



# Official Report (Hansard)

Tuesday 14 September 2021  
Volume 142, No 3

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# Northern Ireland Assembly

Tuesday 14 September 2021

*The Assembly met at 10.30 am (Mr Speaker in the Chair).*

*Members observed two minutes' silence.*

## Members' Statements

**Mr Speaker:** Because this is a new item of business, I will provide, as I did yesterday, a brief outline of how Members' Statements are to be managed at a plenary sitting. If Members wish to be called to make a statement, they should indicate that by rising in their place. Members who are called will have up to three minutes to make their statement. Any Member whose statement is not compliant with the provisions of Standing Order 24A will be asked to resume their seat.

Standing Orders provide that, when selecting a Member to make a statement, I shall have regard to the balance of opinion in the Assembly. Therefore, I shall ensure that, in any period set aside for this business, I select Members from a range of parties. It is unavoidable that there will be occasions when it will not be possible in the time available to select all Members who wish to make a statement, but I will endeavour to ensure that, over time, all Members who wish to make a statement have a fair opportunity to do so. Members should further note that statements will not be subject to debate or questioning, interventions will not be permitted, and I will not take points of order on this or any other matter until the item of business has been completed. If that is clear, we will begin.

### COVID-19: Universities and FE Colleges

**Mr O'Dowd:** I welcome the opportunity to speak on an important issue: the return of further education college and university students and lecturers, professors etc to campus, which is very welcome. Last year, there was huge disruption to student and academic life for many. Those whose first or second year it was did not get the opportunity to experience university or college as others have done over many years.

The challenges faced by our schools estate are also faced by our further education colleges

and universities. I suspect that, in the coming weeks, we will see those challenges manifest on campuses. It also has to be said that we are dealing with a different age range: we are dealing with the return of young adults and older adults. There is an opportunity for vaccinations. I encourage everyone returning to university or college to have their vaccination. There is also the opportunity to use the pop-up vaccination clinics, and other resources are being made available. Hopefully, that will minimise disruption to that sector.

There is also the question of investment in ventilation and in support for the mental health and well-being of our student population. I raised that matter last year, and it has not been rectified. The mental health and well-being support for our students and staff in our universities and further education colleges has not been fully provided for. I hope that that will be in place this year for that sector.

One area of disappointment is the continued failure to fund the £500 COVID disruption payment for all students. Not one, not two, but three DUP Ministers refused to provide all students with the £500 COVID disruption payment. Students who are studying full time in a further education college have not all received that payment. Part-time students have not been supported. Students from here who are studying in Britain and across the border have not been supported. Large sectors of our student population felt discriminated against and left behind as a result of that. If an opportunity arises for those students to be supported in the next financial year, I hope that they will be supported.

I will end on this point. Just as the best place for pupils is in schools, in a safe environment, the best place for our student population is on the campus. I hope that the lessons have been learned from last year. I hope that the Economy Minister and the Executive support our universities and colleges in remaining open. I hope that everyone who has had the opportunity to take measures themselves, such as vaccination, social distancing and

handwashing, will all do their part to ensure that our students have a proper and full education this year.

## Murder of Ian Sproule

**Mrs Dodds:** Today, I stand with the family of Ian Sproule, as they continue to be denied a full investigation of claims that Garda officers colluded in his murder. I have worked with the family for a long time, and they are devastated by the latest developments. Ian's tragic story will strike a chord with many across Northern Ireland. Ian was killed on 13 April 1991. He had just arrived home when he was killed in a hail of bullets. The terrorists then phoned the family home and told them to go out and look at the mess in the yard. His father found him. His parents never really recovered, and his family have been left searching for the truth for the 30 years since.

That was an innocent young life cut short in an instant at the hands of IRA terrorists, one in a series of systematic, sectarian and savage murders in Castlederg. It was a terror spree, glorified by members of the party opposite in their adulation of IRA terrorists. Allegations of Irish state collusion in the crime abound. The IRA presented a Garda security document to journalists as a warped justification for Ian's murder. Assistant Chief Constable Harris stated under oath at the Smithwick tribunal that he was satisfied beyond doubt that there was a leak from the Garda to the IRA in respect of Ian Sproule's murder. Mr Harris is now, of course, the Garda Commissioner.

Despite all of that, the Garda Síochána Ombudsman has refused to sanction an investigation. In a letter received by the family in August, the Sproule family was told that their case had timed out. The ombudsman has even demanded reciprocity from the UK authorities before taking action. That is not only abhorrent but in clear breach of international human rights obligations. Where there is evidence of wrongdoing, it must be investigated. We are told in public that Dublin opposes drawing a line under the past, yet, as with the UK Government proposals on legacy, they hide behind the passage of time to deny truth and justice to the Sproule family and many others. The Dublin Government cannot speak out of both sides of their mouth on legacy. They must take responsibility not just for cases of collusion but for the wider role played by the Irish state in bolstering the terrorist campaign and actively harbouring those responsible.

## Brexit

**Mr O'Toole:** We normally discuss questions to do with what the Northern Ireland Executive are doing. It is our job to scrutinise what the Northern Ireland Executive do, but I thought that today I would draw attention to something that the UK Government have done. The UK Government have issued a statement in which they have unilaterally extended the period for which they will not check goods coming into Great Britain from the EU. That is interesting timing. In the Chamber, there are many people who supported Brexit and said that Brexit would lead to wealth and prosperity for Northern Ireland and, indeed, the whole UK. It is interesting, then, that the Government of Britain, Her Majesty's Government, have decided to prolong the period for which they will not check goods. Goods will still enter Britain as if they were still in the EU, as if those goods travelling from the European single market into Britain were there all along. What does that mean? It means that the UK is not ready to deal with the consequences of Brexit.

I raise the issue because, time and again in the Chamber and particularly over the past few days on the air waves, we have heard from the party opposite about the consequences of the protocol as if the protocol had nothing to do with Brexit — the Brexit that it was at the centre of, that it campaigned for and that it drove through. I am afraid that people will not buy it any more. There is a range of profound consequences for the whole UK of Brexit, and, so far, I can see very few good ones.

Too many have gone along with the DUP project of narrative construction around Brexit and around the protocol. The protocol is a messy and imperfect compromise to protect the island of Ireland from the Brexit that the DUP demanded and which it spearheaded, but it puts us in a relatively advantageous position, once we deal with some of the issues around moving goods from Britain into Northern Ireland. We now have clarity from the European Union that we will have that. Unlike exporters in Britain, we have the opportunity to move our goods seamlessly into the European single market, and, unlike them, we have access to both markets: the British market and the European single market. For people who constantly talk about making Northern Ireland work and maximising Northern Ireland's opportunities, it is a shameful dereliction of their duty not just to threaten these institutions but to jeopardise one bit of economic advantage — one of the greatest bits of economic advantage that we have probably had since partition and since this jurisdiction was created.

In closing, I remind people in the Chamber and those listening further afield that all the consequences, whether it is the protocol or the fact that families in Britain and Europe are being torn apart, are the responsibility of Brexit and those who champion that preposterous cause.

**Mr Speaker:** The Member's time is up.

**Mr O'Toole:** We see today that the UK Government, as with the DUP, are not yet ready to take responsibility for the consequences of that Brexit.

## Maura Muldoon

**Mr Lyttle:** I seek an opportunity to pay a brief tribute to the life of Maura Muldoon, to express my sadness at her passing and to extend condolences to her family and friends.

"Trailblazer", "visionary", "a standard bearer for women's football" and "a tireless advocate for equality and human rights" are some of the tributes that have been paid to Maura. Maura was a former director of Glentoran Football Club in my constituency and a former chairperson of Glentoran Women. As Glentoran chairman, Stephen Henderson, has said:

*"Maura was a pioneer. Undaunted by glass ceilings or outdated perceptions, her election ... to the board of the club was something she took in her stride.*

*In becoming the first woman to attain such a position in senior football, she brought a professionalism, calm demeanour and determination to ensure that she opened the door for others to follow.*

*Her support and commitment to the development of women's football and to Glentoran Women in particular was well known. Keen to challenge stereotypes, inequality and prejudice ... she made Glentoran a better club for her involvement and we are diminished by her passing.*

*Maura laid the foundations upon which the ... success of Glentoran's Women had been built; a fitting legacy to Maura's life in the sport she adored. She impacted the lives of many women now succeeding in different roles within the women's game. Her influence will not be forgotten."*

10.45 am

Maura was also a commissioner at the Human Rights Commission. Chief commissioner, Alyson Kilpatrick, has described Maura as a:

*"tireless advocate for human rights in Northern Ireland and a great support to her fellow commissioners and staff",*

and said that she would be "sorely missed by all".

Maura said that her driving force was to ensure that people, particularly young women, had access to equal opportunity. It is clear that people in Northern Ireland, particularly young women, have significantly greater opportunity today for the life, leadership and service of Maura Muldoon. The Assembly says, "Thank you, Maura", and we send sincere condolences to her partner, Cheryl; her brothers and sisters Eleanor, Sean, Michael and Grainne; and all her family, friends and colleagues.

## National Insurance Contributions: Social Care

**Mr Allister:** I want to address the issue of social care in Northern Ireland. Last week, our United Kingdom Government indicated an increase in National Insurance contributions (NIC), with a view to contributing further to the health service, including social care. In association with that, they announced that they would be introducing an £86,000 cap on the amount that anyone would have to pay during their lifetime for their social care when they reach the stage at which they are dependent on residency in some facility. My first question is this: will we, in Northern Ireland, benefit from that same cap? Or, though we will get £400 million as a result of the NIC increase, will that money be diverted elsewhere? I ask that because people in my constituency and elsewhere who are fearful, and who are already experiencing the loss of their home to provide for social care, want to know whether they are equal citizens. If they are equal citizens, that cap will apply.

This week, there has also been focus on the fact that, back in February, the Minister introduced a change to the continuing healthcare scheme to the effect that you are financially eligible for that continuing assistance only if your care can be adequately provided in hospital. That means that no one qualifies, because anyone whose care can only be adequately provided in hospital will be in hospital. How, therefore, can you possibly qualify for that assistance? The question that arises from that is this: where was our Health

Committee in February when that directive was issued? What questions did it ask of the Minister? What exploration did it make of it? How did it interrogate it? I can find very little evidence of anything in that regard. It is critical that citizens in Northern Ireland are not left behind on this issue and that we get the same fair crack of the whip as elsewhere in the United Kingdom, because we are all commonly paying the same taxes and the same National Insurance contributions and, therefore, should be entitled to the same benefits in that regard.

## **Antrim Camogie; DUP North/South Withdrawal**

**Mr Sheehan:** Ar dtús, a Cheann Comhairle, ba mhaith liom comhghairdeas a dhéanamh le foireann camógaíochta Aontroma, a bhain an chraobh camógaíochta idirmheánach Dé Domhnaigh i bPáirc an Chrócaigh. Bua stairiúil a bhí ann, agus tá sí tuilte ag gach aon duine a bhfuil baint acu leis an fhoireann. I congratulate the Antrim camogie team who had a historic victory in the Intermediate Camogie Championship in Croke Park on Sunday. It was a historic victory, which was well deserved by everyone connected with the team — players, managers and backroom staff.

I want to speak to the DUP decision to withdraw from the North/South elements of the Good Friday Agreement. All right-thinking people have described that as reckless and irresponsible. Who could disagree with that? Much has been said about how damaging it will be to cross-border economic cooperation and health issues. Of course, it will have a negative impact on those areas, but I want to focus on the implications for cross-border educational issues.

In July, the Assembly received a report updating Members on some important areas of work being taken forward on a North/South basis in the area of education. Some of the issues that were discussed included the education implications of Brexit, the response to COVID-19, updates on EU funding, educational underachievement and special educational needs. I will concentrate on those latter two issues: educational underachievement and special educational needs. The DUP regularly raises concerns about educational underachievement among young Protestant boys, yet its decision to withdraw from the North/South Ministerial Council (NSMC) will now jeopardise efforts to develop joint actions under the PEACE PLUS programme to tackle underachievement across the island. Let us remember that in future when the DUP

complains and sheds crocodile tears about educational underachievement.

In relation to special educational needs, the Middletown Centre for Autism is an exceptional example of delivering for children on a cross-border basis. However, issues around data sharing and recognition of qualifications were identified at NSMC levels as requiring resolution. Those issues cannot be resolved if the North/South Ministerial Council is not sitting. The DUP Education Minister needs to be at the table, working on behalf of children and their families who rely on those services, instead of abdicating her responsibility and trying to blame others for a situation that is wholly of the DUP's making.

## **Single Electricity Market**

**Mr Frew:** I am grateful for the opportunity to speak. Members of the Assembly may not know — why would they? — that, over the past week, the single electricity market has experienced a large volume of amber alerts. Such alerts can have a massive impact on any electricity market for a number of reasons. One reason is the security of supply, and another is, inevitably, cost. It is true that, at this time, most electricity markets in Europe are experiencing tension, but none more so than our single electricity market.

My problem is that the single electricity market is controlled and organised by the Single Electricity Market Committee, which is made up of the System Operator for Northern Ireland and Eirgrid, the Republic of Ireland's operator. The problem is that the independence of our system operator is completely and utterly compromised to the point where it does not act in the best interests of Northern Ireland consumers, because it is owned by Eirgrid, and Eirgrid has carved out the expertise in our system operator. That means that it will not act in the best interests of Northern Ireland consumers when our system is under stress. Inevitably, that will lead to rising issues around security of supply and cost, because security of supply costs us all.

I stress to the House that we cannot sit idly by any longer on those issues, which have been going on for 10 years or more. It is due to Eirgrid's incompetence that those problems are now materialising. Every year, Eirgrid produces a generation capacity statement. That statement is published, and it looks ahead at the next 10 years. When one looks back, those statements do not at any time forecast the problems that will be faced by the single electricity market in the Republic of Ireland and

Northern Ireland in the coming years. If we think that this winter is bad, wait until we see the next winter and the winter after that.

## Ambulance Response Times

**Mr McGrath:** My contribution is about an issue in my constituency, and I know that many other Members have dealt with it as well. It is the issue of ambulance response times. It is an especially acute matter in rural communities.

I begin by thanking our staff in the health service in general and specifically ambulance staff. Their work in very stressful situations is immeasurable, and the contributions that they make to saving lives are absolutely fantastic. I put on record my support for them and their work. We often hear stories of staff who have to go a full shift without getting any tea breaks or even toilet breaks. They are pushed to the extreme in the work that they do.

The public, however, feel that the system is a little bit unfair. Our system is built on the acceptance and understanding that, if you dial 999 in your time of need, somebody will be with you in a timely manner to help you. I do not think that that is uniformly happening. In my constituency of South Down, we are hearing horror stories. Just last week, a 94-year-old lady was left on the floor of her kitchen for five hours with a suspected broken hip and broken arm. The first call went in at about 7.30 pm or 8.00 pm, and it was 1.30 am before the ambulance arrived to help her. We have examples of cardiac arrest calls not being responded to within the eight minutes in which they are due to be met. In rural areas, it is sometimes double or treble that time before people get help, and patients are dying as a result. We now have multiple examples in my area of people bringing somebody who has taken a stroke directly to hospital in their car, because they cannot depend on the ambulance getting there in time to help that person.

If you were to arrive at any time at any of our emergency departments, you would see a queue of ambulances waiting to pass their patients on. They cannot leave until they have passed them on. Ambulances become trapped at the emergency department, and the strain on the service is unfair. It is unfair on the paramedic, who does not want to be sitting in an ambulance outside a hospital. It is unfair on the patient who is in an ambulance and should be in the emergency department. It is unfair on the people who need to dial 999 in order to get that ambulance to come to help them. With nine level 1 emergency departments that are full to

overflowing and about 50 to 55 ambulances on at any given time, just one ambulance waiting outside an emergency department in each of those locations means that 20% of our ambulances are not available. The service is broken. We all know that we need to have reform. I hope that we see that reform soon and that there is support from everybody for it.

## Social Care Funding

**Mr Carroll:** As we have heard, there has been a renewed conversation about social care and how it is funded and provided to elderly people and others who need assistance in our society. The problem, however, is that all the approaches and debates are based and focused on the premise that the state should play a minimal role in the provision and cost of care. I say categorically that people should be receiving care, including residential care, from the state, with the NHS and its trusts directly providing and paying for it, but people are being forced to pay for it themselves. It is shocking that people who worked and paid taxes and National Insurance all their life are effectively being failed by the state when it comes to the provision of care towards the end of their life. As we were told by Bevan and others, the NHS is about providing support from the cradle to the grave, but, sadly, when people reach older age, they are failed and let down by the state and the system. The reality is that the problem has been allowed to fester over many years, and the private sector has been facilitated and constantly allowed to creep into providing public services.

Why did the Health Minister not make a statement to the House on the recent changes that he implemented? Some could be cynical and say that there is a plan to implement what Naomi Klein called the "shock doctrine", where a time of great political crisis, when people's attention is focused elsewhere, is used to implement changes that they are opposed to.

When talking about public provision of services and care in particular, people always say, "How can the state afford it? How can it provide for it?". As I have said categorically throughout the COVID pandemic, we need to see a COVID wealth tax implemented. I have raised that point many times. If you tax the households earning over £1 million by an extra 1%, you can bring in £260 billion over five years. The IMF is even talking about a wealth tax. We have already heard and will hear again in the House about our lack of tax-raising powers, but that did not stop parties here for the best part of 10 years clamouring and begging for corporation tax to

be reduced. We therefore need to see a COVID wealth tax and public provision of social care to support people who are in need and who should not be forced to pay for those services if they cannot afford to.

