



Northern Ireland  
Assembly

Committee for Finance

# OFFICIAL REPORT (Hansard)

Defamation Bill: National Union of Journalists

8 December 2021

# NORTHERN IRELAND ASSEMBLY

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### Defamation Bill: National Union of Journalists

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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 Philip McGuigan  
Mr Maolíosa McHugh  
Mr Matthew O'Toole

**Witnesses:**

Professor Chris Frost                      National Union of Journalists

**The Chairperson (Dr Aiken):** I welcome Professor Chris Frost from the National Union of Journalists (NUJ). He has kindly agreed to step in for the scheduled witness, Séamus Dooley, who is unwell. We pass on our regards to Seamus. The session will be reported by Hansard. I invite Professor Frost to speak to the NUJ submission on the Committee Stage of the Defamation Bill. You will have 10 minutes or so to tell us what you think about the Bill, what you like or dislike about it, and how you might want to see it amended. We will ask a couple of key questions afterwards.

We have already received quite a lot of evidence on the Defamation Bill, so some of our questions might sound a bit technical from your end, but we are looking for more clarity on what we have already heard.

**Professor Chris Frost (National Union of Journalists):** Thanks for the opportunity to present our views to you. The NUJ represents journalists in the UK and, of course, in Northern Ireland. We have a number of members in the rest of continental Europe, so we span across a fair brief. Our general view is to support the Bill, just as we largely supported the Act on which it is based, and which applies to England and Wales.

Clearly, we believe in freedom of expression, which is extremely important to journalists. It is a central part of what we do day-to-day, but we also understand the importance of protecting the right of reputation of individuals. Therefore, there needs to be a fine balance between those two rights — the right to inform the public and freedom of expression and, on the other hand, the right to reputation.

Unfortunately, we do not believe that the present Act in Northern Ireland does that, in that it has, in our view, a number of flaws, many of which were corrected in England and Wales by the Defamation Act 2013 and, this year, in Scotland by the Defamation and Malicious Publication (Scotland) Act 2021. We believe that the existing Act is particularly weak in allowing that right to free speech. It allows those

who have a lot of money to bully journalists and newspapers and others by bringing vexatious claims for defamation.

Looking back to the past, we see that Robert Maxwell was particularly well known for that, and a large number of defamation actions died when he did, some time ago. However, he is not the only person to have used his money to set up defamation claims, which people have then found it difficult to act against.

Changing the idea of being able to present any claim, as the Bill intends to do — it needs to have a serious element to it, and we get the serious harm requirement coming through in the Bill — allows for the courts to decide whether the case is appropriate to go ahead. We think that that is the right way to proceed. It does not prevent someone saying, "I've been defamed", but it does allow the courts to say, "Yes, but not by very much".

I will move on to other areas that, we think, are particularly important. The defences against a claim for defamation are, clearly, particularly important. Truth is the obvious one, which you will already have heard a fair bit about — moving away from the old justification to the idea that, if something is true and we can prove that it is true, that stands on its own.

The point that I really want to make in the next couple of minutes, however, is about the changes that have happened in the way that we all work since the Defamation Act (Northern Ireland) 1955 was brought in. Obviously, what happened in 1955 is totally different from the way that we work now. The idea of me talking to you by video would not have been possible in 1955. The World Wide Web and computer technology now completely dominate the way that we work, and that needs to be applied to any defamation. That gives us particular concerns about the single publication rule, which needs to be changed. There have been considerable problems in the past, certainly in England, because, of course, working on the web means that, every time that you take a new look at the web page, it is a new publication. That clearly needs to be changed. It has been changed in England and Wales and is in the process of being changed in Scotland.

There are other things that come up from the web and the way that it operates, such as the way that people are able to comment on stories and to share them, which brings additional problems of potential defamation. Therefore, that needs to be changed as well.

