their opinion columns or op-eds, but they publish the truth. That is very important. That is due, in part, to our defamation laws.

**Mr O'Toole:** If I am reading you correctly, you do not agree with the question about libel tourism; you would reject that suggestion. Have there been situations in your professional experience in which you advised people to litigate or take proceedings here, where possible, rather than in London or another jurisdiction?

**Mr Tweed:** There are no cases of libel tourism in Northern Ireland. There are none that I am aware of. I have challenged the media to give me just one example over all these years. They have been goading me. They have decided that there was none. They admitted that. Obviously, the Committee will investigate that from others in the media, and I stand to be corrected, but I asked someone to tell me. I certainly do not know of any cases.

In relation to whether a Hollywood A-lister, for instance, could bring a case in Belfast, the answer is yes. If the 'Belfast Telegraph' or a locally based newspaper publish a false allegation about somebody who has an international reputation, of course they can bring the claim here. Why should they not be able to? Of course they can, but it has not happened.

**Mr O'Toole:** All UK national titles are published in Northern Ireland, sometimes with bespoke local editions. If there was a story in the 'Mirror' or the 'Sun', for the sake of argument, and one wanted a quick outcome for a client, is the scenario one writing to the publisher and saying, "We are confident that, if we take proceedings in Belfast rather than London, you would be in difficulties. Therefore, we would like to have a conversation about how you respond to this", and that is leading up to an out-of-court settlement? Is that a plausible scenario? It does not have to be libel tourism. A writ is issued for court proceedings in Belfast, but you are effectively —

**Mr Tweed:** Threatening Belfast as opposed to London?

**Mr O'Toole:** Yes.

**Mr Tweed:** Yes, that could possibly happen. At the end of the day, it is against the scenario that I described earlier. There is no advantage. To me, as a libel lawyer, Belfast is my last choice. From a financial perspective, London is still my first choice, and Dublin my second, but Dublin has become more my first choice because Google and Facebook have their EMEA headquarters in Dublin.

As for me saying to the 'Mirror', "Look, if you disseminate this article in Northern Ireland, I'm going to sue you in Belfast", it depends. I have to act for a client with a reputation in Northern Ireland, so normally it has to be a local person or an international personality. It has not happened, but, if somebody has a basis for doing it, and there is sufficient publication and damage to their reputation in Northern Ireland, the courts in Northern Ireland are just as capable as the courts in London or Dublin in determining a case.

**Mr O'Toole:** Your argument is that London is a global financial centre, and Dublin is increasingly a global and European tech centre, so bigger and more important economic activity is happening in those places, and London is an established legal centre as well. In Belfast, the corpus of libel law is a wee bit more favourable to the litigant than those other two places. Would that be fair to say?

**Mr Tweed:** In theory, it would be more favourable to the litigant in Northern Ireland, but in practice, as I explained, it is all down to the balance between the legal costs and the damages. You could work it round whatever way you want.

**Mr O'Toole:** The damages here are possibly likely to be lower because it is a smaller *[Inaudible.]*

**Mr Tweed:** No, I do not think that that is right at all. It really depends. It is so difficult to generalise in all these situations. All that I can say is that the facts speak louder than words. We have not got people coming into Northern Ireland. There has to be a basis for doing it. We sued Facebook in Dublin because that is where Facebook is. Facebook is based in Dublin.

People have accused me of libel tourism. A well-known Hollywood celebrity was suing an English edition of a German publisher book. It was published the same number of times pro rata to the population in Dublin as in London. I took the view that the courts in Dublin were just as capable of deciding it as those in London. That was not a libel tourism case even though there were suggestions that it was.

You gentlemen have a lot of responsibility and the onerous task of deciding whether it is fair and appropriate to introduce the Defamation Bill, whether it will benefit the people of Northern Ireland and whether it will benefit the traditional, mainstream media in Northern Ireland. My answer is a firm, absolute no. I can see no basis whatsoever for it. That is my personal opinion, and I stand to be corrected.

**Mr Wells:** The one thing about being in the Chamber is that, when the red light is on, we have privilege, which means that people like you cannot sue us. I am not going to say anything outrageous, I assure you, but it means that it is perhaps the only time that someone in my position is safe from someone of your experience. It is important not to abuse that right, of course.