## **Northern Trust: Withdrawal of Care Packages**

**Ms Sheerin:** My statement relates to the sudden withdrawal of care packages throughout the Northern Trust area, specifically in south Derry in the Mid Ulster constituency that I represent.

I have written to the Health Minister about it, and I submitted a question for urgent oral answer yesterday, but, given the scale of the problem and its impact on my constituents, I wanted to raise it in the House as well.

**11.00 am**

The issue has affected 39 families across Maghera and Ballinascreen. On Friday evening at about 5.00 pm, I began to receive phone calls from distressed relatives in a state of panic. They had just had a call to say that their loved one's care package was to be withdrawn, with no explanation of when or whether it would resume. Basically, they were being told that they had to make alternative arrangements for the care of their mother, mother-in-law, sister, aunt or whomever.

I commend the work of the local social work team in Magherafelt. I have spoken extensively to the management there, and they are working around the clock to try to find a resolution. I have also spoken to the interim divisional director of community care in the Northern Trust, Roy Hamill, and the chief executive, Jennifer Welsh, both of whom have engaged extensively with me and have been great at keeping in touch and updating me. However, the reality is that this is just one symptom of a massive problem in our healthcare system, which I have been raising with the Health Minister for some time.

Problems receiving healthcare are, above and beyond, the biggest issue that I face as a community representative. Constituents constantly raise them with me. In rural areas, community care packages are vital for people who have elderly loved ones at home who need care but also need to remain in their home. I cannot count the number of times that I have sat in people's kitchens or living rooms with distressed daughters, sons, nieces and nephews who are on the verge of tears or have

already cried and who are trying to advocate for their loved one to get a care package that they need so that they can remain at home.

The first person who rang me on Friday evening, before 5.00 pm, was someone with whom I have been working since July because their granny has still not got the care package to which she is entitled, owing to a resource issue. That is an indication of the problem.

I wrote to the Health Minister, Robin Swann, in July last year about the matter, asking what actions he was taking to increase capacity in the mid-Ulster area. He told me that a recruitment process had just returned 12 new domiciliary care workers to the trust. That is a drop in the ocean. It is already on record that our domiciliary care workers have been at the front line during the pandemic; they are still at the front line on a lot of occasions. They were sent without proper PPE to care for elderly people in their homes; they were asked to identify, during a visit, whether a person had a new cough or symptoms; and they have been carrying the can. We need an increased effort to recognise those people's worth and their value to families in our constituencies, and we need to support the service properly.

**Mr Speaker:** That concludes Members' Statements. Members should take their ease for a moment or two while we prepare for the next item.

## Executive Committee Business

### Betting, Gaming, Lotteries and Amusements (Amendment) Bill: First Stage

**Ms Hargey (The Minister for Communities):** I beg to introduce the Betting, Gaming, Lotteries and Amusements (Amendment) Bill [NIA 36/17-22], which is a Bill to amend the Betting, Gaming, Lotteries and Amusements (NI) Order 1985; and for connected purposes.

*Bill passed First Stage and ordered to be printed.*

## Committee Business

### Charities Bill: Extension of Committee Stage

**Ms P Bradley (The Chairperson of the Committee for Communities):** I beg to move

*That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 10 December 2021, in relation to the Committee Stage of the Charities Bill.*

**Mr Speaker:** Thank you. The Business Committee has agreed that there should be no time limit on the debate. I call the Chairperson of the Committee for Communities to open the debate on the motion.

**Ms P Bradley:** Thank you, Mr Speaker. I rise to request Members' support to extend the Committee Stage of the Charities Bill to 10 December 2021. The Bill passed its Second Stage on 29 June, therefore we were already in Committee Stage just prior to the summer recess. The Committee agreed that, to move things forward, the call for evidence would be issued over the summer recess.

On the face of it, the Bill is short, consisting of only four clauses, but the importance of proper scrutiny cannot be overstated given the history of charities legislation here since the Charities Act (Northern Ireland) 2008 was enacted.

To highlight the need for the Committee not to rush its scrutiny, it is worth reminding the House of the history leading to the Bill. Two early statutory inquiries by the Charity Commission led to the disqualification of two charity trustees. Both brought challenges to the Charity Tribunal and, ultimately, to the High Court, where the former Attorney General intervened and determined that the orders made by commission staff were unlawful. That led to the McBride judgement in 2019, which found that the commission did not have the express or implied power to delegate its functions to staff acting alone. In February 2020, the Court of Appeal dismissed an appeal by the Charity Commission, thus rendering all orders and decisions made by staff until that date unlawful.

That brings me to the Bill. The Committee will need to scrutinise the key aims of the Bill and the effects it will have on the commission, on charities and, hence, on their trustees. The aims are threefold: to address the issues from the judgements with retrospective effect; to make it clear what decisions Charity

Commission staff are empowered to make; and to propose a power for the Department to introduce a registration threshold via subordinate legislation. We have received written submissions through the call for evidence, where organisations and individuals raised concerns about the intentions of the Bill and its outworkings. Also, the Bill is only part of the way forward in dealing with the impacts arising from the judgements.

As a Committee, we also need to consider how the findings of the independent review of charity regulations will impact on what the Bill proposes. As part of its remit, the review is considering whether the legislation in Northern Ireland and the commission's work within the legal framework strike the right balance between supporting charities and deterring or dealing with misconduct. The review report is not yet published. We hope to have sight of it, or at least any key findings related to the Bill, before we have to report as a Committee on the Bill.

We will call relevant organisations and, potentially, some individuals to give oral evidence to hear their views on how the issues are to be dealt with on the scheme of delegation and on the power to provide for a threshold at some future time and to explore their concerns. Whilst the Department has stated that this is mainly a technical Bill, that is not quite the impression we are getting from submissions.

As well as the Charities Bill, the Committee will be scrutinising the Private Tenancies Bill and the Betting, Gaming, Lotteries and Amusements (Amendment) Bill, both of which are long-awaited and cover very important issues. They will be in Committee Stage shortly. A very busy time lies ahead for us in the final few months of the mandate. Therefore, I ask that Members agree to this extension in order to allow us to give the Bill the attention it deserves and to plan our work effectively to deal with other Bills in parallel. Thank you.

*Question put and agreed to.*

*Resolved:*

*That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 10 December 2021, in relation to the Committee Stage of the Charities Bill.*

**Mr Speaker:** Members, take your ease for a moment until we move on to the next item.

## Private Members' Business

### Defamation Bill: Second Stage

**Mr Nesbitt:** I beg to move

*That the Second Stage of the Defamation Bill [NIA 25/17-22] be agreed.*

**Mr Speaker:** In accordance with convention, the Business Committee has not allocated any time limit for the debate. I call Mr Nesbitt to open the debate on the Bill.

**Mr Nesbitt:** Thank you very much indeed, Mr Speaker. I can well imagine that there are those not only in the House but further afield who will jump to conclusions about my motivation for bringing forward this Bill. They will say, "It's jobs for the boys. Here is a man looking after his erstwhile colleagues and chums in the media". I assure the House that that is not the case. My interest in defamation was generated by my years as a broadcast journalist, but my motivation can be summed up in one word: rights. This is about rights: your rights, my rights and, most importantly, the rights of the people whom we are elected to represent.

As is often the case when we debate rights, we are not discussing one absolute right but rather a number of qualified rights that to some extent compete and between which there is some tension. In this case, there are two qualified rights: the right to freedom of expression on the one hand and the right to protect our reputation on the other hand. They are qualified, and I have heard Members talk about the qualification on the freedom of expression in these terms: it does not give you the right to go into a crowded theatre and shout, "Fire, fire, fire", when there is no fire. Indeed, the right to protect your reputation is only a right to protect it from untrue, unwarranted or unfair imputation. We have to balance those two rights, and that is what I would like the House and the Committee for Finance to form a view on.

Since the beginning of recorded time, we have not really changed how we communicate: we draw, we write and we speak. However, the platforms that we use to disseminate our communications — the media, as it were — change dramatically on occasion. Think of Gutenberg and the printing press in the 15th century, Alexander Graham Bell with the telephone and Marconi with the radio in the 19th century, and John Logie Baird with television in the 20th century. Also in the 20th century came probably the most single dramatic

change of all: Tim Berners-Lee's invention of the internet. If we are looking for a medium where reputations are trashed, not on a daily, hourly or even minute-by-minute basis but on a second-by-second basis, it is on the World Wide Web on social media sites. As our laws of defamation predate the invention of the internet, is that not a prima facie case for a deep-dive review of our laws? It is, and we are lucky that that deep dive has been completed.

When Simon Hamilton was the Minister of Finance, he spoke to his Executive colleague David Ford, the then Minister of Justice, and between them they commissioned the now defunct Northern Ireland Law Commission to conduct a deep consultation process and produce a report with recommendations.

The report is dated June 2016 and was released to the public by the then Finance Minister, Máirtín Ó Muilleoir, on 19 July 2016. That, of course, was during summer recess, and, by the time that we got back in the autumn of 2016, it would be fair to say that the House was not going through a golden period. If we were not hurtling towards collapse, we were certainly on that trajectory.

#### 11.15 am

When the Law Commission began its work, I was asked to meet its representatives. I met Judena Leslie, the chief executive, and Dr Andrew Scott, who was the academic who was to conduct the consultation and the review. They asked me to pause my private Member's Bill, the justification being that there might well be understandable confusion if there were two parallel processes in play, so I agreed and paused, and, of course, that pause continued through the three years when the Assembly was down. While I revived my interest when we returned, we very soon hit the pandemic, and we were encouraged by many, including the Minister of Finance, whom I welcome to the Chamber, that we should focus entirely on essential business in the House. Much as I think defamation is important, I certainly could not classify it as essential business, so, again, the pause button was pressed.

In recent months, I have revived my interest. I was required to get you, Mr Speaker, to deem the Bill competent, and I thank you and the Bills team for your efforts and support. Two very minor technical changes to the language were required for you to deem it competent, but more importantly, or significantly perhaps, my clause 5 deals with the operators of websites, and that takes us into the area of telecommunications,

which is a reserved matter under the Northern Ireland Act 1998, so I had to seek the Secretary of State's consent for this House to consider legislation in this area. I am pleased to report that, on 14 May this year, Robin Walker, the Minister of State, confirmed, on behalf of the Secretary of State, that he was content to grant consent to the consideration of the Bill by the Assembly. In fact, he went further and said:

*"I welcome that the proposed bill will seek to put Northern Ireland in line with the rest of the United Kingdom."*

So here we are, after the Bill's First Stage, back in June, having the first debate on defamation that I can recall during my time here. In fact, I believe that it may be the first debate on defamation since devolution in 1998 and also the first time that Dr Scott's report will really be touched on in any sort of detail since he published it in June 2016.

I should add, for the record, that I very much welcome Dr Scott's engagement. He was not just a neutral compiler of responses to the consultation, nor was he merely an academic performing some sort of statistical analysis of responses, such as, "x% thought this, and y% thought that". No, he was a player. He was a man with opinions about how we should reform our defamation laws, and I very much welcome that. It is not a criticism; it is very positive.

Dr Scott made clear, back in 2016, that the majority of respondents wanted to replicate the 2013 Defamation Act, as passed by Westminster, for England and Wales. I will quote Dr Scott:

*"In the main ... it is recommended that reforms directly equivalent to those set out in the 2013 Act should be legislated by the Northern Ireland Assembly."*

Furthermore, in his report, under the headline of "Recommendations", he says that he strongly recommends that we should adopt, from the 2013 Act, section 2, which is on the defence of truth; section 4, which is on the defence of publication on a matter of public interest; section 6, which is on qualified privilege for peer-reviewed scientific or academic statements; section 7, which is on the extension of existing qualified privileges; section 8, which is on the single publication rule; section 12, which is on the power of the court to order publication of summary of judgement; section 13, which is on the power of the court to order takedown of statements; and section 14, which is on the updating of the law of slander. He strongly recommended that we adopt all those

sections. He also recommended that we should adopt section 1, which deals with the serious harm test; section 9, which deals with action against a person not domiciled in the United Kingdom; and section 11, which deals with the presumption in favour of trial by a judge alone. Therefore, he either recommended or strongly recommended the adoption of the vast majority of the Defamation Act 2013. In fairness, he recommended some variance, particularly regarding the reform or abolition of the single meaning rule. I will touch on that later in my remarks.

*(Mr Deputy Speaker [Mr McGlone] in the Chair)*

I suppose that the first question is whether we should simply replicate the Defamation Act 2013. I believe that that makes the greatest sense. However, there were two appendices to Dr Scott's report: the first contained his proposed draft Bill for reforming defamation; the second contained mine, albeit before we put in the two technical amendments that were recommended by the Bills team. Should we replicate it? I believe that we should. We would, for example, have much more case law and legal precedence if we were in tune with England and Wales. It would also mean that we would not place unnecessary complications in the way of publishers who intend to publish in Great Britain and Northern Ireland. However, it is a judgement call. Today, all that I am asking is that the Finance Committee looks at the options and comes to a conclusion.

Is reform required? Again, the best answer comes from Dr Scott at paragraph 1.05 of his report, where he states that the former Northern Ireland Law Commission consultation paper suggested:

*"the key imbalance in this area is arguably not that in favour of reputation over free speech or vice versa ... [but rather] that between litigants who can afford to defend their publications or to vindicate their reputations, and those who cannot".*

Therefore, he suggests very strongly that the current law is not about the law. It is about the money. It is about who has the deepest pockets, and they win.

I have personal experience of three cases of defamation from my time as a broadcast journalist at Ulster Television. All three were settled out of court. The process was as follows. We were issued with a writ, and we would gather in the Ulster Television boardroom — the production team that made the

programme, senior management, UTV's legal advisers and two other people who had flown in from London and who would sit in the corner away from the table and listen to the whys and wherefores. When the internal debate was finished, those two people would come to the table and instruct us to settle it out of court. That was not because of the merits of the argument; it was because of the likely financial implications in comparison with how much settling out of court would cost and how much we would risk if we allowed a trial by jury to continue. Let us remember that, under our current laws, it is a jury trial. The judge will respect the status of the jury and will not say whether a statement is defamatory. He or she will simply declare whether it is capable of being interpreted as defamatory. If he or she says that it is capable of such an imputation, the trial will begin, the jury will decide, and it will decide the quantum of damages in the event that it decides that it is a defamatory statement. The money is key. The two gentlemen whom I referred to who had flown in from London were the insurers. Their position had nothing to do with the law. It was about the money. They would say, "We will not cover you if you go to court. Settle it out of court".

Interestingly, politicians were involved in all three cases. Statements by a politician led to the three writs, and two of the three writs came from other politicians.

**Mr Weir:** Will the Member give way?

**Mr Nesbitt:** Let me complete the point, if I may. In one of the cases, we were right to apologise because we had misinterpreted the difference between naming somebody and identifying somebody. We had not named them but we had given enough information for people to identify who they were, so we had defamed them and we were right to settle.

In the other two cases, it was one politician taking offence at what another politician had said about them. Currently, under the law, it is defamatory only if right-thinking, ordinary people think less of the person because they have heard that communication. I do not believe that there is any way that you could prove that in court. Under my proposed legislation, the bar becomes, "Prove that there has been serious harm?" There is no way that you can do that. I am thinking of those statements by one politician about another. Yet, because money is more important than the law under our current regime, both those politicians who were claimants got an out-of-court settlement. That just does not add up for me.

I will let Mr Weir in after reminding the House that we are a bit like foxes with the keys to the chicken coop. We have absolute privilege; we can say whatever we like in this Chamber. We cannot repeat it out there, 20 yards away in the Great Hall, but we can say what we like in here. Yet, we are also making decisions about whether or not we bring in a fairer, more modern regime for defamation.

**Mr Weir:** I thank the Member for giving way. I appreciate that we may be foxes but I will try not to be too nasty to him. An analogy about a former occupant of the chicken coop may be of relevance.

I want to make two points in relation to settlement and the litigant side of things. The Member has indicated that, in a lot of these cases, there is an out-of-court financial settlement. There are others in the Chamber with a far more eminent background in the law than me, such as Mr Allister, although I am sure that modesty would prevent him from suggesting that himself. The legal culture in Northern Ireland, not simply in defamation cases, is that vast numbers of cases are settled by way of an out-of-court settlement and very few cases run to a full length of challenge.

The Member made an important point about the role of money in this. He mentioned specifically the depth of the publisher's pockets or those of the organisation that is trying to defend the statement. Clearly, the financial consideration will always be examined as part of it. The other criticism around defamation — I cannot see anything in the Bill that corrects it — is that those with very deep pockets who sue a broadcaster, a media outlet or whatever take a certain level of risk but can put their money where their mouth is if they have that amount of money. For many ordinary people, however, if they are libelled, there is little opportunity for them to take very high-stakes, expensive challenges given what the overall costs would be. I am sure that, later, we will debate the jury element. However, there does not seem to be a great deal in the Bill that addresses the problem that taking a libel action is outside the remit of the vast majority of people. Will the Member address where he sees protections in the Bill, not simply for the litigant who has to defend but, potentially, for the wronged plaintiff for whom much of it is pie in the sky?