Finally, we are talking about the problem that we faced very heavily in England when London became the libel tourism capital of the world. People were able to sue in London for something that appeared on the internet, even if it really did not have very much of a connection with the UK, simply because people in the UK were able to read that on the web. We found the appalling situation of some US states introducing laws stating that our law of defamation could not apply in their country. How embarrassing is that? That needs to be changed. The new Act does that, and the Bill that is proposed here does that for Northern Ireland. Without that, you risk finding that Northern Ireland will become — indeed, some might say that it is already becoming — the libel capital of the world. That is not something that any forward-looking Province/country would want to have hanging around its neck.

Those are the key elements that concern us. There are not really any significant problems for us with the Defamation Bill as proposed. Had we written that, it might have been slightly different. There may have been one or two minor things that we would have sought. So far, the Defamation Act 2013 in England and Wales has worked fairly well. There has been very little controversy about the way that it has operated. None of the new elements seems to have drawn any serious problems. The number of libel cases has dropped slightly but not to the extent that people are complaining that they are not able to bring claims forward when those are justified.

We would like the Assembly to support the Bill and enact it as soon as possible. That is it, Chair. I am happy to answer any questions that anybody has — or to try to, anyway.

**The Chairperson (Dr Aiken):** Thanks very much indeed for that, Chris. I have just two points. The first is that some respondents to the Committee Stage suggested that clause 1, which is the serious harm piece, should be strengthened in order to incorporate a provision to enable parties to apply to the court, at an early stage, to have the action struck out, if it is established that it is without merit and is merely strategic litigation to censor free speech, such as happens with NGOs. Within Northern Ireland, however, the rules of court and common law already include provisions to allow claims without merit to be struck down. Why do you think that other provisions are necessary, and what would they look like?

**Professor Frost:** I am afraid that that is a technical question that is a little bit beyond my experience. My knowledge of Northern Ireland law is, perhaps, more limited than it ought to be. There certainly needs to be some way of striking out a case very early on. It can be extremely expensive, even at an early stage, to defend a claim for defamation. That can have a seriously chilling effect on journalists, who maybe go for a story but become very concerned that it will involve massive expense before we get anything. If you are telling me that the law already allows for cases like that to be struck out at a very early stage, provided that it is a possibility, I would not be too concerned about precisely how that is done.

**The Chairperson (Dr Aiken):** You touched on my second point, which is the question of the chilling effect. The Committee received evidence, I think, from a senior representative from the BBC, who said that 20% of its legal activity — litigation etc — is around Northern Ireland, bearing in mind that the BBC is a global corporation. Obviously, there is a chill factor. What is your sense of the way in which the law has changed that in England and Wales? Has there been a diminution of the chilling effect, has it had no real effect whatsoever or has it improved the way that the media feel that they are able to defend themselves?

**Professor Frost:** That is a good and important question, but it is the kind of thing that takes quite some time to drift through as the law changes. In reality, it has been seriously in operation only since 2014 or 2015, so it is probably still a little bit too early for that to start to affect the way that journalists feel about their risks while looking at a story. However, there is evidence that the number of cases being brought has dropped significantly.

One of the problems about the chilling effect was always that key people — largely rich people — who are involved in various activities would do that. We need to see an increase in the investigations of people of that sort, as journalists start to worry less about defamation cases being brought, to identify whether there is any significant change. I am confident that it will come. It is just difficult to evidence it at the moment and to say, "There has been a 20% increase in the number of stories about certain types of people". There are other factors involved, but it certainly acted as a chilling effect against people who were well known for launching into defamation actions before the new Act commenced. That has made it more difficult for them since.

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

**Mr Allister:** To use your own words, Chris, your starting point seems to be that it is OK to defame a citizen provided that you do not do it very much.

**Professor Frost:** That is certainly not what I am suggesting. If you defame —

**Mr Allister:** Sorry, the words that you used are, "not by very much".

**Professor Frost:** OK. I apologise for my use of words that can be misinterpreted. We are talking about serious harm, and the defences that are now involved make it much clearer what is expected of journalists: truth, honest opinion, privilege and the other defences.