Your reputation is well known. You said that only 5% of your work is based in Northern Ireland. Am I right in thinking that that 5% is the vast majority of cases involving libel in Northern Ireland?

**Mr Tweed:** I cannot answer that, Mr Wells. I just do not know. The work that I have been doing in recent times has been very high profile, so, perhaps, it gets what might be regarded as disproportionate media coverage, and it appears as if I am doing much more. I cannot answer the question. I just do not know.

There are many other good lawyers out there. I have never held myself out to be the best lawyer in the world, by any means. I can count on one hand the number of cases that I have in Northern Ireland at the moment. I certainly cannot do that as far as Dublin or London are concerned at the moment.

**Mr Wells:** To the layman, the market is cornered by you and your colleagues.

**Mr Tweed:** Sorry?

**Mr Wells:** You have cornered the market in Northern Ireland.

**Mr Tweed:** Again, I think that there are quite a few other lawyers out there doing media work, but I do not know.

**Mr Wells:** They are very quiet, if they are.

**Mr Tweed:** I just do not know. I cannot answer that. I would be misleading you if I said otherwise.

**Mr Wells:** What I am trying to work out is your motivation for coming here and saying that Mr Nesbitt's Bill has very little merit; that we have to keep things as they are, things are going very well, you are doing very well, your colleagues are doing very well, so let us not upset the apple cart, and, when things are going good, just keep them as they are. Surely, given the fact that you are so successful and have so much work in Northern Ireland, in the sense that a very high percentage of the work seems to fall in your lap, is that not your motivation for saying, "Let's not change things"?

**Mr Tweed:** Absolutely not. I really resent that comment. Nothing could be further from the truth. I will state publicly that I do not care if I do not get another case from Northern Ireland until I retire. I do not make money from Northern Ireland work per se. I take on cases that I believe have merit and that I believe are right, and I just do not like being bullied, as I have been by certain quarters here, and, if you bully me, I will come at you. That is my modus operandi.

I am not going to take it that I am here for the money. That is one criticism that I will not take. You can call me a useless lawyer, you can call me somebody who goes after inappropriate cases, but I am not in it in Northern Ireland for the money. I can tell you that categorically.

**Mr Wells:** I would not accuse you of that at all.

**Mr Tweed:** Well, you are, Mr Wells. You put it to me that I am cornering the market so that I can make money here. That is absolute and total nonsense. Nothing could be further from the truth.

**Mr Wells:** It is not libellous of me to say that you are cornering the market because that is an indication of the success that you have had and your notoriety. Many people will come to you for work because they know your reputation.

**Mr Tweed:** I think that is possibly right. You can tell me that. I —

**Mr Wells:** I am saying this because you quoted the Arlene Foster case and the excellent judgement on that, and well done to you for what you did there, but the fact that you took that work on in Northern Ireland and the success that you had in that case was broadcast throughout the United Kingdom and much further.

**Mr Tweed:** Do you mean am I getting success from my clients' success? The answer is yes to that, of course.

**Mr Wells:** What I am saying to you is that that case was broadcast not just in the Northern Ireland media but throughout the United Kingdom and the Irish Republic. That success is bound to have helped your work in the rest of the UK.

**Mr Tweed:** It probably does, but, as I said, I am not looking for work. We are turning away more and more work, and I am putting on the public record that I am not looking for work, but I will fight to the death for a case that I believe is right and has merit. The bottom line is that Belfast is not an attractive proposition, particularly for me, and it most certainly is not attractive from a financial perspective.

If you are saying, "You're getting a lot of attention from doing particular cases", then, yes, I fight the case and I get a result, and it is great if I get publicity from it; that is fine. It is good for the client — it is for the client that I am trying to do it — and I would be a total hypocrite to say otherwise. I love the hunt, and it is good to get an acknowledgement at the end of it.

I apologise if I sound sharp, but I am very sensitive to the criticism about staying in Northern Ireland or attracting work to make money. That is not the case in this jurisdiction — not for a media lawyer. I made it very plain, even in the defamation committee in the High Court in Belfast, which I mentioned earlier, that it is virtually impossible to make money in Northern Ireland. There are various factors, historical and otherwise, that explain that. It will change, and if this legislation is brought in and brings

us broadly into line with England and Wales, I might stay around for another year or two and capitalise on the increased fees, but it is not in the interests of the people of Northern Ireland.