**Mr Nesbitt:** I thank the Member. He, obviously, agrees with me that money is an important issue. Whether we are making it easier for the ordinary person to take action is a question that needs to be considered by the Finance Committee, but it is one of the policy objectives

of the Bill. Moving on to that, the aim of the Bill is to reform the law of defamation and ensure that a fair balance is struck between the right to freedom of expression and the protection of reputation.

There are 12 policy objectives. The first is:

*"• Make it easier and less expensive to take legal action when you have been defamed".*

**11.30 am**

They also include:

*"• Make it harder for the rich and influential to chill free speech  
• Introduce measures to exclude trivial claims;"*

of which I suspect there are many, and:

*"• Protect the rights of scientists and academics to engage in robust debate".*

That is an area I would like to expand on.

**Mr Weir:** I thank the Member for giving way. At least, with legislation, we have unlimited time in that regard. It is one thing for the Member to say that there is an aim and that one of the aims is to make this more accessible to people. That is indeed one of the aims but, if the aim is not in any way reflected in the wording of the legislation, it is a relatively poor argument to put forward on the basis that it is left at, "Well, the Finance Committee can do something about this".

**Mr Nesbitt:** What I am saying is that it is up to the Finance Committee to take a view on whether there is enough in the legislation. For example, under the current regime, you have to persuade a judge that it is possible that you were defamed by the statement. He then hands that over to the jury, and you go into a jury trial. Under my regime, although jury trials are not ruled out, they would be the exception rather than the rule, and the judge could make a very quick decision as to whether or not the statement was defamatory. That is easier and cheaper than the current regime.

If I may, I would like to read into the record the policy objectives. I said:

*"• Make it easier and less expensive to take ... action ...  
• Make it harder ... to chill free speech  
• ... exclude trivial claims",*

where that is possible, and:

- "• Protect the rights of scientists and academics ...*
- Protect the right of journalists to conduct responsible and necessary investigations;*
- Protect the work of Non-Governmental Organisations;*
- Take better account of the impact of the Internet;*
- Require claimants to show that they have suffered serious harm before suing ... ;*
- Remove the current presumption in favour of a jury trial;*
- Introduce a defence of 'responsible publication on matters of public interest';*
- Provide increased protection to operators of websites that host user-generated content, providing they comply with the procedure to enable the complainant to resolve disputes directly with the author of the material concerned",*

and finally:

*"Introduce new statutory defences of truth and honest opinion to replace the common law defences of justification and fair comment."*

With regard to the media, the scrutiny of this Executive and Assembly is different from that of neighbouring legislatures for two reasons. In Dublin and London, there are three bodies that scrutinise the work of government: an official Opposition; a second Chamber, be that the Seanad or the House of Lords; and the media. Here, there is no official Opposition or second Chamber; there is only the media. The role of the media in scrutinising the work of the politicians in this House is all the more important for the absence of those other two arms of scrutiny.

The first thing I want to talk about is the idea of replacing the current definition of defamation with the test of "serious harm". There are Members in the House who are very nervous about how to define "serious harm". Is it moving the bar, changing the bar or putting the bar too high? That is a judgement call, but it is the sort of concept that will be firmed up through case law. The more often a case goes through the courts, the more likely it is that you will get to a definite definition of "serious harm". Of course, the idea is simply to remove trivial claims and speed up the process.

Clause 2 is one of the areas in which we are replacing common law with a statutory defence. In this case, the common law defence of "justification" becomes the statutory defence of

"truth". Clause 3 relates to "honest opinion". The common law defence of "fair comment" becomes the new statutory defence of "honest opinion".

Clause 4 concerns publication on a matter of public interest. Effectively, it would replace the common-law defence that was established in the case of *Reynolds v Times Newspapers Ltd*, which was a notorious case in which the late former Taoiseach Albert Reynolds tried to sue 'The Times'. I believe that he was awarded £1 because he was technically correct, but the judge felt that 'The Times' was to be supported, because what it had reported was a matter of public interest.

Clause 5 deals with operators of websites. I had to get the consent of the Secretary of State here, because, ordinarily, this is beyond the competence of the House. As I said previously, this is where reputations are trashed, second by second, somewhere in the world. In essence, I am proposing that there become a statutory duty on the operator of the website: if you complain to it that you believe that you have been defamed, the operator must identify to you the author of the post. For clarity, for the purposes of the clause, "identify" means that the operator gives the claimant sufficient information to bring proceedings against the author. The claimant therefore needs the name and a way of contacting the person. If the operator cannot, or will not, provide you with that information to identify the author, you can take your claim against the operator of the website.

Clause 6 looks at peer-reviewed statements in scientific or academic journals. That is one of the areas in which there is huge danger from being at variance with England and Wales. Let us take an example that is based on a real-life example involving a former school friend of mine who is a specialist on the effects of epilepsy on pregnancy. It is his determined and researched view that a particular drug, whatever its merits, should not be taken by a pregnant woman. There is no other imputation about the effects of the drug, but he establishes in his mind that pregnant women should not take the drug if they suffer from epilepsy.

Given that the drug is being produced by a global pharma with huge resources, finances and access to legal teams, that is potentially a very dangerous statement to make. It could perhaps open him to the possibility of being sued. Under the 2013 Act as it applies in England and Wales, if he were to write a scientific academic medical paper and then have it peer-reviewed, and the peer review

concur with his conclusion, he effectively has privilege and is clear to publish without fear of being sued for defamation. That is not the case in this jurisdiction.

The question that I cannot answer is this: how often have academics who are thinking of applying for a post at Ulster University or Queen's University Belfast been put off by the fact that they do not have the protection that they would have if they were to take a post at a university in England or Wales? It is the same when looking at the statistics for the number of cases of defamation that are brought to our courts. It is an interesting statistic in its own right, but it does not really tell us anything about the activity that is going on behind the scenes. The really interesting statistic, which is not available, is this: how often has a communication not been made because the potential author, publisher or editor received a legal letter threatening to sue if publication went ahead? That is the chill factor. There are not stats for how often such letters are issued, and it is not possible to gather up that information. We know that it is there, however, and we need to conclude that it is significant as well as serious.

Clause 7 applies to reports protected by privilege, and it just extends the areas that are covered by that privilege.

Clause 8 is important. It is a single publication rule. It says that you cannot sue every time somebody repeats the original defamatory comment. Everything relates back to the first time a statement is published and to its author and/or editor.

Clause 9 refers to action against a person who is not domiciled in the United Kingdom. It addresses the idea of so-called libel tourism. There is no evidence that libel tourism exists in any significant manner, but the clause says that we take a common-sense approach. The example that I put in the explanatory and financial memorandum is that, if a statement is published 100,000 times in Australia and only 5,000 times in Northern Ireland, that is a basis for saying, "If you want to take a case for defamation, take it in Australia, because that is where the damage is most pronounced".

Clause 10 deals with an action against a person who is not the author, editor or publisher. You would take that action only if it were not reasonably practicable to bring the action against the author, editor or publisher.

Clause 11 relates to the idea that the trial would be by judge alone, without a jury. I understand

that that is a sensitive matter, given our history of judge-only trials. However, in this case, it makes a lot of sense. One of the big issues that Dr Scott identified in his research and consultation was access to justice. This goes a considerable way to addressing that.

Several other clauses are more technical than anything else. I will not trouble the House with them at this stage. I simply ask the House to note that implementation is not expected to increase significantly any public expenditure or make any significant change to the workload of any Department or Executive agency.

Dr Scott's big idea — if I may put it that way, and I do not wish that to sound disparaging; it is his theme — is what he calls the "bipartite suggestion", which is to do with the single meaning rule. If a claimant claims that he has been defamed by a communication, the court has to decide what the statement means, or what is the imputation. We all know that we can often say something, and we think that we know exactly what we mean, but the person to whom we are speaking takes a significantly different interpretation of what we have said. Dr Scott's report uses the example of a person avoiding tax. If you hear that a businessman has avoided tax, you might have a very negative interpretation. On the one hand, you might think that that man is a scoundrel who is illegally evading his duty to pay his taxes. You might think very badly of him. On the other hand, you might take the view that what is meant by that is that he is very tax efficient. He understands that, if he gives charitable donations, it reduces his tax liability and makes his shareholders happy because they are doing good works for vulnerable people.

Under the current regime, one of the things that slows down the process is having a jury. The judge does not decide on the single meaning; that is for the jury to do. If there is no jury, there is no bar on the judge deciding, right up front, what the single meaning is. That could eliminate the case, knock it out and resolve it right at the beginning, which addresses Mr Weir's point about how the ordinary person gets better access to justice.

Dr Scott recommends something different. He says that we should do two things: abandon the single meaning rule altogether, but, in conjunction with that, put a bar on bringing a defamation case where the complainant has explained to the publisher the interpretations that he puts on a statement that he considers defamatory.

The bar comes on if the publisher then corrects the meaning and says, "The complainant says he thinks I was implying that he is a bad person who avoids paying taxes. That is not what I meant; I meant that he is a good person who gives charitable donations, which get tax relief". If you do that prominently and promptly, there is a bar on you taking a case for defamation. Again, it is a judgement call: as with "serious harm", what does "promptly" mean? What does "prominently" mean? Dr Scott seems to suggest that, whatever the primary publication, be it press, print, radio or television, the correction should go on the internet. That is not prominent enough for me. If it is in the paper, the correction or apology needs to be in the paper. If it is on radio, it should be on radio. If it is on television, it should be on television. It could lead to endless corrections undermining public confidence in the media. That is my view, and that is why I do not support it, but I hope that it will be up for the Committee for Finance to take a view on that position.

I emphasise that I am happy for the Committee to tease out the relative merits not just of retaining a single-meaning rule or adopting Dr Scott's proposal but of every clause in the Bill. I hope we get to the point soon where the Committee takes the Bill, deconstructs it, breaks it apart sentence by sentence and then builds it back up. Who knows what shape it will take? I will not die in a ditch over every clause in the Bill; I simply believe that there should be and can be a better balance between the right to freedom of expression and the right to protect your reputation, not least because our current laws predate the internet, and I think that is an open-and-shut case for review.

**Dr Aiken (The Chairperson of the Committee for Finance):** I thank Mike, the sponsor of the Bill, for his opening remarks and for the related oral briefing he provided to the Committee for Finance on 8 September. I make my comments as the Chairperson of the Finance Committee.

Free speech is a key guarantor and a critical feature of democracy. It allows views to be aired, the truth to be told and, perhaps most importantly, the powerful to be held to account. A number of measures provide protections for Members in that regard. However, they are insufficient on their own. Free speech and access to a free press are also critical components of a democracy and are rightly considered to be the birthright of all those who are fortunate enough to live in this and, indeed, neighbouring jurisdictions.

With the freedom to publish comes responsibility and the need to protect the

reputations of individuals and, in some cases, organisations from defamation based on false and damaging statements. As indicated, the legislation in that regard is a little complex. It has evolved over a considerable time, and, in Northern Ireland, it relies on common law precedents. In other jurisdictions, fairly recent legislation has put key terminology into the statute book and has sought to strike an improved balance between the protection of reputation and the most important right to free speech. The Bill owes a great deal to the recent legislation in England and Wales. It builds on the consultation undertaken by the Northern Ireland Law Commission and the analysis by Professor Scott of the London School of Economics and Political Science (LSE). It proposes a fairly long list of changes.

When the Committee heard from the sponsor last week, members expressed differing views. Some indicated support in principle for the reform of defamation legislation but queried the timing and content of the Bill. Others highlighted concerns relating to the serious harm provisions but remained open-minded on some other aspects of the Bill. Still others indicated that they would support the Bill at Second Stage and seek to amend it at later stages. Overall, the Committee did not come to a final position. I, like the Bill sponsor, will await with interest the impending vote when we find out who goes into which Lobby.

There has been some commentary about the Committee's consideration of these matters. Let me clarify: on 23 June, the Committee agreed to take briefings on the Defamation Bill from the sponsor and the Assembly's Research and Information Service. Our forward work programme setting that out was published and shared with the Department of Finance. A number of unrelated changes to that programme were requested by the Department and agreed without fuss by the Committee. To be clear, it is not the case that officials sought to brief the Committee on these matters and were denied; if they had, I feel sure that my Committee colleagues would have readily agreed to accept such briefings regardless of whether or not it was usual practice.

By virtue of the evidence that the Committee has considered, it has endeavoured to give proper consideration to the principles of the Bill, given the constrained timescales of what would appear to be a fast disappearing mandate. That said, consensus was not possible on this occasion. The Bill awaits the decision of the House.

**Mr McHugh:** I welcome the opportunity to contribute to the debate on the Defamation Bill. It is a complex area of law, with competing interests. It is important that, when we consider changing defamation law, we do so in a balanced and proportionate way. I am not opposed to reforming and updating defamation law. There is strong justification for modernising libel law, given that the current law came into force in 1994 and many aspects of society have changed since that time, particularly with the rise of social media and online platforms. In that regard, I agree with the Bill sponsor.

I cannot agree, however, that the Bill will provide a fair and balanced outcome. I will spell out briefly why I think that to be the case. The Bill is an exact replica of the Defamation Act 2013 that was passed in England and Wales. That Act is controversial in its own right and contains many flaws. At the time that the Act was signed into law, the then Finance Minister chose not to extend that legislation to this jurisdiction and decided that we would instead look at developing our own legislation, which would be tailored to meet the needs of citizens in the North of Ireland. That was the correct approach to take.

To that end, a review was commissioned under the direction of Professor Scott to carry out research and provide commentary on the need for legislation and the extent to which the Defamation Act 2013 should be replicated. The Scott report was clear in its findings: it said that there was a need for legislation that was similar in some respects to the Defamation Act 2013 but was different in that it should be tailored to our particular needs here. The report also provided an assessment of the specific parts of the Act that should be replicated here and the parts for which, in Professor Scott's opinion, evidence of the need to replicate was less convincing.

This Bill is not the Bill that the Scott report suggested that we pursue. I fail to understand how the Bill, in any shape or form, has been adapted or changed to suit the needs of people in this jurisdiction. As far as I can see, it is a straightforward copy and paste of the Defamation Act 2013.

One of the more contentious aspects of the Bill is the clause that sets out the serious harm test, which will ensure that anyone wishing to bring a case of defamation must show how the defamatory statement has caused serious harm to their reputation. That was well examined in the Finance Committee. Many of the arguments that were presented to us were less than convincing. The clause is problematic, to say

the least. My first question is this: how is it possible for any judge to quantify fairly what constitutes serious harm? It seems to me that the clause will set up an evidence threshold that will block ordinary citizens from taking libel action. It is OK for corporations or high-profile public figures in the media or politics who can point to a drop in, say, sales or viewership or whatever, to prove that damage done by defamatory statements has affected their reputation, but how does the clause help the ordinary man in the street whose reputation has been unfairly damaged? How does he protect his name?

The Bill sponsor claims that the clause will act as a filter to deter what he describes as "frivolous" claims. Many people have had to endure nasty and untrue comments — we can all easily identify with that — and have experienced a loss of reputation. Under this regime, however, their right to defend their name will be diminished and their claim described as "frivolous", which, I am sure, to many, would be rather insulting, to say the least.

Defamation law is a complex area with competing rights at stake, namely the right to freedom of expression as opposed to the right to defend one's name. I take very personally the right to defend one's name. We have a duty as legislators to ensure that we strike the correct balance. The Bill is skewed too heavily in the direction of freedom of expression. As legislators, we have a responsibility to ensure that we have law that is fit for purpose and is informed by all the available and up-to-date information. It would be wrong to adopt an approach that would see bad legislation being passed quickly rather than law based on that informed position.

**Mr K Buchanan:** Thank you, Mr Deputy Speaker, for the opportunity to contribute to the debate. It is important that the Bill be fully scrutinised, not only at this stage but if it gets to further stages.

While we recognise the need to see progress on long-standing concerns relating to the fairness of defamation law in Northern Ireland, it will be imperative that Members of the House draw on and learn from the operational experience of previous reforms enacted in other jurisdictions, not least England and Wales.

I will touch briefly on clause 1 and one or two other clauses; I will not go into them in depth at this stage. The interpretation of the serious harm threshold will be crucial to the success of any reforms. It needs to be fair and balanced

for companies and private citizens. There has to be an acknowledgement that raising the bar to require defamatory content to cause serious harm or a serious financial loss will inevitably affect whether a business or private citizen believes it is viable to launch proceedings. That gives me great concern. Perhaps the Bill sponsor can comment on that in his closing remarks.

The meaning of "serious harm" has been subject to legal wrangling in England and Wales, and the Court of Appeal and the Supreme Court have provided different rulings. We need to avoid sowing confusion that ultimately reduces confidence in the system. An important practical question remains about when a dispute on serious harm should be resolved. Should there be preliminary hearings? Would that add or remove cost? The same goes for defences on grounds of fair comment. Are there ways of ruling on those at an early stage to prevent unnecessary proceedings at a full trial?

We cannot ignore the fact that the overriding concern among members of the public about current libel law is not whether it restricts free speech in the press but whether they can get affordable access to the legal system. These are some points — not necessarily questions — for the Bill sponsor: will the Bill prevent or reduce open access to courts for private citizens? Are there ways of enhancing the focus of the Bill to better reflect that? How will the Bill build confidence in the process? Will the Bill favour the defendant rather than the citizen?