**Mr Allister:** You can print a small lie. Is that right?

**Professor Frost:** Hardly. If you are aiming to print the truth, you do not print lies.

**Mr Allister:** Yes. However, if the contention is that no one has a cause of action unless they can show serious harm, the corollary of that is that you have no cause of action for mere harm. You have to show serious harm. Therefore, provided that it does not cause you serious harm — that you are not defamed, in your words, "by very much" — a mistruth or a distortion is OK. An unconscionable position is created.

**Professor Frost:** Why would I want to print a small lie? I do not understand that.

**Mr Allister:** You obviously want to have no cause of action for someone about whom such a lie is printed, if it does not cause them serious harm. The idea of clause 1 is to prohibit actions where there is not more than serious harm. That means that that which does not cause serious harm is OK, and, if that is a small lie, so be it.

**Professor Frost:** You are rather stretching the facts. There is no reason to suppose that it would mean that there is a string of small lies. What is the point of printing small lies? The difficulty with defamation — prosecuting and defending it — is that you have to be able to prove pretty much everything that is there. Now, often when you prove —

**Mr Allister:** Shocking that you have to prove what you write.

**Professor Frost:** — *[Inaudible]* it is not always necessarily easy to prove all the tiny little lies or untruths or truths that are underpinning it, but, if you can prove the big truth, you can defend the libel. However, if the defendant can prove that there is a harm, it is up to the courts to decide how serious that is and whether it is important. Of course, the journalists will have decided that themselves beforehand. If they are lying and deliberately distorting the truth, that is a big *[Inaudible.]*

**Mr Allister:** Under our law, as it stands, you have to prove the gist of the libel.

**Professor Frost:** No, that is not entirely true, is it?

**Mr Allister:** You are now saying that —

**Professor Frost:** You have to justify it, and that is not the same thing at all. There was an old saying that —

**Mr Allister:** No. Sorry, the plaintiff has to prove —

**Professor Frost:** — the bigger the truth, the bigger the libel.

**Mr Allister:** No. You misunderstand me. The plaintiff has to show what the gist of the libel is and that the gist of the libel has lowered their reputation. You are trying to contend that that is not enough; that you have to show that the gist of the libel not only harmed their reputation but caused them serious harm.

**Professor Frost:** Yes.

**Mr Allister:** You are giving immunity to that —

**Professor Frost:** That is up to the court to decide.

**Mr Allister:** — which only causes harm.

**Professor Frost:** It is up to the courts to decide whether or not it is a serious harm; it is not up to the journalist.

**Mr Allister:** Is that not where the level of damages comes in? If it is only a trivial matter, will you not get trivial damages? In our system, trivial matters will never get to the High Court. They will be heard in the County Court. If a trivial matter is brought in the High Court, the defendant can have it remitted to the County Court. There already is a protection against the trivial.

**Professor Frost:** Not under the law of defamation that you have at the moment. The whole point is that there is no way to strike a claim out until it gets to court. The serious harm threshold allows that to happen.

**Mr Allister:** Yes, it does so by virtue of giving immunity to that which is not serious harm. Since we are talking about stretching the facts, you told us that Northern Ireland is already on its way to being the "libel capital of the world". Where is your evidence for that?

**Professor Frost:** It is the examples of things that I have been told by people who work in the field of libel and the suggestion that is around that that is happening. Now, it is small at the moment, but you run that risk, because, at the moment, the law in Northern Ireland is considerably behind the law in most European countries and the US.

**Mr Allister:** Chris, I do not know to whom you have been talking, but I can tell you this: since 2013, on average, there have been fewer libel actions and writs issued in Northern Ireland than there were in the years pre 2013, which strongly confounds the suggestion that we, in some way, have become an object of libel tourism. The number of cases is falling, not rising. Whoever told you that we have become a libel capital has, I think, grossly misled you. The evidence is not there to support that.