**Mr Wells:** You do not like Mr Nesbitt's Bill. We have got your drift on that; there is no doubt about that. However, you are saying that change is required in Northern Ireland to take account of social media and that the current legislation is inadequate.

**Mr Tweed:** Totally.

**Mr Wells:** The question is this: can Mr Nesbitt's Bill be amended adequately to deal with that, or do we need to start from scratch with a new Bill to replace the current legislation in Northern Ireland?

**Mr Tweed:** My personal preference is for a new Bill. Start from scratch, run it through and deal with the things that matter to the people and the mainstream media in Northern Ireland. Get the Bill, and get it properly structured. The 2013 Act is totally outdated and unfit for the purpose for which it was intended. At that stage, there was a massive pressure to placate the media and to be seen to be doing something. To answer your question, Mr Wells, I would prefer to see the Committee and the Assembly take on social media and to deal with that real problem of our times, if they are prepared to do so. I would welcome that with open arms. For the reasons discussed, I do not see any point in trying to amend this Bill. You have my views on serious harm, for instance. I do not see any point in it, albeit it could be done. I have no particular problem with changing the descriptions of "honest opinion", "truth" or whatever, if it is deemed appropriate, but we have to ask the question: why? What benefit will it have? We do not want change for the sake of it.

**Mr K Buchanan:** Thank you, Paul, for your information so far. There have been a lot of good questions and answers. Is there free speech in Northern Ireland for the mainstream media?

**Mr Tweed:** I will mention the article again. That was the 'Belfast Telegraph' giving its opinion on defamation law reform. It is one-sided and one-way. If that is not free speech, I do not know what is. There is total free speech. I have absolute sympathy for a situation in which a journalist feels that they have been in some way threatened in the wrong by a billionaire who decides, "I'm going to use my money to knock you out". That needs to be dealt with. I have acted for publishers in such situations; we have got to fight them. It is not satisfactory. I am not aware of any cases of that nature in this jurisdiction. If it becomes a problem, it needs to be looked at. I stand to be corrected, but I am telling you what I know. I assume that I am right, but I am not aware of any instances of that, or of academics or scientists being threatened. However, I may be wrong.

**Mr K Buchanan:** On many occasions, you referred to the truth and journalists telling the truth. If journalists are telling the truth, have they anything to be concerned about?

**Mr Tweed:** Concerned about what?

**Mr K Buchanan:** You sending them a letter.

**Mr Tweed:** I do not simply send out letters.

**Mr K Buchanan:** I appreciate that.

**Mr Tweed:** I work through the issues, because I have to assess my clients. We are under very strict regulations as well, not that I need them. We have many clients, and we are a great filter for the media. We send away a lot of cases, and, if they cannot persuade me, hopefully they will not go to someone else. It is difficult, and I cannot get it right every time. You cannot be absolutely certain, but you do your best to assess the credibility of the client who comes to you. If you are satisfied that there is merit, you decide whether to take action and put them on notice.

I have a good relationship with most of the in-house lawyers in the UK and Ireland. I lift the phone to them, and we try to get things sorted. Most of them are very capable people. They are brighter lawyers than I am, with much more experience because they are doing this day in, day out. In most cases, we can reach agreement. Whether it is the 'MailOnline', 'The Sun' or whatever, we will have a chat and get it sorted. I will say, "You have to speak to the journalist. Here's the stuff; have a look at it. It is not for publication, but this bit will prove that my client is telling the truth", and we will get it sorted.

For a lot of my clients, it is not about getting money or a Klondike in damages — not all of them, anyway. Most of them do not want that; they want to get the record set straight. They want it done quickly, however, and that is another problem. Even with the mainstream media, it is a problem, although obviously not as great as facing the dissemination of the likes of Google. The problem is in trying to get them to correct something right away. One of the biggest problems that I have is this: an article is published; you persuade the in-house lawyer that it is wrong, saying, "Look, that is factually wrong. I can prove it. It is provably wrong"; and the lawyer says, "Paul, we will check with them. If you give me that, we will publish a clarification at the end of the article online". How many people will read the article a second time to find the clarification at the bottom? Is that better than the postage-stamp apology from the 'Daily Mail' that we had back in the 1980s?