Will the Bill make it more difficult for the citizen to raise a case? Will the Bill offer more protection to large social media broadcasters and print media? Will the private citizen have a diminished opportunity to bring a claim?

### 12.00 noon

In his comments, the Bill sponsor referred to the Secretary of State, who has paved the way for the legislation to be introduced, despite the fact that the Bill touches on reserved matters about online content in clause 5. That does not remove the need for a joined-up approach. We need to ensure that the obligations placed on social media companies about their abilities are fair and realistic, particularly given that users who publish defamatory content cannot easily be identified.

While, broadly speaking, we welcome the intention to set out regulations clarifying what is expected of an online company when

responding to a complaint about defamatory content posted on its website, it remains to be seen how that will work in practice. If an individual in Northern Ireland takes on a large media giant in California, it is the David and Goliath principle. However, David has no stones, and it could be a difficult lawsuit to follow in real, practical terms. Maybe the Bill sponsor can touch on that issue later.

The interaction needs to be better explained. Does the definition for the "operator of a website" cover all relevant housing platforms in all forms? Will the Bill compel or enforce social media companies to change their policy of non-disclosure? I understand that such a policy is currently the case in some instances. We also need to examine the Bill's potential for unintended consequences. Will a raised threshold of serious harm allow newspapers or broadcasters to calculate that the financial reward of publishing a questionable story will outweigh any likelihood that it will be challenged? Will a higher threshold for pursuing defamation cases ultimately lead to a reluctance in the legal profession to take on anything but watertight — if there is such a thing — cases?

Those are a few pointers and general concerns about the clauses. I would appreciate it if the Bill sponsor could alleviate those concerns in his closing remarks.

**Mr O'Toole:** First, before I go on to make detailed remarks, I declare my interest. I am the chairperson of the all-party group on press freedom and media sustainability. Indeed, the Bill sponsor is the deputy chairperson, and other members of the all-party group are here today. Some of what I say today will be based on that experience and perspective, as well as my being the SDLP finance spokesperson and one of its representatives on the Finance Committee.

I very much welcome the fact that the Member has brought this legislation to the Assembly today. We are in broad support of the Bill. We will support it at Second Stage. First, like the Member, though I am not quite as storied as him, I have some professional experience. I was a journalist at the start of my career and, indeed, continued to do quite a lot of freelance journalism until I joined the House. However, that does not distort my view any more than Mr Allister's legal experience or that of Mr Weir colours their view on the matter. It gives a particular perspective that is useful.

As the Bill sponsor said, he has tried for many years to make progress on the legislation. I

welcome the fact that we are debating it now. I welcome the fact that it is coming to us before the end of the mandate. First, it is worth saying that a free press is critical to our democracy. Multiple people have said that today; I am sure that others will say it as we go forward. However, in addition, you cannot have a free press without having a healthy and sustainable press. Media titles, particularly those that derive their revenue from commercial sources, which is most of them, need to be viable going forward.

The all-party group on press freedom and media sustainability made a call for evidence on that matter. We are in the process of finalising the report. The call for evidence has been about the issues that face media titles in Northern Ireland, and it is not just the big titles that we all know. It included the big, regional titles, such as the 'Belfast Telegraph', 'The Irish News' and the 'News Letter', but also the small, local titles that all our constituents read and Members rely on to do their job and get their message out. I am sure that we will rely on those titles in the months before next May or whenever the forthcoming election is.

I went through the responses to our call for evidence, and one of the most consistent complaints and observations that was made by the local media was the threat posed to them by Northern Ireland's unreformed defamation law regime. So, for people who think that this is all about 'The Sun' newspaper and big tech based in California, it is not. In fact, what we are doing here is much more proportionately about your weekly newspapers: the 'Down Recorder', the 'County Down Spectator', the 'Derry Journal', the 'Ballymena Guardian'; you can name them all. They are the people who have to deal every day with the pressure created by our very restrictive defamation laws. I will come back to this point, but let us reiterate it: Northern Ireland has the most unreformed defamation laws not just in the UK but in these islands. I will come back to the point about consistency with other jurisdictions, whether England and Wales or, indeed, the South of Ireland.

It is also worth saying, in parenthesis, and putting on record that we have a particular challenge, as well with the sustainability of media titles, with the safety of our journalists here in Northern Ireland. We are not a model jurisdiction of a free press and a healthy, plural, vibrant democracy where journalists are free to do their job. I see the Member opposite laughing, but this is serious stuff.

**Mr Weir:** I am recalling something else.

**Mr O'Toole:** OK. I appreciate that. I did not mean to impugn him. Thankfully, I have privilege here, so he will not be able to take action.

**Mr Weir:** I will explain to you later.

**Mr O'Toole:** Indeed. The point that I am making is that this is serious stuff, and this is part of the context too. This is not a safe jurisdiction in which to be a journalist, and it is not a healthy place for local media.

I have engaged multiple times with the Finance Minister and often he has taken supportive action on the sustainability of our media, but part of the context is that not just one or two but most of the regional newspaper groups and newspapers that responded to our call for evidence singled out the defamation law in Northern Ireland as a particular concern for them. That is the context of this Bill as I talk through the general points.

As I said, there is clear anecdotal evidence that our outdated defamation laws have a significant chilling effect on free speech, and I use the word "anecdotal" for a reason. As the Bill sponsor said, much of what happens because of our defamation law is based on out-of-court settlements. In the Finance Committee the other day, we had a somewhat technical debate about the meaning of out-of-court settlements. Mr Allister, who is, of course, a learned gentleman, pointed out that out-of-court settlements have a particular meaning. In many cases, these are not even out-of-court settlements because a writ, a legal proceeding, is never issued in the first place. Because I have privilege, I can say here that I know that, because Northern Ireland's defamation laws are so restrictive, there are many cases where a writ is never issued but powerful people, including people in political parties, get very expensive libel lawyers to issue letters to threaten people with actions. They do not ever have to issue a writ or go near a court, but that chills free speech. If people in the Chamber think that that is not happening, they are either deluded or are deliberately kidding themselves. That does happen, and I can think of multiple examples of it. I can think of some very striking examples that happened in recent weeks and months. That is where we are with Northern Ireland's defamation laws.

I made the point about a lot of this evidence being anecdotal. As the Bill sponsor said, because these are, in large part, either out-of-court settlements or not even out-of-court settlements but settlements or arrangements that are made between parties before they even

get to issuing a writ, we cannot know in substantive terms. The courts do not publish it. Judgements are not reached and statistics are not gathered because there is no basis on which to gather them. However, if people believe in the principles of this Bill and that we should look at reforming our defamation law — of course, they have already reformed defamation law in England and Wales and the Programme for Government in the South of Ireland has committed to reforming defamation law — why not use the exercise of moving this Bill on to the next stage for the Finance Committee to do its work and to bottom out and substantiate more of the detailed rationale? I have heard lots of Members, including the previous but one Member who spoke, Mr McHugh, make this point. He said that he agreed with the principles of the Bill but that he had concerns with specific provisions and clauses. Why not get the Bill to Committee Stage so that we can hear evidence from practitioners and other people and, if necessary, improve and amend it?

I am clear, as are every media organisation and lots of other individuals who are not representatives of media organisations, that Northern Ireland's defamation laws are, as they stand, chilling free speech and allowing rich individuals and organisations to use lawyers' letters to shut down freedom of speech and expression. That is a very serious thing for our democracy. It is particularly serious because our democracy is unique, as the Bill's sponsor said. We are a consociational democracy. I passionately believe in power-sharing, but, as the Bill sponsor said, we do not have a second revising Chamber, nor do we have an official Opposition. Furthermore, because we are a small jurisdiction, and because of the stresses that the media has been under this past two decades because of the growth and explosion in online platforms, we do not have as plural or strong an investigative media as we had in the past. Therefore, as I said, there is a strong case to be made that the reform of our defamation laws is both overdue and necessary. Members do not have to take my word for it, or even the word of the Bill sponsor: they can take Professor Andrew Scott's word for it. He, of course, did his review, as has been said. It was commissioned by the Law Commission under a previous Finance Minister, Simon Hamilton, and that work was continued under another Finance Minister, Máirtín Ó Muilleoir. It is also worth saying that, in large part, Dr Scott recommended similar reforms to those that were made in England and Wales. If Members think that the England and Wales reforms are not appropriate — they are not exactly the same as what is in the sponsor's Bill — and that

they could be amended or adjusted further, let us do that in Committee Stage and then Consideration Stage. We can do that.

People have made reference to the need for coordination and collaboration across the island. We are, in one sense, unique because the media industry here is Northern Ireland; it is both east-west and North/South. In a sense, we are part of both the British and the Irish media markets. People here read 'The Irish Times' and London's 'The Times', so, yes, there is a job to be done in ensuring that those laws do not create unnecessary burdens to publishers, or create lacunae. At the minute, there is a big lacuna, because we are totally unreformed since 1996. The Republic reformed its laws in 2009, and England and Wales reformed theirs in 2013. Let us look at all that in Consideration Stage. What is wrong with looking at it in Consideration Stage? It would specifically be possible, I am sure —. The Bill sponsor might want to reflect on this in his closing remarks. If one of the concerns is how reforms in the South might impact on the law here, I would be amenable to helping facilitate the moving of a specific amendment about reviewing a law that was passed here once there was —. If reform was passed in the Oireachtas, we could look at that. We could insert a specific review clause which provided for a review in statute here of how our legislation was operating with that. That is totally possible; all of that is doable. However, it is not doable if we kick out the Bill today, I am afraid.

I am slightly concerned by some of what I have heard today. There are Members teeing up arguments to kick out the legislation rather than give it a fair hearing at Committee Stage through to Consideration Stage. I have heard that from two parties. That concerns me. It concerns me because there have been people from political parties who have used our powerful defamation laws to send letters from expensive libel lawyers to shut down criticism. It is important that we have a defamation law regime that allows individuals who have been wronged and defamed proper legal recourse. That is critical. That is one of the aims of the Bill, and I am supportive of it. Free speech is a conditional privilege, as the Bill sponsor said. You do not have total free speech to say what you like. We are politicians, and we have people saying bad things about us all the time. Some are legitimate criticisms and some are unfair, but we are politicians and we have chosen to be in public life, so we have chosen to accept a measure of challenge and criticism as part of our jobs. It is clear that, in the online world, things very often go too far. By the way, I remind some of you who are conflating some of

the issues around online bullying and online harm with defamation law that there is separate online harms work going on at Westminster. The truth is that very few average people use the defamation law in order to take action on cyberbullying, for example. The law as it stands does not really provide for that.

This legislation will not change that, so I caution against conflating those issues.

### 12.15 pm

I will deal fairly briefly with some of the specific points in the legislation. I will not go through each clause in detail, because I hope that the Finance Committee will have the opportunity to do so. As has been said, clause 1 is largely consistent with the Defamation Act in England and Wales, in that it creates a new test of serious harm. That is exactly the kind of issue that we need to understand and unpack in the Finance Committee. I ask those who are profoundly concerned about what the clause means — two different contributors have asked that question — whether they have seen evidence that the reformed law in England and Wales has led to a huge increase in defamatory material going unchecked and spreading like wildfire in publications there since it was made. That is part of the test as well. If we go to Committee Stage, there will be a reasonable test for the Bill sponsor to explain each clause and make what is in each clause stand up, but it is also important that those who question the need for reform provide evidence of whether the additional harm that they are worried about has been created in England and Wales.

I also note the irony. I look forward to hearing what Mr Allister says about the Bill. We have heard a lot recently about the critical importance of Northern Ireland's being treated exactly the same as the rest of the United Kingdom, which includes England and Wales. Here is a test today for Mr Allister and the DUP. Let us engage on the question of why Northern Ireland cannot have similar standards in its defamation law to the rest of the UK. I am fascinated. I look forward to hearing why not, because I have been told repeatedly in the Chamber and in the media in recent weeks and months that being treated exactly the same is the ultimate test of sovereignty and of the Britishness of this place. I look forward to hearing why we need an entirely different and unreformed defamation law regime that is completely outwith and at variance to that in the rest of the UK. I do not say that to be mischievous or flippant. Rather, I say it to ensure that we have a serious conversation, if

people are going to throw up particular questions about the application of the Bill. In my view, the way in which to have a serious conversation and to scrutinise the Bill is by allowing it to proceed to Committee Stage and then to Consideration Stage, when we will have the opportunity to scrutinise it clause by clause and to scrutinise what has happened in England and Wales over the past number of years, the potential for reform in the South of Ireland, what it will mean for the sustainability of media titles and all the other questions.

I repeat my point: many local newspapers said to us in the call for evidence that one of the clear things that they want to see reformed is our defamation law. I want to hear from them too, if the Bill proceeds to Committee Stage.

In conclusion, there are significant questions that we need to tease out at Committee Stage and further at Consideration Stage. There is definitely the opportunity for scrutiny and, if necessary, further amendment. From what I heard, the Bill sponsor sounded more than amenable to that, if it is required. I very much hope that we get to do that, because I have not heard a good reason from anyone as to why the House should not support the Bill's passage to the next stage. The SDLP will certainly be doing that.

**Mr Muir:** I rise as the Alliance Party spokesperson on finance to respond to the Bill at Second Reading. Like Matthew O'Toole, I declare my membership of the all-party group on press freedom and media sustainability.

My contribution will focus on three key issues. The first is why we are here and why, as a party, we support the Bill at Second Stage. The second is the principles of the Bill, a discussion on which is, I understand, the primary purpose of today's debate. The third is particular issues with the Bill that require consideration today and highlighting those as matters for further consideration, if the Bill passes its Second Stage.

As for the background, context and why the Alliance Party supports the Bill at Second Stage, it is my understanding that, when the Defamation Bill, which is now the Defamation Act 2013, was passing through Westminster in 2012, a paper was passed to OFMDFM by the then Finance Minister, Sammy Wilson. That paper was withdrawn in June 2012. To date, I still do not know the content of that paper or the logic behind why it was withdrawn, but it was withdrawn, and the deadline to enact a legislative consent motion arising from the Bill, which is now an Act, was missed. To me, it is

perhaps no surprise that that paper was withdrawn and that the opportunity for the legislative consent motion was missed. It is wrong that the Executive and the Assembly were not given an opportunity to take a decision. However, since the DUP objected to the Bill when it was passing through Westminster, it is not a surprise that the Finance Minister did not take that opportunity. It is wrong that the Executive and this place were not given an opportunity to make a decision on that.

From reading through the evidence provided to last week's Finance Committee, it is clear that previous work that the Bill sponsor did was put on hold due to the Law Commission's work and that of Professor Scott. That work was completed and has been considered, as outlined here today. To push the Bill back and deny its passage at Second Reading would be wrong. That would deny us the opportunity to further consider the Bill at Committee Stage and other stages. That would be wrong, and it would deny the opportunity for amendments. If Members have concerns about particular aspects of the Bill, they will have an opportunity to further analyse those at Committee Stage and to bring amendments to the House. That is the right way for the Bill to proceed. Pushing it back would simply push the whole issue onto a merry-go-round. Frankly, it would deny any opportunity for change in this mandate and, potentially, in the future.

I valued the opportunity to meet the Bill sponsor before, I think, summer recess. That was a good opportunity to understand the Bill's aims and context. If the Bill passes its Second Stage today, I encourage others to engage and have those discussions with him. I have striven to respond to all of the private Member's Bills that have been presented to the Chamber. It is important to engage with Bill sponsors. I note that the sponsor of this Bill circulated a note on the Bill to all 90 MLAs, so there was engagement and an opportunity for discussion.

On the principles behind the Bill, as other contributors outlined, particularly Matthew O'Toole, this is about reforming defamation laws in Northern Ireland. The laws in Northern Ireland are outdated and need to be reformed. Today is an opportunity to progress that much-needed reform.

A key debate in the Finance Committee, which has been outlined today, was whether we should alter the threshold and change it to a matter of "serious harm". We as a party are convinced of and support the need to change the threshold. I know that the retort is to ask for

evidence in support of that. There is the issue of the chilling effect of the current legislation, and that will continue without a change to the threshold and an update to the legislation.

Getting specific examples of the chilling effect of the current defamation laws is difficult, but I can recollect where that has occurred in Northern Ireland. It only takes you to read the book 'Burned' or the proceedings of the RHI inquiry to see that, as the media, particularly larger media outlets, sought to bring to light some of the issues in that scandal. The age-old procedure whereby solicitors' letters and legal letters are served on a media company is used to such an extent that media broadcasters sometimes have to leave it to the last minute before getting a broadcast out.

The programme on the RHI inquiry was not just a one-off in finding itself in that situation. There are many other examples. Credit to the BBC and 'Spotlight' for bringing many issues to light for the Northern Ireland public. However, as Matthew O'Toole outlined, for smaller local media companies without the deep pockets of larger media organisations, that chilling effect has a serious impact on the decision whether to publish articles in order to bring to light serious issues of concern for the public. That is why we need to support the Defamation Bill at its Second Reading. As the Bill sponsor outlined, it is also about protecting the rights of scientists and academics. We need to strike a balance in the legislation. What is in the 2013 Act is ready to be transposed to the Bill.