**Professor Frost:** I said that it runs the risk of it, but you also have to remember that the number of cases of defamation in England and Wales has also fallen dramatically over the same period, so it may just be that people are no longer bringing cases. I do not know. You would have to talk to the people who bring defamation cases.

**Mr Allister:** Tell me this: why do you want to make life easier for the social media companies? You represent print journalists. Why do you want to let the social media companies away with what clause 5 would let them away with? That it is one publication — end of. They are merely a platform and not a publisher. Why do you want to help them?

**Professor Frost:** We are all journalists. We have members who work in social media or on websites of various sorts. We are not just for print journalists. That, if you like, historically, is our base, and we certainly recruit and represent print journalists, but we represent all journalists. We represent those who work in those fields as well, but we are not particularly supporting that. We are —

**Mr Allister:** So you do not think that Twitter —

**Professor Frost:** — supporting the right to free expression, and, if that involves those on social media, so be it, but the rules apply to them in exactly the same way as they do to any other journalist.

**Mr Allister:** No. You are trying to diminish it under clause 5. You are trying to remove them from the category of publisher and make them a mere platform. You are making life easier for the big social media companies, are you not?

**Professor Frost:** The difficulty with saying that they would be a publisher means that we draw everyone into the publication category. One of the important things that newspapers, broadcasters and others do is to provide a platform for free debate. If a publisher, be they social or traditional media, finds that they are responsible for every single thing that gets published under that platform, there are enormous difficulties, and that will seriously reduce freedom of expression.

**Mr Allister:** Or maybe they will be more careful, but, of course, the repeat publication is reflected in a reducing quantum of damages, is that not correct?

**Professor Frost:** Not particularly. Repeat publication is entirely different.

**Mr Allister:** Thank you, professor.

**Mr O'Toole:** Thank you very much for your evidence, Chris. The Bill basically updates Northern Ireland law to be in line, in large part, with the Defamation Act 2013. From the NUJ's perspective, has there been a marked improvement when it comes to the stress on journalists around defamation threats, vexatious or otherwise, as a result of the 2013 Act?

**Professor Frost:** Yes, there certainly seems to have been an improvement, and there have been some cases that, previously, would have been extremely damaging to the journalist involved. I do not have the cases handy. If anybody needs that, I would need to research that and come back to you. The general view seems to be that things have improved a little, that it is much easier to do the work and to do it properly, that the defences that are there now are legitimate but that the protections still exist for someone's right to reputation. There was not the kind of controversy that surrounded the old Act in England and Wales.

**Mr O'Toole:** Tell me if you do not have this information, because I know that you are filling in for Séamus. Two issues that journalists have had to deal with, particularly in the last decade or two, are insecurity of work and low pay. It is alleged that our defamation laws here require small media companies and publishers, in particular, to be more cautious and conservative and also to have insurance for actions taken against them. Is there any evidence that our defamation laws have

contributed to some of that insecurity of work and the low pay that journalists have experienced, given that it is one of the financial risks that publishers have to deal with in an age of declining revenues and declining circulation?

**Professor Frost:** It would be difficult to suggest that that has been directly, or even indirectly, responsible for the reduction in jobs and the lowering of pay and conditions in most publishers. There is certainly some feeling that, in England and Northern Ireland, publishers are still very concerned about carrying certain types of story because of the risk of facing very heavy costs. Defamation costs are not so much about the level of damages that are presented but about the huge costs of paying for the legal fees of both sides if you lose. Very few organisations now are prepared to carry that. More and more newspapers, in particular, and other types of journalism employ freelancers, and they are not necessarily supporting them. It is not unknown for those who are seeking defamation actions to sue the journalist rather than the publisher. There are difficulties, but I do not honestly think that I could say that it has damaged job opportunities or anything.

**Mr O'Toole:** That is fine. Thank you.

**The Chairperson (Dr Aiken):** Matthew, may I come in with a quick question? Chris, has there been any indication that, since the 2013 Act came in, legal insurance premiums have gone down for media companies, or have the premiums continued to go upwards? The contention is that, because of the 2013 Act, it is less likely for defamation actions to be taken forward to that degree. It has been quoted to us that one of the chilling factors is the cost of legal risk and the rest of it. Has there been any indication that the premium costs have gone down, or have they remained the same?