It is about balance. I keep going back to my great friend Liam Clarke's saying, "We don't have to be balanced", but there has to be fairness. In other words, if something is published that is wrong, given what Mr Wells said about the legislation, consider putting a clause in that means that, if a newspaper is found to be in the wrong, it has to not only take the offending article down but publish an apology with the exact same prominence as the article that has been deemed by the courts to be wrong, bearing in mind that it takes a year on average to get a case to trial here — if it gets there. I have to ask: how many cases have come to trial in Northern Ireland? In Dublin, it takes nearly two years to get a case to court. It is quicker in London, but people's hands shake when they see the legal costs. There are no answers to any of those problems in a general clause that you can put in.

I keep reiterating and emphasising that I am not speaking for claimants or for the mainstream media. Everyone has to understand that the current legislation is not in favour of only plaintiffs but, ironically, of the mainstream media in that the legal costs are so low, and the in-house lawyers who deal with such cases know whether they can defend a case. Most of them know right away. In Northern Ireland — I am thinking aloud — most of them will have access to legal advice from experienced lawyers who deal with this day in, day out, so it is not just a question of a journalist being exposed. Sam McBride will say, "No, when I was doing my book, I was on my own", and, to be fair, he may have a point, but the Bill will not help him.

**Mr K Buchanan:** OK. Thank you, Paul.

**The Chairperson (Dr Aiken):** Jemma?

**Ms Dolan:** Thanks, Chair, but my question has been answered. Thanks, Paul.

**The Chairperson (Dr Aiken):** Thanks very much indeed, Jemma.

**Mr Catney:** Thanks very much, Mr Tweed, for your evidence. I will make a small point. When you were talking to Mr Wells, you said that we should start from scratch with the Bill. Northern Ireland is a very small jurisdiction, but, earlier in your deliberations, you said that Ireland, England, Scotland, Wales, the EU and probably all of Europe should get together in order to strengthen the laws to take on social media. Would there be any point in starting from scratch with the Bill and trying to amend it for Northern Ireland, given what you stated about trying to get all countries to work together on it?

**Mr Tweed:** Yes. Obviously, the preference is to get at least a pan-European agreement on dealing with those issues. That is by far the preference. I should say that that is being considered and looked at. From my perspective, that is definitely the preference in terms of its effectiveness. You have to bear in mind that we are having difficulty at the moment in trying, for instance, to pin down where Amazon Prime is based. It broadcasts here, but is it based in Luxembourg, Dublin or London? Where? It is about those sorts of things. Having a pan-European approach would be the ideal situation. As for whether we need any legislation here, as I say, I do not think so, unless it is to deal with social media companies. Again, you have to be realistic. Given that those are jurisdictionally based in the Republic of Ireland, we have to consider whether it is worth putting in the time that would be required when the Government are facing so many other pressing issues.

**Mr Catney:** Would it not be more helpful and beneficial — I know that the social media side is very difficult to address — if we worked with what we have and tried to strengthen the Bill while trying to go for broader pan-European legislation that covers all jurisdictions?

**Mr Tweed:** I have no problem with that, if that is a solution, subject, as I say, to my observations on specific clauses. That could certainly be considered.

**Mr Catney:** OK. Thank you, Mr Tweed.

**The Chairperson (Dr Aiken):** Paul, thank you very much indeed for an excellent evidence session. You are going to send us some of your ideas on the a communications decency Act.

**Mr O'Toole:** The online harms Bill, no?

**The Chairperson (Dr Aiken):** Yes.

**Mr Tweed:** I can do both if that is helpful. I am more than happy to do that.

**The Chairperson (Dr Aiken):** Yes, please. Thank you very much indeed for your time and for giving the Committee a lot to cogitate.

**Mr Tweed:** Sorry for talking so much. My wife will be complaining when I go back home.

**The Chairperson (Dr Aiken):** Do not worry: that is what we do in Committee. Thank you very much indeed.

**Mr Tweed:** Thank you.