The Bill also reflects the fact that life has changed. When introducing the Bill's Second Reading, the Bill sponsor said that the way in which we communicate now is similar to that of the past. There is one key change, however, and that is social media. In what I was going to call "the olden days" but that is now in my lifetime — I am starting to show my age — people might have written a letter to a local or regional newspaper, and that letter might have contained defamatory allegations. From speaking to some editors who are a bit long in the tooth, I know that they will say they used to act as filters and did not print some of the letters they received because they knew they were defamatory. Nowadays, people — sometimes, when they have alcohol taken — pick up a phone and publish whatever they want on social media. Retracting that and dealing with the serious harm that can arise from it can become a particular challenge. We need legislation to be able to deal with that.

We need to strike a balance on freedom of expression. I can think, for example, of human

rights activists in other countries. Afghanistan, where people need to conceal their identities, is of particular relevance today. However, we have to deal with the question, which I am concerned about and which, hopefully, can be considered in Committee Stage, of how effective the 2013 Act is in dealing with defamatory allegations that are published on social media in particular. I am not entirely convinced it is effective, so it needs further examination.

From reading the Committee proceedings, I know that concern was expressed, particularly from a Sinn Féin perspective, about how we need an all-Ireland approach. A letter about that from the Finance Minister was shared with the Committee. Passing the Bill at Second Reading would not preclude amendments, which have been outlined, or a further approach to an all-Ireland dimension and harmonisation. Voting against the Bill's Second Reading, however, would preclude any action whatsoever. It would not allow progress on, further scrutiny of or amendments to the Bill.

I am not a member of the Finance Committee. Party strengths at the moment mean that the Alliance Party does not have a position on it. I will highlight again the issues that arise from parties not being represented on certain Committees. The last Bill I responded to was a private Member's Bill from Jim Allister. As I said, we do not have a place on the Finance Committee, so we are not fully party to the correspondence, the documentation or the full discourse in that Committee. There has to be a way to ensure that, for example, other parties have sight of letters that are seen by the Committee, so that, when the Bill comes back to the Chamber at Consideration Stage, we can not only bring our own analysis and scrutiny but not miss anything that has been considered by the Committee.

As a party that supports openness and transparency, the Alliance Party will support the Bill at its Second Reading. There is nothing to fear from voting for it at Second Stage. There is nothing whatsoever to fear; if anything, there is a lot to gain. I encourage the House to support the Bill's Second Stage.

**Mr McGuigan:** I welcome the opportunity to contribute briefly to the debate on the Defamation Bill.

As my party colleague Maolíosa McHugh pointed out, legislation in the area is desirable, in the sense that the current laws are outdated and there is undoubtedly a case for more modern laws that are fit for purpose. I remain

unconvinced, however, that this private Member's Bill is the best vehicle for that.

I am a member of the Finance Committee, and I had the opportunity, along with other Committee members, to hear the Bill sponsor answer the Committee's questions.

I remain unconvinced after that session that the Bill will deal effectively with all the issues that have been raised by Members across the House. I remain unconvinced that the Bill will deal effectively with online abuse. I have serious concerns, as others have, about the "serious harm" clause.

### 12.30 pm

Another aspect of the Bill is its attempt to deal with libel tourism. However, as the Committee heard through a research paper and from the Bill sponsor, libel tourism does not seem to be a problem here in the North. The statistics show that the average number of defamation cases a year has decreased since 2013.

I am deeply concerned about the clause to move away from jury trials in favour of judge-only trials. I raised that point in Committee and say again that surely the Bill sponsor can appreciate the controversial nature of that clause here in the North. Public confidence in our legal system has at times been at best fragile, to say the least. Full jury trials are an important part of ensuring that public confidence remains high. A move away from full jury trials is a retreat from the principle that every citizen has the right to a fair trial and equal access to justice.

We have an opportunity, if we choose, to develop well-informed, balanced and up-to-date legislation that has been informed by a proper analysis of the strengths and weaknesses of defamation law in our neighbouring jurisdictions. The South in particular, as was mentioned, will soon report on its plans to update its defamation law.

I conclude by reiterating that the 2013 Act was unsuitable for this jurisdiction in 2013, and it is my belief that it still remains unsuitable. However, although we have reservations, we will not block the vote.

**Mr Weir:** I suspect that that might have been the message that the Member got just a few moments ago, but I might be speculating.

Like Mr Muir and a few others, I am not a member of the Finance Committee. I did, at

various stages in previous Assemblies, serve on the Finance Committee. I am, I suppose, the MLA equivalent of a recovering member of the Finance Committee, but I have not had the opportunity to get the detailed information that has been presented to the Finance Committee.

I do not think that there is a problem per se in reforming defamation law. I am not fundamentally opposed to looking at the current position and looking to modify, change and codify it. However, I have concerns about the Bill as currently drafted. To that extent, my party and I are particularly keen to hear what the Bill sponsor says in his summing-up to see whether our concerns can be assuaged or are capable of change.

I appreciate that some of this comes down to the dichotomy between those who have a journalistic background or, indeed, are heavily invested in the all-party group. With perhaps a slightly more cynical eye from those of us who come from a legal background, I do not see the 2013 Act as necessarily being the panacea in terms of defamation and libel law as it has at times been presented. Why do I say that? In part because I question the motivation behind the 2013 Act. If I am being cynical, the Act came in at the time of the coalition Government when there was considerable pressure on the press, particularly because of the phone-hacking scandal, and there could have been high levels of additional regulation of the press. Perhaps there is a little bit of cynical belief that that was an attempt by the Government — a quid pro quo — to do something on behalf of the media barons by saying, "At least we are trying to balance this out by making things a bit easier for you in a libel situation". I view the background with some cynicism.

There are two key issues: finance for both the plaintiff and the defendant and where the balance is between the two, and, as was mentioned, trying to balance the conflicting pressure of ensuring that there is a free press that can act without fear or favour against the need for people to be able to protect their reputations. We should always remember that in existing legislation and common law, it has always been the case, and this is recognised in the legislation, that any comment that is shown to be truthful, fair or in the public interest is always defensible. So, any publication that is printing the truth should never have any fear about a successful claim being made against it for doing so.

On the balance between those two pressures, and I appreciate what some Members have said on this, the question in recent years has

been about whether it has started to shift towards giving too much those who would potentially create libels. We have seen the extent to which libel has increased, particularly through social media and, to some extent, what might be described as being a "democratisation" of the process, which has come at a very heavy penalty. We have to bear that in mind when looking at where we have the balance so that there is an opportunity for someone to take a case in the right circumstances and receive justice.

I have a suspicion — sorry, suspicion is the wrong word. I have a concern that some of the clauses, although quite reasonable in and of themselves, incrementally shift the burden against the plaintiff. The sponsor referred to the fact that, effectively, the Bill codifies, in a legislative sense, the common-law defence of justification into a clause that deals with truth. However, it does not quite do that: it shifts the defence from stating that something is true to having to be substantially true. That may be a reasonable change to make, but, again, it shifts things incrementally.

Similarly, on the issue of fair comment, the Bill broadly reflects the current law, but, for example, it removes the requirement for the opinion to be a matter of public interest. Again, there is a slight incremental shift in that. Largely speaking, it appears that clause 4 reflects the Reynolds test.

On clause 5, which deals with the operators of websites, it is important that we create legislation that deals very specifically with social media websites and online presence. While I welcome much of what is in the clause, if we reach the point at which the Bill goes to the Finance Committee for scrutiny, it will be important that there is a key test on whether it goes far enough. This is an opportunity to provide people with greater protection from online libel. If there is a criticism of clause 5, it is that it does not go far enough. Is this an opportunity that we need to take? Does the current wording of clause 5 represent a missed opportunity?

I do not have any problem with clause 6 on peer-reviewed statements, although I am slightly cynical about the belief that there is a horde of academics who have not or will not come to Northern Ireland because they are worried about how they will be challenged in the courts because of the law on peer-reviewed statements. Nevertheless, I am supportive of clause 6.

I do not have any particular problem with clause 7, but clause 8 needs to be teased out more. On the issue of jury trials, I understand the argument that there can be simplification and, maybe, an impact on costs, although the principal cost will be from the long trials that involve very expensive lawyers. There is a basic principle in a jury trial, particularly if we are trying to judge what is prejudicial and defamatory in the public mind, of getting 12 men or women together to give a verdict, on behalf of the public as a whole, as to whether something meets a particular threshold. I see certain advantages in that. Again, I am slightly sceptical of that, albeit it is not necessarily the most fundamental issue.

It largely comes down to two issues that I have concern about. Specifically, on clause 1, libel has been actionable per se. Rather than giving a greater level of clarity, introducing a test of serious harm has a number of drawbacks. First, the experience in England and Wales, where it has operated, has been that different case law has perhaps produced different standards, so it does not necessarily give certainty to either litigant or defendant. Secondly, the Bill sponsor indicated that we could effectively test whether that raises the bar or not. It strikes me that moving from a situation in which libel itself is actionable per se to a point where serious harm needs to be demonstrated clearly raises the bar, and that, I think, is a key deterrent to those who may potentially take legal action.

Mention was made of the calculation that is often done, which is not unique to defamation cases, of, for example, a publisher deciding, "Is it worthwhile me fighting this to the fullest extent? Can I settle out of court?". A serious harm test will start to shift that very heavily the other way towards the plaintiff, and lawyers will be saying, "How can we be certain that we will be able to demonstrate serious harm?". Will this act as a major deterrent to people who have been directly libelled or defamed taking that legal action? While I have indicated that I have some quibbles with other aspects of the Bill, that is the most fundamental problem in the Bill at present. It shifts the burden too much against the opportunity for people to defend their reputation.

The Member has been open to say that, essentially, if the Bill gets to Committee, he will take on board whatever is raised there. While the Member's preference is clearly for everything that is in the Bill at present to remain, as a party, we are interested in hearing, during his summing-up remarks, whether he sees that as amendable, potentially by removal from the Bill, or whether he sees that as so

fundamental to the Bill that he could not countenance that. That is important.

This is the final point. While it appears as an aim, it is a little bit weak simply to say, "Here is a list of worthy aims". It is a reasonable enough point to talk about accessibility and, on the one hand, put in place what is there and say that, actually, this means that publishers with deeper pockets are not simply protected and that it goes, if you like, to defendants of a less financially substantial nature. However, there is nothing in the Bill that correspondingly addresses what, I think, from a financial point of view, is probably the single biggest problem with defamation, which is the extent to which it is seen on both sides as being a rich person's game. While there has been mention of the intimidation of the big publisher, the problem for those who will sometimes be libelled is that, if they are going against a newspaper, a large online presence or, indeed, one of the major broadcast media organisations, they are going against an organisation that can potentially draw on the best lawyers in the country and draw upon millions of pounds. For the ordinary man in the street, that option is not available. One of the other fundamental changes needed to the Bill, if it is to move ahead, is some way to rebalance that side of it.

From a financial point of view, that is a bigger problem than, if you like, a feeling of financial intimidation among publishers.

## 12.45 pm

The 2013 legislation has not widened access for the ordinary man on the street. Any raising of the bar will act as a deterrent to the next section of people up. It is certainly the case that, since 2013, the mega-rich have effectively been able to take the financial threats of this more casually. If we raise the bar substantially without having any cognisance of the financial impact, it runs the risk of defamation cases becoming much more the preserve of the rich. For example, despite the reform that was made, some of the most recent cases that have been lodged in London are from Russian oligarchs. To be fair, a Russian oligarch should have the same right to protect his or her reputation as anybody else, but, irrespective of where the balance is put, the cost of taking a defamation case is loose change for people like that. With the financial aspects of defamation and, indeed, the balance between the plaintiff and the defendant, we do not want, instead of widening accessibility, which is one of the aims of the Bill, to create a perverse incentive and a scenario in which defamation becomes much more the

preserve of those who have very large resources.

My party and I have concerns. It is only fair to give the sponsor of the Bill the opportunity to outline what commitment he will give to reasonable amendments being made at the next stage and whether he thinks that those could be accommodated. The major concern, which, I think, is shared beyond my party, is clause 1. That is a fundamental flaw in the Bill. Can an amendment to that clause be accepted as part of an overall package that would enable the Bill to go through?

**Mr Deputy Speaker (Mr McGlone):** I call Jim Allister. Mr Allister, I apologise in advance if I have to cut you off in mid flow. There will be a meeting of the Business Committee at 1.00 pm.

**Mr Allister:** Thank you. I suspect that you will [*Laughter.*] The danger to the House is that I might get a second go [*Laughter.*] I welcome the debate. I begin by expressing my total amazement that an attempt was made by a Minister, namely the Finance Minister, to thwart and abort the debate by writing to the Speaker and the Business Office asking that the debate should not take place and should be delayed. To his credit, the Speaker properly told the Minister that that was itself out of order, in that it is not for the Executive to dictate the order of business to the Business Committee. However, that was a telling insight into the totalitarian tendency of Ministers in the Executive who think that they can dictate to this elected Assembly when private Members can bring their business to the House. Through their scheduling, the Executive can certainly dictate when they bring their business to the House, but when private Members bring theirs is none of the Executive's business. I welcome the fact that the debate is taking place in spite of that audacious attempt.

With most Bills, a good starting point is often to ask what we are trying to fix and whether the present system is broken. To be absolutely fair to him, when I asked the Bill's sponsor at the Finance Committee whether he could point to any outrageous defamation rulings or awards in recent years in Northern Ireland, he honestly conceded that he could not. We are not in a situation where our defamation laws are so out of control or out of kilter with what they need to be that there is an urgent, irrepressible need for reform. Therefore, as legislators, we should be conscious of the fact that there does not appear to be a compelling requirement to address the issue at this point — not that it is not always good to reflect and reform where we can.

Mr O'Toole made a point, and he may be right; the problem with his point is that there is no way of really knowing that there is a subterranean chill factor whereby letters are written and media organisations fold before the proceedings start. Now, I have enough contacts still in the legal world to know that two of the major parties in the House keep their lawyers very busy writing to the media to object to suggestions that certain things might be published. Maybe that has a chilling effect; I am sure that, to some degree, it does. That is something to go into the balance in considering the issues.

For me, the fundamental, defining issue on the matter is how far we are changing defamation law in the context of its accessibility to the general public. That brings one straight away to clause 1. Today, the test for succeeding in defamation is whether what has been said, in the eyes of the average man or the general public, lowers a person's reputation or what they think of that individual. What clause 1 wants to do is to raise that to a different question, which is this: is that harm serious? That is itself a wholly subjective question. Let me make this point: the proper test for whether something is serious harm or non-serious harm is the level of damages that flow from that harm. In other words, if you secure a judgement that you secure a judgement that you have been defamed, the damages that you get reflect whether the harm caused to you was minor or serious. I respectfully suggest that that is the right arena for the determination of whether something causes "serious harm". However, to make that the threshold to even be able to succeed in defamation proceedings is wrong. It is very much putting the cart before the horse. The situation is that, if your reputation has been damaged, the degree to which it has been damaged is reflected in the damages that you get, not that you must demonstrate a particular level of harm before you are even permitted to succeed. That, I think, is the fundamental flaw, as I see it, in the Bill.

I do not have an issue with much of the rest of the Bill. On the common law translation of the defence of justification into the statutory defence of truth, there is not much difference. On the issue relating to fair comment there is not much difference. Yes, we need to tighten things up for the social media age in which we live. I have difficulties with the abolition of juries, because the fundamental question in a libel case is this: has this man's or woman's reputation been adversely affected in how they are perceived by the general public? Who better to determine that than the general public, who sit on a jury? If that is the question, is that

not the right arena for it to be answered? I have some difficulty with that.

I return to clause 1. If we move away from truth as the touchstone of whether there has been libel and change that touchstone to, "Has there been serious harm caused by reason of the lie that was told?", we diminish the very essence of the respect that we have for truth. If we say that you can now tell a lie about someone, provided that you do not cause that person serious harm, we are making a pretty huge change to our libel laws. That is what it comes down to when you deconstruct clause 1. You can cause someone's reputation to be diminished and get away with it because you have not caused the person serious harm. You can tell a lie about someone and get away with it because you have not caused the person serious harm. Is that the sort of law that we want to present on behalf of our citizens? Do we want to say to them, "Yes, it is OK for a newspaper or someone else to tell a lie about you, as long as it does not cause you serious harm"? I do not think that that is the proper approach.

What is "serious harm", and how appropriate is it that a judge, who may not be the person most in touch with everyday life in our society, makes that decision? Is it appropriate that a judge and a judge alone should make that decision about an ordinary citizen, an elevated citizen or someone in the public eye? If harm has been caused to someone's reputation by a lie that was told, surely it is far better to rest in the current situation, whereby you reflect the seriousness of that in the damages awarded, rather than putting in place too high a bar to let the person get the defamation case off the ground.

I read in the explanatory and financial memorandum that this is about making it:

*"easier and less expensive to take legal action".*

I am sorry, but I just do not see that in the Bill. How is it making it easier by saying to someone, "You have a higher threshold to meet before you start"? On any interpretation, that makes it harder. When someone goes to consult their solicitor and/or barrister to discuss the viability of bringing a case, that person will now have to be told, "It's not whether your reputation was damaged; it's whether that damage caused you serious harm". That does not make it easier; it makes it harder. That is why the very first principle that is supposedly espoused in the document is denied by its own content.