**Professor Frost:** It is an interesting point but not one that I am up on, I am afraid. I would need to make enquiries and find out what is being charged, but I certainly expect that to be the case, because the risk of a case coming forward now is slightly less and the cost of that case should be slightly less as well. It ought to be cheaper, but I do not know. My experience is that liability insurance is incredibly expensive and difficult to get.

**The Chairperson (Dr Aiken):** Is there any way through the NUJ, or through any of your links, to inform the Committee of that? It would be useful for us to be aware of that, because it would be an evidential base to show that there is a direction of travel caused by the change in legislation.

**Professor Frost:** Yes, sure. I will make enquiries and come back to the Committee in due course.

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

**Mr O'Toole:** My final question is about a point that Jim Allister put to you, that the lower number of cases — I do not know where those figures are from — brought in Northern Ireland was evidence that there was no libel tourism and that defamation laws here were not temptation to litigiousness. Have you encountered any evidence to suggest that, in a strange way, the lower number of writs issued in Northern Ireland could be evidence that the defamation law here penalises media and publishers more, because the risks of allowing anything to proceed to court are higher, and it is therefore inevitably in their interests to settle proceedings before a writ is even issued? We know and have heard evidence on, first, the enthusiastic use of a lawyers' letters to ensure damages before a writ is even drafted and, secondly, the even more upstream process of the editor saying to his or her journalists, "Back off that one. It is not worth the cost". Does NUJ recognise that?

**Professor Frost:** Yes. I cannot, off the top of my head, give you any examples of cases, partly because you are quite right that the sort of thing that happens is that an editor says to a journalist, "No, we are not pursuing that", either because the person is well known for bringing defamation cases or, as the editor says, "You may well be quite right in everything that you are saying, but we would be sued and we just cannot afford to go down that line". In an area of the country where the old law still applied, it would not be unexpected for there to be fewer investigations, because there is a much bigger risk of defamation cases following.

**Mr O'Toole:** Is it also true, Chris, that one of the challenges is that we cannot, by definition, gather data on non-judicial proceedings, as there is no official record of them because they involve a phone call and a meeting between a libel lawyer and a publisher's lawyer and, possibly, the editor of a title?

Is it not also the case that the chilling effect on editorial journalistic conversations is such that, if that is happening, we might not be hearing about it because, for fairly obvious reasons of professional respectability, editors are not likely to put their hand up and say, "I am stopping my journalists doing stories because I am worried about the financial costs"? Even if that is true, not many editors would be keen to admit it publicly.

**Professor Frost:** You are absolutely right. Hardly any editors would be prepared to admit to that. Apart from anything else, if they were going to do so, they would have to say who the story was about, which might lead them into defamation problems anyway. It is not an area in which it is easy to get research material to find out how many such cases there might be, simply because, as a matter of professional embarrassment, people would not want to talk about it. It is certainly not unknown, and I have known of some cases in my career. Admittedly, that goes back some way and was while the law before 2013 applied. You may just not know that some of these cases are happening. You might need to look out for an increase in the number of apologies, but, again, it is much more likely that it simply would not get that far.

**Mr O'Toole:** OK. Thank you.

**Mr Catney:** Thank you for your answers, Chris. Some respondents have suggested that the provisions in clause 1 on serious harm — I know that you have probably touched on this with the other questions — should be further strengthened. We had a defamation lawyer here, and he stated that he did not want any work in this jurisdiction, yet, in your opening remarks, you talked about Northern Ireland becoming a capital for litigation. Will you expand on that, because one lawyer is saying no, and you are saying yes?