**Mr Muir:** Will the Member give way?

**Mr Allister:** Yes.

**Mr Muir:** I thank the Member for his contribution. He is right to focus on the issue of serious harm, because that is where the major debate will be if the Bill passes its Second Reading. When I was considering the Bill and the context behind it, I looked up the background to it all. On 3 May 2013, there was an article by the late and great Liam Clarke that gave the background to it. If this has been misquoted, I am happy to be corrected, but it states:

*"Jim Allister, a barrister",*

which you are,

*"said: 'We will create a very difficult situation for ourselves if we don't adopt the bill here, but it will be good for lawyers of course.'"*

I want to understand, from your perspective, why your view of the Bill today differs from your view back in 2013.

**1.00 pm**

**Mr Allister:** I have no recollection of talking to Mr Clarke at all about this, so I am dependent on the accuracy of his reporting. I do not want to at all impugn someone who has passed this scene of time, but I do not recognise the short extract that you read. That is all that I can say to you. However, the question for today is this: are we or are we not on the right path?

I think that Mr Deputy Speaker is about to tell me to sit down. *[Laughter.]*

**Mr Deputy Speaker (Mr McGlone):** Just on that path, I will consult the barrister now. The Business Committee has arranged to meet at 1.00 pm today. I propose, therefore, by leave of the Assembly, to suspend the sitting until 2.00 pm. The first item of business when we return will be questions to the Minister of Agriculture, Environment and Rural Affairs.

*The debate stood suspended.*

*The sitting was suspended at 1.00 pm.*

*On resuming (Mr Deputy Speaker [Mr Beggs] in the Chair) —*

2.00 pm

## Oral Answers to Questions

### Agriculture, Environment and Rural Affairs

**Mr Deputy Speaker (Mr Beggs):** I advise Members that questions 8 and 15 have been withdrawn.

#### Wildlife: Impact of Development

1. **Miss Woods** asked the Minister of Agriculture, Environment and Rural Affairs how the Northern Ireland Environment Agency (NIEA) assesses the impact of development on wildlife. (AQO 2394/17-22)

**Mr Poots (The Minister of Agriculture, Environment and Rural Affairs):** The Department of Agriculture, Environment and Rural Affairs is a statutory consultee for certain planning applications submitted to local planning authorities and DFI under the Planning (General Development Procedure) Order (Northern Ireland) 2015. The natural environment division of the Northern Ireland Environment Agency in the Department is responsible for providing advice on planning consultations that have the potential to have a significant impact on natural heritage features.

Planning consultations have to be considered against a wide range of planning policies, including, for example, those in local development plans, planning policy statement 2 and the strategic planning policy statement, all of which have provisions and policies for the protection of wildlife and species protected by law, such as the Wildlife (Northern Ireland) Order 1985.

It should be noted that NIEA has an advisory consultee role in the planning process and is not responsible for directly assessing the impact of a development on wildlife or for determining applications. That is the responsibility of the applicant, who must assess the impacts of their proposal, including on wildlife, and submit associated evidence in order to obtain planning permission, and the planning authority, which must consider and determine the application.

In order to obtain planning permission, the planning application should be supported with evidence of any potential impacts to natural heritage features that could occur as a result of the proposal. It should also provide details of any proposed mitigation and compensation that may be required. Some developments may require the submission of an environmental impact assessment under the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 in support of the application in order to ensure that all potential likely significant environmental impacts, including on ecology and wildlife, have been considered.

NIEA has published advice and guidance that can be used by applicants and agents to inform their projects and raise awareness of the necessary ecological requirements to accompany an application. That advice and guidance can also be used by the planning authority to inform its assessments of and determinations in planning applications.

**Miss Woods:** I thank the Minister for his detailed answer. The Minister will be aware that assessments of that nature are guidance-based and that there is no legislative mandate to provide outcome and risk-based regulatory assurance. How does his Department ensure that assessments for ecological and biodiversity impacts are followed up and verified? Would he support legislation to strengthen those assessments in order to ensure that developmental impacts are properly considered?

**Mr Poots:** The division of NIEA that deals with those matters has the ability to go through the assessments that have been provided to it by the applicant in order to identify and challenge their robustness. That can be test-based. It also involves site visits. Therefore, NIEA has the ability to adequately address those issues.

Very often, I hear of issues to do with bats, for example, where NIEA has delayed planning applications until further assessments are taken in the appropriate periods. If a planning application is granted, it is very often only on the basis that various steps are taken that will allow the bats to move to fresh roosts and so forth. Similar steps are taken where badgers are to be displaced. There is a whole series of things that NIEA will do to protect wildlife. No one should be under any illusion that there are no mitigations in there to ensure that wildlife is protected.

**Mr McGuigan:** Given that wildlife is not aware of and does not take note of arbitrary boundaries, what level of cooperation does the NIEA have with its counterparts across the rest of Ireland when conducting wildlife assessments?

**Mr Poots:** The council, in the first instance, is the planning authority and decision maker.

NIEA will use all the information that will be provided to it and assess that on the basis of what it recognises, as experts in the field, needs to be done to ensure that wildlife is protected. That work has been carried out for many years, and NIEA will continue to do it.

**Mrs Barton:** What involvement does Shared Environmental Services have with NIEA in this matter?

**Mr Poots:** Shared Environmental Services is an independent body that was established by a previous Minister, Alex Attwood, to look at those areas of special interest. It gives advice to councils and is paid for by councils. The body has no responsibility whatsoever to the Department of Agriculture, Environment and Rural Affairs.

## Islandmagee Gas Storage Project

2. **Mr Dickson** asked the Minister of Agriculture, Environment and Rural Affairs for an update on the proposed Islandmagee gas caverns marine licence application. (AQO 2395/17-22)

**Mr Poots:** I am considering a number of documents relating to the proposed Islandmagee gas storage project. The documents relate to an application for a marine licence and the review of a discharge consent and abstraction licence. The matter that I am determining is complex, and, as such, it is vital that I give the documentation all due consideration.

**Mr Dickson:** Thank you, Minister. I trust that you will appreciate that this issue requires a great deal of detailed analysis and investigation. Nevertheless, it is effectively a sword of Damocles being held over many residents in Islandmagee and far beyond.

Given the approach of the COP26 environment conference in Scotland later this year, together with the number of serious incidents around the world regarding this type of gas storage, and given that this is a fossil fuel and the United

Kingdom wishes to move us away from fossil fuel, will the Minister please help to alleviate the fears and concerns of my constituents in Islandmagee and across East Antrim? Can we have a positive decision that the Department is clear that fossil fuel is a fuel of the past?

**Mr Poots:** Unfortunately, I cannot look at the issue in the same way as the Member for East Antrim or, indeed, his colleagues from East Antrim who are in my party might look at it. I have to look at it purely on the basis of the scientific and planning evidence that is provided to me. Whatever decision I arrive at will be based on the qualitative material that is garnered by them in order to make recommendations to me. Therefore, I cannot take a decision that would be prejudiced by bias either for or against. I have to take in all the arguments and arrive at a reasoned position that is defensible thereafter.

**Dr Archibald:** Given the recent Intergovernmental Panel on Climate Change (IPCC) report that shows that we rapidly need to decarbonise and, as Mr Dickson said, move away from fossil fuels, as part of the consideration of the application, are you considering the potential for legal challenge on the basis of climate legislation that is going through the Assembly?

**Mr Poots:** I am under the impression that, should I approve the application, I will be challenged judicially, and, if I refuse the application, I will be challenged judicially. I have to make a decision based on the information provided to me, not on whether one or other party will challenge me judicially thereafter. If I make a decision and one or other party challenges that decision, it is for that party to demonstrate that I have not been rational and have not done all the things that I should have done as a Minister. Who knows what would happen thereafter?

**Mr Deputy Speaker (Mr Beggs):** I call Justin McNulty.

**Mr McNulty:** Question 4.

**Mr Deputy Speaker (Mr Beggs):** Apologies. I thought that the Member wanted to ask a supplementary question. I will now to go Mark Durkan.

## Independent Environmental Protection Agency

3. **Mr Durkan** asked the Minister of Agriculture, Environment and Rural Affairs when he will fulfil the New Decade, New Approach (NDNA) commitment to establish an independent environmental protection agency. (AQO 2396/17-22)

**Mr Poots:** Mr Durkan knows where he is in the pecking order. Good environmental governance is always about focusing on environmental outcomes and taking a strategic approach to the environmental challenges that we face in Northern Ireland and, indeed, on the global stage.

New Decade, New Approach does not specify a time frame for the establishment of an independent environmental protection agency. I am on record as saying that I am considering the implications of the NDNA proposal for the establishment of an independent environmental protection agency to form part of the possible outline of a future Programme for Government.

An independent environmental protection agency — in other words, a replacement for the Northern Ireland Environment Agency — cannot be created overnight. Consideration needs to be given to appropriate options, and those will require robust economic appraisal to determine the best option for Northern Ireland. It is no small task to scope out all the potential impacts, including significant legislative, financial and human resource issues, that would be necessary before decisions can be made.

The Assembly has given its consent to extend the provisions of the UK Environment Bill to give effect to the Office for Environmental Protection (OEP) for Northern Ireland. Recently, I published a synopsis of responses to a discussion document that was issued to gauge stakeholder views on how we should deal with environmental plans, principles and governance in the future.

The functions of the OEP will be to monitor environmental improvement against Northern Ireland's environmental improvement plan; provide independent scrutiny and advice on environmental law and policy; investigate environmental complaints; and, if necessary, take enforcement action against public authorities that breach environmental law. It is important to note that the OEP will not take action against individuals or private businesses. That role remains the responsibility of the Northern Ireland Environment Agency and other enforcement agencies. The OEP will exist to hold Government to account for the proper implementation of environmental law.

Understandably, in the current crisis, resources are spread more thinly than I would like, so some prioritisation has been necessary. Other issues need to be addressed first, such as the OEP and green growth strategy, which will help our recovery from the devastating effects of COVID-19.

**Mr Deputy Speaker (Mr Beggs):** I remind the Minister that if he needs more than two minutes, he can indicate so in advance.

**Mr Durkan:** He needed an extra 10 seconds for his wee wisecrack at the start. My desire to see an independent environmental protection agency is, in no way, an attack on the expertise, professionalism or passion of the Northern Ireland Environment Agency staff, many of whom I had the privilege to work with in a previous role. Does the Minister concur that any new environmental protection agency should be looked at on an all-island basis, given that we breathe the same air and share the same environment?

**Mr Poots:** If you want to do that, maybe we should do it on an all-islands basis and see our friends in Ireland come back under the banner of the United Kingdom. I am sure that they would be very welcome to do that, given that that is where they do most of their trading and business. It is a fairly complicated, difficult and tricky issue as things stand, so I do not think that I would be keen to introduce further complications to any suggestion of the creation of an independent environmental protection agency.

**Mr McAleer:** Given that it was an NDNA commitment and part of the basis on which the Assembly was reconvened 20 months ago, when does the Minister envisage that the independent environmental protection agency will come into place? He has been considering it for around 20 months now.

**Mr Poots:** If I had kicked off on day one, it would have been a struggle to achieve it in what was left of this Assembly term. I will not take criticism from people who actually held the Assembly back from meeting for three years. If you are that keen about the environment, it would have been much better had you ensured that the Assembly was not defunct for three years because of your own political considerations.

**Mr Blair:** In the interests of environmental protection, what is the Minister's assessment of the DUP's proposed withdrawal from North/South Ministerial Council areas of

environmental cooperation and the impact that that is likely to have on areas of much-needed cooperation, particularly around environmental protection, pollution, water quality and waste management?

**2.15 pm**

**Mr Poots:** It will have considerably less impact than the Northern Ireland protocol — well over 70% of our goods come in to Northern Ireland from Great Britain on some 419,000 HGVs per annum — and the consequences of not dealing with that issue and not arriving at a circumstance where that barrier is not put between Northern Ireland and its main body of trade, when we will be able to move things forward. People cannot just believe that they can drive a coach and horses through east-west relationships without there being some sort of consequence.

## Climate and Ecological Emergency

4. **Mr McNulty** asked the Minister of Agriculture, Environment and Rural Affairs whether his Department has declared a climate and ecological emergency. (AQO 2397/17-22)

**Mr Poots:** My Department and I recognise the need for urgent action to tackle these issues, and we recognise the Assembly's climate emergency declaration of February 2020, when the Assembly also acknowledged a biodiversity crisis in Northern Ireland. Rather than my Department focusing resources on making further declarations, I am instead prioritising my work to drive forward effective and meaningful actions across government to tackle climate change and our ecological challenges.

In tackling the climate change emergency and the biodiversity crisis, we cannot be complacent. The evidence is clear, and we need real action, not just more words. Taking urgent action to reduce the causes of climate change and to tackle its impacts is everybody's responsibility in order to prevent further environmental damage and to deliver ecological and climate resilience in Northern Ireland.

One example of such action is my introduction to the Assembly of the Executive's Climate Change (No. 2) Bill, which is steeped in science and evidence. The Bill, if enacted, will underpin and drive forward climate action and policy across all levels of government, as it sets ambitious emissions reduction targets that, if met, will deliver on Northern Ireland's equitable contribution to UK net zero by 2050, in line with the Paris Accord.

**Mr McNulty:** I thank the Minister for his answer. Will he make a commitment to set a legally binding target to halt species decline here by 2030, in line with the recent G7 commitment to halt and reverse biodiversity loss by 2030?

**Mr Poots:** We have a biodiversity plan. We also have a plan for green growth. We are developing, with our agriculture sector, work to improve efficiency on farms. We are helping to develop a whole renewables industry. I note that the Minister representing the Member's party refused one of the largest renewable energy projects that has come before us.

Looking after the environment takes more than just words; it takes actions. I am much more interested in actions to deliver a better environment than in glossy words. What I get in the Assembly, over and over again, is aspiration, but that aspiration is not taken to where the action actually happens, to what the costs are and what the impact is upon individuals and particular businesses or, indeed, agriculture. We need to get away from the aspirational fluff to what actually delivers for the environment — who is actually making the delivery and how we assist them in that — and then we will get real, tangible benefits arising from it.

**Mr Irwin:** What steps has the Minister taken to reduce Northern Ireland's carbon footprint, and what role can green growth play in increasing Northern Ireland's carbon efficiency?

**Mr Poots:** I was, perhaps, ahead of some colleagues across the way in that, when I was Minister previously, I brought in a planning policy statement for renewable energy. As a consequence of that, we are sitting on around 45% renewable energy in Northern Ireland, whereas other parts of the United Kingdom have struggled to reach 20%. Currently, the big opportunity for us lies in hydrogen. We can produce hydrogen from water and renewable electricity instead of importing fossil fuels from around the world.

I want to work with other Departments, including the Department for Infrastructure and the Department for the Economy in particular, to ensure that we embrace the opportunity that exists for Northern Ireland to lead the way on renewable energy. I want Northern Ireland to be a net exporter of renewable energy. That is an entirely achievable plan, and we need to apply ourselves to making it work.

Wouldn't it be great if we did not rely on oil from the Middle East, and gas from the North Sea or,

indeed, Russia, but were using our own resources? From existing anaerobic digestion, for example, there is the capacity to provide biomethane to 62% of the households on the gas network. We should invest in further anaerobic digestion. We should look at slurry separation thereafter. We should take the phosphates out of the system and sell those to other parts of the world to ensure that they do not arrive in our waterways. However, we need people with the vision to do this. I cannot do it on my own; I need the support of Executive colleagues. There are so many opportunities out there to make a clean, green environment but it will not come from just words; it will come from actions.

**Ms Dolan:** Does the Minister acknowledge that biodiversity loss can have a profound impact on human health, including through the increased risk of infectious diseases?

**Mr Poots:** None of us want to see biodiversity loss. That is why we have taken the actions that we have. One of the areas that I am looking at is peatlands. We have a peatlands strategy because there is very specific biodiversity in our peatlands. We need to ensure that our peatlands are wetter. We also need to ensure that we better deal with ammonia, so that there is less nitrogen deposition in our peatlands. Our peatlands are in better condition than those in some of the countries neighbouring us. They are certainly in better condition than the peatlands in the Republic of Ireland, and almost certainly in better condition than some of those in Scotland, which are in a very poor state. However, we can, and will, do much more. We are clearly identifying ways and means to improve that habitat because it is a very rich and important part of our biodiversity.

### **Local and Seasonal Produce: Promotion**

5. **Mr McGlone** asked the Minister of Agriculture, Environment and Rural Affairs what steps he is taking to promote the consumption of more local and seasonal produce. (AQO 2398/17-22)

**Mr Poots:** My Department has promoted, and will continue to promote, the benefits of our locally produced food and the importance of supporting our agri-food industry by buying local produce. I, and my officials, are in regular contact with industry stakeholders to discuss the promotion of local quality farm produce and how that can be enhanced.

Through the Northern Ireland Regional Food Programme, my Department provides annual financial support to industry organisations to support them in raising the profile of Northern Ireland's quality regional food and increasing its consumption in Northern Ireland, the rest of the UK and the Republic of Ireland. This is the fifteenth consecutive year of the programme, with funding of £290,000 being offered in 2021-22 to support the delivery of exhibitions, fairs, seminars, workshops and information programmes. Of particular note this year, through the Northern Ireland Regional Food Programme, my Department is funding a generic agri-food promotional campaign, which is being led by Food NI. This agri-food consumer-focused promotional campaign will support the Northern Ireland agri-food industry as it begins to recover from the COVID-19 pandemic by highlighting the quality, sustainability and high reputation of all sectors of the agri-food industry. It will point to opportunities to source, buy and consume more local and seasonal food.