**The Chairperson (Dr Aiken):** It has been eight years since the 2013 Act came through.

**Mr Catney:** That is right. Eight years.

**Professor Frost:** I cannot, obviously, comment for the lawyer who said that he or she would not take up such a case. However, we know that one of the problems, particularly about the internet, is that it makes it much more possible to choose a jurisdiction in which to sue because of the possibility that people might be reading stories in that jurisdiction, even if the stories are not specifically aimed at that jurisdiction. What I am trying to say is that, in the old days, if it appeared in the 'Belfast Telegraph', it would need to be a Belfast reader who was reading it and, therefore, that is where the damage would be done. However, the 'Belfast Telegraph', and, indeed, any newspaper, is now online and, if they write about someone, it is almost certain that someone in Northern Ireland will have read it and, therefore, it is possible to bring that litigation to Northern Ireland. It is important to try to prevent that happening. If the legislation in that region, province or country is such that it becomes very easy to bring a defamation case, and where the courts are sympathetic to that defamation case because of the way in which the law is structured, some people will do that.

**Mr Catney:** You also mentioned the exceptions of social media. Clause 5 includes significant exemptions from liability for social media networks. Yet you and the NUJ support this provision, even though it appears to undermine your own members, which Matthew mentioned.

I am trying to get at why you support, or seem to be in favour of, clause 9. Then I have to go back to clause 1 and ask whether you agree that we need the serious harm test in that clause. I am trying to understand where exactly you are coming from on this.

**Professor Frost:** We are coming from a position where the law in England and Wales is already there. This Bill largely picks up the Act that already exists elsewhere in the UK and, therefore, picks up this area. We do not feel massively strongly about website operators, but you have to remember that an awful lot of publishers who employ our members are website operators. Therefore, this is not just about Facebook, TikTok and what have you. Indeed, it is arguable whether they are publishers in any case. Operators of websites are being allowed to carry material. As I have said before, the comments pages on traditional newspapers on the web allow for discussion and debate. It is something that newspapers want as a matter of freedom of expression, but the cost of moderation would be incredibly expensive. If we do not get freedom to do that, with the provisos that are included in the Act, we would have to stop carrying all those comments pages or, at least, that is the risk, and we feel that that would be detrimental to freedom of expression.

**Mr K Buchanan:** I appreciate your information so far, Chris. Can I have a wee bit of background information on the NUJ? How many members do you have in the UK in total, and how many have you here? Maybe you know the exact figure.

**Professor Frost:** We have slightly under 30,000 numbers in total. A significant number of them — about 2,500 — are in Ireland. However, I am not sure precisely how many are in Northern Ireland as distinct from the Republic.

**Mr K Buchanan:** Obviously, there is a charge for membership. If I were a journalist, I assume that I would pay a fee to be a part of your union.

**Professor Frost:** Yes. We charge fees.

**Mr K Buchanan:** I see that you have 12 professional principles. How often are they updated or reviewed?

**Professor Frost:** They are reviewed by our annual conference. Any member can go to a branch meeting and discuss a particular part of the clause and then put a motion through to our delegate meeting, which happens every two years now. Those can be discussed and changes agreed, formalised and brought back to the next delegate meeting. We did a complete update in 2007 and then we strengthened the clause on children in 2012, from memory.

**Mr K Buchanan:** If one of your members breaks one of those principles, what happens?

**Professor Frost:** A complaint can be brought against them, and that then comes before our ethics council, which I chair. A complaint will be heard, and we then pass the decision of the council on to the national executive council. The national executive council can punish a member if they are found guilty of breaching the code, and that can include expulsion from the union, a reprimand or a fine of up to £1,000. The member, of course, has the right to appeal to our appeals tribunal if they feel that they have been found unfairly in breach.

**Mr K Buchanan:** How many complaints have you had from Northern Ireland, and how many expulsions and fines have there been? I appreciate that I am looking for a lot of data. It is just to get a flavour. How many of your people from here have been reported for misconduct, we will call it, or breaking the principles, and where has that gone?

**Professor Frost:** I am not aware of complaints with regard to a Northern Ireland member. I cannot remember how far back that would be.