My Department supports, and is actively involved in, activities such as the Bank of Ireland Open Farm Weekend. This very successful initiative aims to bring consumers, especially families, closer to primary food production so that they have a better understanding of where their food comes from, how it is produced and why it is important to buy our high-quality produce. My officials are also developing proposals for a new food strategy framework for Northern Ireland. I am very keen to ensure that the promotion of our high-quality local farm produce is a central part of any future food strategy. My ambition is for Northern Ireland to be recognised, both at home and abroad, as a world-class food region that is known for its sustainability, quality, safety and knowledge-based approach. That would mean more of our locally produced food being sold and consumed, both at home and beyond.

**Mr McGlone:** I thank the Minister for his comprehensive answer. Does he agree that shorter and more secure supply chains that have shorter transport distances and diminished costs, alongside the consumption of local and seasonal produce, are also essential to any efforts to help reduce greenhouse gas emissions?

**Mr Poots:** I absolutely and entirely agree with the Member, and I ask him to reflect on his party's position that we follow the Climate Change Bill being proposed by the Green Party, which would reduce livestock numbers in Northern Ireland by 83% whilst Brazil is increasing its livestock numbers by millions. I

see no benefit to the world environment because, whatever cows do, they do it in Brazil as well as in Northern Ireland. I see no benefit whatsoever in importing produce from South America that can be produced in a more carbon-friendly and sustainable way here, and I urge the Member to reflect on his party's position on that particular legislation.

**Mr McGlone:** You are going to have to tell Boris, too.

**Mr Deputy Speaker (Mr Beggs):** Order, order.

**Mr Butler:** I thank the Minister for his answer on them-uns' cows in Brazil and us-uns' cows here in Northern Ireland. How will he ensure that local and seasonal produce will be a sustainable business for our producers in Northern Ireland?

**Mr Poots:** Some of the major supermarkets are assisting in buying local produce, and some of them even have markets in their car parks where people can sell their own produce. We want to encourage those small producers of quality vegetables to have that opportunity to maximise their return, because their profitability would otherwise be low. We want to encourage those artisan producers, and Food NI is doing a tremendous job at promoting that. We have companies now that are supplying Harrods, Fortnum and Mason and some of the top companies in London with our high-quality artisan foods. They are some of the best anywhere in the world. We will continue to support those companies and their development. We have a micro food business investment scheme pilot, which supports the micro food and drink manufacturing businesses, which are processing primary agricultural produce to produce new product. We want to help them to enhance their existing product, expand their range and produce more of it. Lots of work is being done, and various small grants are available to those rural businesses. We have visited many of them over the past year and a half, and it is good to see that thriving microbusinesses are involved in food production across Northern Ireland.

**Mr Delargy:** Given the increase in North/South trade, what work has the Minister done with his colleagues in the South to promote the consumption of local and seasonal produce in the border region and across the island?

**Mr Poots:** One of the things that I have done is to promote Northern Ireland's having protected geographical indication status for grass-fed Irish beef. I will encourage it for British beef when

that opportunity arises. Unfortunately, colleagues in Ireland were not as receptive to that as I might have liked them to be. I think that we are probably getting to a better place with them now, but it took a battle to achieve that. Sometimes, people South of the border might be better looking at cooperation where it is to the mutual benefit of people on both sides of the border.

**Mr Deputy Speaker (Mr Beggs):** I call Órlaithí Flynn, who is unlikely to get a supplementary question.

## Mullaghglass Landfill Site

6. **Ms Flynn** asked the Minister of Agriculture, Environment and Rural Affairs for an update on his visit to the Mullaghglass landfill site. (AQO 2399/17-22)

**Mr Poots:** I visited the Mullaghglass site on 3 August 2021, where I met the operator's landfill team. I have highlighted to the operator the high volume of complaints that my office, in addition to the Northern Ireland Environment Agency, is continuing to receive from local residents, community groups and political representatives. That is of real concern to me. It was evident during my visit that, operationally, this is a very busy site with a lot of waste material being disposed of in the active phase. During the site tour, I was able to see at first hand the measures that have been put in place by the operator to capture the landfill gas, and it was evident on the day that further works were taking place to install the final cap in the most recently infilled area of the site. The operator reported that it envisages that 80% of the site will be covered with its permanent cap by December 2021 and that the site will be closed in 12 to 18 months' time. I have sought further assurance from the operator that it will do everything to ensure that what can be done to minimise odour impacts on the local area outside the site boundary will be done.

**Mr Deputy Speaker (Mr Beggs):** I invite the Member to ask a quick supplementary question.

**Ms Flynn:** Minister, thanks for the response. I am glad to hear that the site visit went ahead. Can the Minister confirm, on the back of that site visit, whether he is ruling out calling for an independent investigation to see where the odour is coming from? It is still coming from the site, regardless of the measures.

2.30 pm

**Mr Poots:** There are considerable measures in place. One of the problems is that, as the landfill team prepare to seal the site completely, they bore wells, and, as they bore wells, fresh smells are introduced. In order to close a site down and to ensure that, in future years, there is not a continuing odour, it is necessary for that to happen. It is one of the problems that we have: if action is not taken now, we have problems in the future, but the action taken now causes problems in the here and now. I sympathise with the residents. They face a difficult circumstance. I am prepared to close the site early, but I have been told by my officials that doing that would not provide any benefit for the residents. That is why we have not done so.

**Mr Deputy Speaker (Mr Beggs):** That ends the time for listed questions. We now move on to topical questions.

### **Protocol Difficulties: North/South Discussions**

T1. **Mrs Barton** asked the Minister of Agriculture, Environment and Rural Affairs whether there have been discussions at any recent North/South meetings about overcoming the many difficulties experienced in the agriculture industry since the introduction of the protocol. (AQT 1551/17-22)

**Mr Poots:** There have been discussions North/South and certainly many east-west. I have corresponded in writing and had telephone conversations with my colleagues in the UK Government on over 50 occasions, not to mention the dozens of meetings in which I have raised the issue and the difficulties caused by the protocol with them. I have also raised the issues with colleagues in the Irish Republic and indicated to them the damage that is being done to relationships as a consequence of their support for the protocol and, in particular, Leo Varadkar's bad behaviour when he showed photographs from the 1970s and said that that was what could happen in Northern Ireland. That was a disgraceful action. As a consequence, we have a European Union that argues that it is doing this to protect the peace process, when, in fact, its actions are damaging it.

**Mrs Barton:** Minister, your party leader has made it clear that you will not be participating in future North/South meetings. Will you clarify whether that includes the attendance of the DUP junior Minister, Gary Middleton, at the Specialised Committee meeting on the

implementation of the protocol as part of the Joint Committee?

**Mr Poots:** The party leader has made his statement, and the party leader will stand over the statement, as will the Ministers. That will cause problems, and we understand that. It will cause problems for other parties, because the basis of the agreement under which we are in here is that we engage in North/South meetings and in the North/South infrastructure. The decision has, however, been taken that we cannot have that normality of relationships North/South whilst we have that disturbance in east-west relationships. The Belfast Agreement was built on relationships across these islands, not just on this one island. It is therefore incumbent on us to reflect that in what we do and to make sure that we can get to a situation in which we are again ensuring that relationships across these islands are maintained in a constructive way.

**Mr Deputy Speaker (Mr Beggs):** Question 2 has been withdrawn.

### **Badger Cull**

T3. **Ms Bradshaw** asked the Minister of Agriculture, Environment and Rural Affairs whether his officials have looked into or are looking into how badgers become infected with TB in the first instance, given that, despite representing an urban constituency, hundreds of constituents have contacted her about the badger cull proposals. (AQT 1553/17-22)

**Mr Poots:** Unfortunately, there is a lot of misinformation out there. I have received a letter that, I think, has done the rounds with MLAs. There is a lot of inaccurate information in it. Our Department spent five years on a test and vaccinate or remove (TVR) exercise. It tested and vaccinated badgers and removed those that had TB. A considerable veterinary scientific experience was developed through that exercise and, indeed, through other engagements that other parties have had in dealing with the issue. If we proceed with it, we will probably be looking at the removal of hundreds of badgers per annum. At the moment, around 14,000 bovine animals are slaughtered early in life as a consequence of TB. People seem to care about only one aspect.

I point out to the Member that the badger is a predator and does not have any natural predators. As a result of badger predation, we have fewer hedgehogs, frogs and other species than we should have. Sometimes, a little control

can help other species. The same applies to songbirds, for example: if we did not have crows and magpies being taken out, we would have fewer songbirds. We need to ensure that the actions that we take are for the benefit of not just agriculture but the wider environment.

**Ms Bradshaw:** Thank you, Minister, for your response. As you said, the second part is about protecting the bovine community, so to speak. Are there any plans to test whether potentially infected cattle slurry spreads TB from one piece of land to the next?

**Mr Poots:** Slurry has to be got rid of somewhere, and that is why I find putting it through an anaerobic digestion process, which heats the slurry and reduces infection, a much preferable route. As well as an environmental benefit, there is a benefit through the reduction of any potential disease spread. Some make the argument that TB can be spread by slurry; I do not think that we have convincing evidence of that at this stage.

I have no interest or heart in taking the life of any animal, but, in order to get on top of the problem and to ensure that we have a healthy population of badgers and bovines, we will have to engage in some form of elimination, in the first instance, and vaccination thereafter. We have to get on top of the disease problem and then offer vaccination, in much the same way as we had to do with COVID to stop its spread. We will have to do the same with this difficult disease, which has not been dealt with for 40 years. I understand why people find it offensive when we talk about culling badgers. It is not a Province-wide cull of badgers; it is only in areas where there are extreme problems with bovine TB. In areas where there are no problems with bovine TB, badgers will not be touched and will remain protected, as they are now. It is a difficult one, and I accept that it is difficult for the community. Nonetheless, £40 million is being spent on it, badgers are going through hardship as a result of catching bovine TB, and it is the best thing to do to ensure that we have a healthy wildlife population.

## **NSMC: DUP Boycott**

T4. **Mr O'Dowd** asked the Minister of Agriculture, Environment and Rural Affairs how anyone can take him as a man of his word or his party as a party that will stand by its word, given that although, on 11 January 2020, he took a pledge to serve all the people equally and "to participate fully in the Executive Committee, the North-South Ministerial Council and the British-Irish Council", the DUP's boycott

of the NSMC means that he has broken that pledge, with the boycott causing problems for farmers and the rural community that he serves, albeit in response to Mrs Barton's question about the boycott, he said that it may cause problems for the other parties. (AQT 1554/17-22)

**Mr Poots:** I also stand by my word to serve in the best interests of the people whom I represent — the Member might reflect on that — whether they are people in Lough Neagh who are having trouble obtaining or selling their eels, farmers in west Tyrone or north Antrim who struggle to get blackface sheep from Scotland, which is an important part of their business, or the pedigree breeders who take animals to Scotland and bring them back if they are not sold. You say that you represent and speak for farmers. The farmers I speak to, who come from across the community, tell me that cannot go on. Do you know what? It would be much better if you stood with us on the issue and said to Europe, "Stop hurting the people I represent". I should not have to do that on your behalf, but I am.

**Mr O'Dowd:** I will happily bring the Minister around Upper Bann and show him the new developments and investments that are taking place as a result of the protocol. We told you that following the line of Brexit would damage relationships and potentially damage industry on this island. Minister, you did not answer the question. After you broke the Pledge of Office, how can I or anyone else take you as a man of your word?

**Mr Poots:** I have taken my position on the protocol from the outset. I indicated from the outset that the protocol would cause problems in Northern Ireland, but your party and the other three main parties — Alliance, the SDLP and the Green Party — all called for its rigorous implementation. With your rigorous implementation, what will you do about checking the 419,000 trucks that come from Great Britain to this place to feed people in Northern Ireland? Do you want more trucks stopped and checked? Do you want more cost to be added? When that cost is added to the Lidl's, the Iceland's, the Tescos or whoever, they will put up their prices for the people who live in Kilwilke, Taghnevan, —

**Mr O'Dowd:** Are you —?

**Mr Deputy Speaker (Mr Beggs):** Order.

**Mr Poots:** — Garvaghy Road and the other places where you seek votes. You are hurting

your own people by looking for the rigorous implementation of the protocol, —

**Mr O'Dowd:** Are you a man of your word?

**Mr Deputy Speaker (Mr Beggs):** Order.

**Mr Poots:** — which we are working to get rid of.

**Mr Deputy Speaker (Mr Beggs):** Order, Members. We place a question, and we then allow the Minister to answer.

## Customs Checks

T5. **Mr Gildernew** asked the Minister of Agriculture, Environment and Rural Affairs for an update on the update on the construction of permanent, fit-for-purpose customs checks at the North's ports. (AQT 1555/17-22)

**Mr Poots:** There is a proposal on that with the Department of Finance. That will go to the Executive for consideration.

**Mr Gildernew:** Minister, thank you for your answer. Given that the construction of those facilities is not optional and is, indeed, a requirement of the Withdrawal Act, will you update us on what legal advice you have received on their construction?

**Mr Poots:** The legal advice is that I should take it to the Executive. It is not my decision to make.

## Animal Cruelty Register

T6. **Mrs D Kelly** asked the Minister of Agriculture, Environment and Rural Affairs, after resisting the temptation to remind the DUP that Brexit and the protocol are entirely of its making, for a progress report on an animal cruelty register. (AQT 1556/17-22)

**Mr Poots:** I will just respond to the first comment: the protocol is not of our making. It is a political decision that is being implemented. It is not protecting the European Union single market because the goods are staying in Northern Ireland. Therefore, the goods coming from Great Britain for customers to buy in stores in Upper Bann pose no threat to the single market. You should stand up for your people in Upper Bann.

We have put the animal welfare register to the Department of Justice and have indicated our

desire to proceed with it. The Department of Justice has indicated that there are issues; I do not entirely accept that. Nonetheless, that is where it lies.

**Mrs D Kelly:** The good people of Upper Bann will have an opportunity in the coming months to say whether they believe that I stand up for them.

Has the Minister agreed a timescale for the animal welfare register with the Minister of Justice?

**Mr Poots:** I have not, because Justice has indicated that some of the material poses a difficulty for it due to GDPR and the legality of giving out such information.

It therefore becomes more challenging for us on that front. Nonetheless, it is right that people who have demonstrated that they are cruel to animals should not have the capacity to keep them. A register that people can look at to see whether an individual who is keeping an animal is banned from keeping animals will enable people to act on that information. It will be easier for councils and others to act on it as well.

2.45 pm

**Mr Deputy Speaker (Mr Beggs):** That is the end of questions to the Minister of Agriculture, Environment and Rural Affairs. Members should take their ease for a few moments.

(Mr Speaker in the Chair)

## Question for Urgent Oral Answer

### Health

#### Continuing Healthcare

**Mr Speaker:** Mrs Pam Cameron has given notice of a question for urgent oral answer to the Minister of Health. I remind Members that, if they wish to ask a supplementary question, they should rise continually in their place. The Member who tabled the question will be called automatically to ask a supplementary question.

**Mrs Cameron** asked the Minister of Health to respond to concerns raised by service users and health and social care (HSC) advocates in relation to his Department's new policy on continuing healthcare in Northern Ireland.

**Mr Swann (The Minister of Health):** I welcome the opportunity to clarify the situation with continuing healthcare. I appreciate that social care is an extensive and complex area. However, I urge Members and those listening not to conflate the issue with the policy decision that was announced in another part of the United Kingdom last week.

The fact is that continuing healthcare has become an outdated and much criticised scheme, principally serving to offer only confusion and false hope to individuals and families. A review carried out by my Department, following an Age NI report in 2014, found a risk of variance in the application of departmental guidance and in continuing healthcare practice across the trusts. That led to regional inconsistency and a potential postcode lottery for individuals. The Department undertook a consultation, launched in 2017, that was designed to establish a clear position on the matter. I inherited the scheme and the public consultation on its future. I wanted to provide more clarity, at least in the short term, pending wider consideration of how social care should be funded in the future. In taking up my role, it was clear that the previous inequality, confusion and variance across the region needed to be addressed. In February 2021, I gave approval on the way forward, with the aim of creating a fairer system. A stakeholder working group has been established, with the aim of producing guidance to underpin the new position. The aim has always been to publish the guidance over the coming weeks, once the

working group was able to come to an agreement. I can very much appreciate the concerns raised by service users and advocates. It is only right that, when issues are raised, they are addressed by those in government responsible for decision-making.

The matter of continuing healthcare is only one small part of the health and social care system, but it very much relates to the wider issues relating to social care, how it is provided and how it is funded. I am, therefore, very keen to look at this matter in the round, in the wider context of how we deliver health and social care in Northern Ireland.

The reality is that many people, particularly older people, need to move into care homes because of the impact of medical conditions on their ability to look after themselves. An argument could, perhaps, be made that the state should provide free or subsidised social care in such circumstances, just as it provides free healthcare at the point of need. It is also the case that the financial cost of such provision would be significant, with major implications for other areas of public spending. I look forward to the House addressing such issues in the forthcoming public consultation on the reform of adult social care.