**Mr K Buchanan:** So, on the basis of your principles, you are saying that no journalist in Northern Ireland has been inaccurate.

**Professor Frost:** I would not go that far. I am not that stupid.

**Mr K Buchanan:** We had a witness last week, and I am not sure whether he or she is a member of your union. They said, in black and white:

*"I hold no brief for liars, but if lies are not causing serious harm, should we not prioritise free speech?"*

That would break one of your principles, would it not?

**Professor Frost:** It certainly would, and we certainly do not support that view. It is quite clear that we want people to tell the truth. That is a major part of our principles. If we had a complaint about a member that suggested that they had written something knowing it to be false, that would breach our code.

**Mr K Buchanan:** Number 5 in your code of conduct states that a journalist:

*"Obtains material by honest, straightforward and open means, with the exception of investigations that are both overwhelmingly in the public interest".*

So, is it OK not to if it is in the public interest?

**Professor Frost:** OK not to what, sorry?

**Mr K Buchanan:** Is it OK not to get your information through straightforward and open means?

**Professor Frost:** It is not always possible, certainly when one is investigating —

**Mr K Buchanan:** So, is it OK to tell lies?

**Professor Frost:** — things of a criminal nature, but that is our first choice, yes.

**Mr K Buchanan:** Chris, is it OK to tell lies to get a good story?

**Professor Frost:** If you are investigating someone, one of the big debates in journalism is whether it is OK to pretend that you are something that you are not, perhaps. That would involve lying to get a story. It is a very big debate, and it happens fairly rarely, I am pleased to say. It is something that all ethical groups struggle with, whether the Independent Press Standards Organisation (IPSO), IMPRESS, the NUJ, the BBC or Ofcom. It is problematic, but to suggest that we could not use methods that are not straightforward would leave us always having to tell the truth about who and what we are and what we are asking for, and that may not always be sensible.

**The Chairperson (Dr Aiken):** Some of that has raised an issue with me. That, obviously, goes directly to clause 1, which talks about what is deemed to be serious harm. You have agreed with the Deputy Chair of the Committee that, in certain circumstances, a journalist might stretch the truth — to put it politely — to gain the story because it is part of the greater public good. Taking into account the serious harm context of the proposed legislation, does that not give a charter for widening that out?

**Professor Frost:** Not at all, because what we are talking about with serious harm is what was published about the person who is claiming that their reputation was damaged, not the methods that a journalist might have used to achieve that.

**Mr K Buchanan:** Chair, if Chris is content, we could write to him to get details on how many members the NUJ has here and how many allegations of misconduct — call it what you want — have been made.

**The Chairperson (Dr Aiken):** I am happy that we do that.

**Mr K Buchanan:** We will write a note to you, Chris, to get a bit of that detail.

**Professor Frost:** Yes, sure.

**Mr K Buchanan:** Finally, are you content with the Bill in its current format, or should it be amended to deal with the situation where a journalist says something incorrect about an individual, whatever that is, and that individual gets a postage stamp on page 6 to say sorry? Apologising two days later could have resulted in that individual being financially ruined, out of a job, their marriage could have broken down or whatever.

**Professor Frost:** I accept your basic premise, but what you are talking about is moving away from the Defamation Act to proper regulation of the press and broadcasting to uphold ethical standards. I am very happy to talk about that at length. My view of IPSO is fairly well known, and whatever way that can be allowed to happen with, as you say, just a postage stamp apology, seems to me and my union to be appalling. However, I do not see how that is linked to the Defamation Act or the serious harm test, which is not about whether or not there is a further apology.

**Mr McHugh:** Tá faillte romhat, Chris. You are very welcome. The one area that we have covered quite extensively is the whole issue of serious harm. How do you define it? Who do you think should define serious harm, and at what stage should one apply a definition to it?

**Professor Frost:** I am quite happy for the courts to determine that, as is suggested in the Bill, and as is applied with the Act in England. Obviously, editors and journalists involved in writing the story would need to consider at a much earlier stage whether they felt that it was serious harm and whether they wanted to pursue the story. However, from a journalist's point of view, it would be something that is accurate, truthful and that they can prove is truthful, and it is a matter of whether or not it is serious harm. I do not think that they would be doing it if they did not think that it was serious harm.

The point about serious harm is to prevent the vexatious claims that certain people used to daub journalists with, until the Act was brought in, about things that were not serious harm. They may still be truthful, and they often were. What seems to be forgotten here is that it is not cheap, and a large number of rich people were able to bring defamation claims against people whose stories were not deemed to have caused serious harm, but which they knew were truthful, which they knew that journalists could support and which they knew that the journalist's publisher could not afford to defend.

**Mr McHugh:** I am coming at this not from the perspective of the rich man but the poor man or the ordinary man on the street. When he is being defamed, he might have his own yardstick for deciding whether or not it has caused him serious harm. What defence would you have in that situation?

**Professor Frost:** The first defence would be to go to the Independent Press Standards Organisation to bring a complaint. I have already said that I think that that is severely lacking, but that is what publishers have offered, and that is what the UK Government have accepted as being reasonable, in that they did not pursue further other methods of ensuring that there was proper protection for those who could not afford expensive defamation suits.

I agree with you that they need protection just as much as the rich people do, but, because of the way in which the law has been structured, unless you are suggesting that something else should be inserted in the Defamation Act to allow for some kind of legal support, I do not see how this is a game that poor people can play either way. It never has been.

**Mr McHugh:** I am suggesting that it might be more accessible to the man in the street in its current form as opposed to introducing the yardstick. As we have already received in evidence — I know that you totally disagree with the position — a not-unknown journalist made a statement to the Committee that a wee white lie is OK as long as it does not cause serious harm, because, at the end of the day, what trumps all else is freedom of speech. I am sure that you would find plenty of people in America who would agree with that position.

To move on to another element, you mentioned some of the difficulties and problems in the Bill around the idea of the single publication rule. Is that accommodated in the Bill in its current form, or can it be accommodated? Should the discussion about that be happening, as has been suggested to the Committee, at a much wider level not just in Northern Ireland or even Britain but in Europe, especially when you start addressing the issue of social media companies, which really do carry the power in a whole lot of ways given the amount of resources that they have at their disposal?

**Professor Frost:** You are certainly right about the power that they have with the finances at their disposal. The main point about the single publication rule is that it identifies the first publication, and that becomes the material for which an action can be applied through the courts. It would then go through the process outlined in the Bill. If another publisher published the same thing, that, of course, would become another publication. If the initial publication were amended significantly or even at all, that would become another publication and would, again, be open to litigation.

The key point is that it is not a publication that keeps getting repeated, and that is because the technology has changed. Back in 1955, when a newspaper was published, x thousand copies or, in some cases, a million copies were printed, and each of those was a first publication. However, if that publication had been repeated — if the same newspaper had been published again some time later — it would have become a different publication. That is exactly how the web works: each publication is a new iteration of the one that went before, even though it may be identical. That was being used by some people to make multiple cases against the original publisher, and that is just not acceptable given the way that the technology works.

**Mr McHugh:** Do you feel that the Act addresses that as well?

**Professor Frost:** Yes, I think that it gives a reasonable interpretation of what we expect and how it should work. I am not aware of any case coming up that proves that it is not working very well. As I

say, one of the problems is that the new Act in England has been in operation only for about six or seven years. Some of those have been blighted by the pandemic, which, as we know, slowed a lot of things down, so it is quite difficult to decide whether or not it has made a massive improvement. The people I talk to generally seem to think that it is a better method than what went before.

**Mr McHugh:** OK. Go raibh maith agat, Chris. Thank you, Chris.

**The Chairperson (Dr Aiken):** Thank you very much indeed, Chris, for your evidence. You said that you will undertake to get back to the Committee on a couple of things. I look forward to talking to you again in the future.

**Professor Frost:** Thank you very much.