**Mrs Cameron:** I thank the Minister for making himself available to the House to answer questions on this incredibly important topic. Many across NI will, rightly, be concerned at how their caring needs are going to be met now and in the future.

The Marie Curie response to the consultation on continuing healthcare in Northern Ireland, specifically on option three, which was to introduce a single eligibility criteria question, which was the Department's preferred option and has now been introduced, was:

*"Marie Curie does not support the implementation of the single eligibility criteria model in Northern Ireland. We believe that, as currently presented, this option amounts to the abolishment of Continuing Healthcare funding for local patients."*

My colleague Arlene Foster submitted a question last week to ask whether, given Her Majesty's Government's announcements on social care, the Department had any plans to replicate the proposed cap on the cost of social care for residents in Northern Ireland. Perhaps the Minister can give some clarity today.

Is there not a moral obligation on the Department to look at the cases of many people in nursing homes across Northern Ireland who were not even made aware of their eligibility for continuing healthcare before the policy was scrapped?

**Mr Swann:** I thank the Member for her point. As I said in an earlier answer, the review was carried out following a report by Age NI. This policy was brought to light, and the need for the publication of the guidance raised, by the Office of the Northern Ireland Public Services Ombudsman (NIPSO) when it consulted, in 2017, on the variance across trusts. That is why we see only one of the five trusts actually utilising the current continuing healthcare policy.

As I said in my initial response, it is vital that we separate continuing healthcare from the review of social care and the reform of adult social care. As I think the Member indicated, that query was raised by her party colleague Arlene Foster. I look forward to the House addressing such issues and the input of parties, individuals and organisations such as Marie Curie into the forthcoming public consultation on the reform of adult social care. It is worth noting those individuals and other political parties who took the time to respond to the public consultation on the reform of continuing healthcare when it was launched in 2017.

**Ms Flynn:** Minister, in your opening remarks, you mentioned the stakeholder working group that has been set up for some of this work. It was on 22 March that you gave the commitment to establish that group. How many service users, carers or advocacy groups are on the working group, and has it met yet?

**Mr Swann:** I thank the Member for the question. The working group has met. It is due to meet again in another couple of weeks. At that stage, we had hoped to have the publication of the guidance. It does not look like it will be able to finalise that at the second meeting. Hopefully, it will do so at the third meeting. We asked Age NI to sit on that group, because, as the Member will be aware, it represents a large cohort of the service users and potential applicants to the scheme. It was very critical of the Department's response, so we brought it in as a critical voice when preparing the guidance on the future of continuing healthcare before it became part of the wider review of adult social care in Northern Ireland.

**Ms Hunter:** Minister, you will understand that this is a very emotional issue for many of my constituents; I know several people who have had to sell their home and use their savings to afford access to care. Have you spoken with individuals who have been impacted by this issue and what is your assessment of how this approach, which leads to them using their savings and selling their homes to afford access to care, is impacting on them?

**Mr Swann:** I thank the Member for her question. As I said in my initial response, we need not to conflate continuing healthcare with the greater reform of social care, because they are two very separate issues. The continuing healthcare scheme, which was initially discussed and is the subject of the question for urgent oral answer, has only been utilised by one trust in Northern Ireland. The Member is referring to the greater reform of adult social care in Northern Ireland, which, as I have said, will be the subject of a public consultation. I look forward to the House addressing such issues in the forthcoming public consultation, and I note that the Member's party was one of the parties that made a submission to the public consultation on continuing healthcare.

**Mr Chambers:** I look forward to the Minister's upcoming consultation on adult social care reform. However, recommendations from that will likely come with significant funding commitments. Does the Minister envisage any challenges around the Executive table when he makes the case for funding consequential from health spending in England to be earmarked for health spending in Northern Ireland?

**Mr Swann:** I thank the Member for his question. I am conscious not to mix what has been announced in England on what they are doing on social care and the funding of that, but there is a Barnett consequential from that announcement. I have asked around the Executive table for that consequential to be ring-fenced for health spend in Northern Ireland, because, in Northern Ireland, our social care service is part of our healthcare service. In England, social care services are looked after by councils and districts, whereas here in Northern Ireland it is all done by us. I ask that anyone from any Executive party who is raising concerns about the funding of this policy or the greater reform of social care and domiciliary care supports my ask at the Executive table for that Barnett consequential to be earmarked and ring-fenced for health provision in Northern Ireland.

**Ms Bradshaw:** Thank you, Minister, for coming to the Chamber to provide some clarity on the issue. My question is about the eligibility assessments and those who conduct them. You said that there is only one trust doing those; do you know why the other trusts are not doing them? What sort of backgrounds do the assessors have? What is built in regarding a review of the assessment? I ask that because we know that people's situations can deteriorate quite quickly.

**Mr Swann:** I thank the Member for her question. Only one trust is utilising continuing healthcare because of the inconsistency across the trusts in their understanding of what the service was about, how it could be funded and how it could be accessed. That is why the NIPSO's report stated that failings in the health service should be documented and addressed, which is something that I welcomed. We are aware of the issues previously raised by the NIPSO in respect to the previous policy; those were well documented and further underscored the need for the 2017 consultation. That is part of the reason why only one trust was utilising the system. How the assessments are conducted and how they will be utilised will be part of the work of the stakeholder forum to make sure that any guidance that is issued is applicable to and practised on a regional basis rather than solely in one trust area.

**3.00 pm**

**Miss Woods:** I thank the Minister for attending the Chamber today. He will be aware that I have written many times to his Department about constituency issues to do with this. How long is it between an application for continuing healthcare and a decision? If, for example, a person applied for a continuing healthcare assessment 10 years ago, was not assessed and sadly died, what appeal mechanism is there against payment of fees that have been charged by the trust and passed to that person's family members?

**Mr Swann:** I am aware that the Member has a number of specific constituency issues on the question that she has asked. If she is content, I will come back to her in writing on the specifics, because I do not want to give an inaccurate answer on what is a live case for her at constituency level.

**Mr Allister:** Is the Minister in a position to tell the House how many people across Northern Ireland are in receipt of funding for continuing healthcare provision? Secondly, will he come off the fence about whether it is his ambition

that, in Northern Ireland, there should be a cap on the amount that a family ultimately has to pay?

**Mr Swann:** I thank the Member. The answer to the first question is 72. It would be premature for me to answer the second question before the public consultation and options are launched in regard to what we intend to ask the people of Northern Ireland in that public consultation. The Member is often rightly critical that many consultations are published with a predetermined decision already in place. The Member is asking me to take a position when the consultation has not been launched or decided on yet, but I will not be tempted to do that.

**Mr Carroll:** Can the Minister outline what consideration he or the working group that he referred to has given to the conditions faced by domiciliary care workers, who often have to pay their own mileage or travel time when moving between people who they care for? There is no care system without care workers. Can the Minister also confirm that there were fewer than 50 responses to the consultation in 2017?

**Mr Swann:** I thank the Member. There were 43 consultation responses in 2017, and I think that 19 of those were from individuals who had experience of the system. I do not want to conflate our domiciliary care service and what we are doing across the community in Northern Ireland with the specific point of continuing healthcare. Members will be aware of the continual challenges that we face in our domiciliary care sector, both in the independent and statutory sectors. That is why I have asked for the establishment of a social care fair work forum that would look to support and develop Northern Ireland's social care workforce. The Member is well aware of the value and importance that I put on that workforce, which is currently depleted, is under pressure and is struggling to manage the ever-increasing workload. I have asked for that new body to be tasked with developing proposals to improve terms and conditions and career prospects for social care staff. I am hopeful that that will assist the sector in recruiting, developing and retaining committed, skilled and well-motivated workers and provide a voice for the workforce, which often feels marginalised in our healthcare system. There is no avenue or representative forum for those care workers, and I hope that our social care fair work forum will provide that for them.

**Mr Robinson:** What guidance has been developed on the implementation of the new

continuing healthcare policy, and how were service users and families consulted as part of the process?

**Mr Swann:** I thank the Member for his question. He will be aware that, as I said, I have established a working group to do that. Representatives from the trusts, my Department and Age NI will be involved in preparing that guidance so that it is fit for purpose. Involving Age NI will make sure that service users' voices are heard so that, when we publish the guidance, there is representation from around the table, including providers and users. That will make sure that who can apply for it and who it is applicable to is easily understood.

**Ms S Bradley:** I thank the Minister for being here today to discuss the issue. Is the Department working proactively in any way to engage with families who may have loved ones who were denied access to an assessment? I ask that not only because it is right to engage with them but because there may be potential court cases if such things are not settled amicably.

**Mr Swann:** Anyone who made an application for a continuing healthcare grant prior to February will still be assessed under the old scheme and will be eligible for payments should that be deemed necessary. If the Member has specific constituency issues that she wants to raise or write to me about, I will carefully consider those and pass them to the relevant officials in the Department for consideration.

**Mr Buckley:** The investigation by 'The Nolan Show' goes to the heart of how we as a society treat and, indeed, provide care to our fellow citizens. I was alarmed when I listened to the accounts of many individuals who were not even offered the continuing care option. There is a moral obligation on the Department to follow up on those cases to ensure that there is retrospective provision.

How does the Minister respond to the allegation that the policy is more about closing a loophole and cutting costs than about a fair or evidence-based approach to long-term care? Why was the matter not brought to the Executive? It is significant, controversial and cross-cutting.

**Mr Swann:** I thank the Member. On his last point, it was not, and it is not.

The Member is a member of the Health Committee and will be aware that I wrote to the Committee about the issue on 8 October 2020.

I also supplied the Health Committee with a copy of the full report on 11 February. The Member will also be aware that the matter was out for public consultation for 14 weeks in 2017 and that only a small number of political parties responded to that consultation.

On the point about access and the availability of the scheme, individuals in the trusts will have informed families and dealt with them. Again, this is a small part of the greater reform that we need in adult social care in Northern Ireland. We have seen that work starting in Westminster, and I hope to bring forward the consultation on the reform of public social care. I hope that the Member will partake in that and that his party will support it and its development in regard to how we fund it and what people in Northern Ireland will have to pay for their social care.

**Mr Speaker:** Members, that concludes this item of business. Please take your ease for a moment or two.

*(Mr Deputy Speaker [Mr Beggs] in the Chair)*

## Private Members' Business

### Defamation Bill: Second Stage

*Debate resumed on motion:*

*That the Second Stage of the Defamation Bill [NIA 25/17-22] be agreed. — [Mr Nesbitt.]*

**Mr Allister:** I am flattered that Mr Muir seems to keep a file of my past utterances. It is just a pity that he does not heed them a little more, but there you go. *[Laughter.]* Before we broke for lunch, he intervened to ask me about a purported quotation from me in the 'Belfast Telegraph' from 2012, I think, in which I was reported to have said that, if we did not follow the 2013 Act, we would be in a difficult position. As to whether I said that, when you read the entirety of the article, the question that I was answering is clear. The burden of the article was that there was going to be a huge avalanche of libel tourism in Northern Ireland if we were the only place that did not follow the 2013 Act. I said that that would indeed create a very difficult situation.

Things have turned out very differently, however, despite those warnings that, if we did not follow the 2013 Act, there would be libel tourism. There was talk about Russian oligarchs and all sorts flooding our High Court. Some statistics speak to the truth of the matter. In the three or four years before 2013, we had an average of 35 writs for defamation issued in Northern Ireland. In the corresponding period since 2013, the average number of writs issued for defamation in Northern Ireland is 30. Far from an increase, there has been a slight decrease but, really, little if any impact. Libel tourism was a straw man in all of this. That therefore enables us to examine the present legislative proposal free from that pressure and burden. When you examine it free from that pressure and burden, it leaves you, of necessity, to consider every clause.

I have indicated that clause 1 troubles me most, and it does so because of the raising of the bar for how you can obtain remedy for defamation. I have dealt with most of my points about that, but I just want to make a couple of others. As in any civil proceedings, the onus is on the plaintiff to prove their case on the balance of probabilities. If, however, you have to prove your case on the balance of probabilities that not only was there harm but there was serious harm, it is clearly a much more difficult hurdle.

That is in circumstances in which, if you are suing a media organisation, it is most likely in a position where it has insurance. The plaintiff can never have anything other than his own resources, because it is just not possible to get legal aid in defamation cases.

**3.15 pm**

It is an uneven playing field before you ever start. You are suing a body that, more often than not, as Mr Nesbitt bore witness to, has insurers that will pick up the tab, although, as Mr Nesbitt told us, you have to follow their directions. Against that is a plaintiff who is very upset at what has been said about them and who now has an extra consideration. First, they have to consider that, to do anything about this, they have to risk taking legal proceedings. If they lose those legal proceedings, there is no safety net of legal aid, and they will therefore have to pay everyone's costs, including those of the large- or medium-sized media organisation. Now, however, that plaintiff also has to consider whether they can get over the hurdle of proving this unspecified, subjective criterion of serious harm. What will a judge say serious harm is in their circumstances? That is another imponderable. It is not just a matter of deciding, "I have been lied about, and my reputation has suffered". This law would say that, unless there is serious harm, a reputation is entitled to suffer. Is that a good place to be? Is it good to say that anyone — a media organisation, an individual or anyone whatsoever — can tell a lie about you and damage your reputation, provided that they do not overdo it to the point where they have caused you serious harm?

Serious harm to one person might not be serious harm to another. In the eyes of a plaintiff, the harm might seem very serious but, in the eyes of an outsider, it might not seem serious at all. Our concern should be for the person affected — the little man. Clause 1 creates a hurdle that says to the little man, "It is not only that you have to take all the financial risks. It is not only that you cannot get insurance against being libelled when those that you have to sue do have insurance. Now, even to venture to sue, you need to be satisfied that you can prove serious harm. Then, if you get to the point where the judge says, 'Sorry, there is harm but, in my view, it is not serious harm', you will have lost, and you will pay everyone's costs, because costs follow the event. The individual who takes the risk — a risk that is present in libel in any event but would be enhanced risk by having to seek to show serious harm — and fails, having not got past that point, emerges in a far worse position, even though he has already suffered harm. He

emerges with a huge bill to add to the harm that he has already suffered, but it was not enough harm to be called serious.

How can we possibly rush into creating that situation? I say to the House that we need to pause and think very carefully about whether that is where we want to go. For me, this is the compelling and determinative issue. I echo what Mr Weir said to the sponsor: when he comes to make a winding-up speech on the debate, will he indicate whether clause 1 is a make-or-break clause for the Bill? If it is not, it would be much easier — I can speak only for myself — to go through the Aye Lobby, because there are other things that it would probably be useful to do, not least in respect of scientific journals and social media. It is critical that we know whether the sponsor is going to die in a ditch over clause 1. A very clear answer to that would be helpful as we seek to move the matter forward.

**Mr C Murphy (The Minister of Finance):** I welcome the opportunity to speak in the debate. I will say at the outset that our request to look again at the timing of the debate was on the back of a series of attempted engagements. We offered to speak to the Bill's sponsor; I wrote to him in, I think, July. He did not take up the offer, which is his prerogative. When we discovered that the Committee hearing would quickly be followed by the Second Stage, we wanted an opportunity to speak to the Committee. I accept in all that that the Department should have been more alert to the timetables involved. I am not sure where the Committee Chair got the idea that officials were denied access to the Committee. That was never the case; we did not make a request to address the Committee. However, that was the rationale behind that. For the record, I accept that we should have been more alert to the timing of all those things and had our opportunity to speak to the Committee ahead of that time, in which case the request for a delay in the debate would not have been necessary. Nonetheless, we are where we are today.

One thing in the debate that has been consistent is that every Member I heard speak agreed that reform is necessary. There is no one who disagrees; no one said that the situation that we have is satisfactory or that it is doing the right job for the right people in the right balance. The question is this: is the Bill is the right vehicle for that reform? One of the difficulties with being the penultimate Member to speak in the debate is that other Members have dissected quite a lot of the important parts of the Bill and offered some concerns and criticisms about how it would operate. I share a

lot of them. I do not propose for the sake of the debate to repeat or go into the areas that they went in to, but the central question for all of us here, regardless of whether the Bill goes on to other stages, is this: is the Bill the right vehicle for what we all agree is a very necessary process of reform? The Bill is not a fresh piece of legislation. I think that everyone accepts that. It is a straight replication of the Defamation Act that was passed in Westminster in 2013, which was eight years ago. In terms of modern-day technology and media platforms, that is a lifetime ago. We live in a digital age. Defamatory statements can easily be posted on social media platforms and rapidly circulated online and by word of mouth. Within hours, a person's reputation can be destroyed, causing great distress to them and their families. It is primarily women who bear the brunt of abuse and defamation from online trolls. The legislation does not deal with that fundamental issue.

In replicating the 2013 Act, the private Member's Bill also introduces serious harm, which was dwelt on quite considerably by Mr Allister. That means that it is not sufficient for a person to prove that their reputation has been damaged by a defamatory statement; they also have to demonstrate that they have been seriously harmed. He articulated that, given his knowledge of the legal system, probably better than I could, so I will rest with his questioning in that regard. The original intention of serious harm was to exclude frivolous claims. In reality, it makes it easier for public figures, by virtue of their public profile and reputation, to demonstrate serious harm; in other words, the rich and the powerful are better protected than perhaps the ordinary man or woman on the street. As the Bill sponsor suggested, it is, indeed, about the money when it comes to that outcome from the legislation. Some of the most enthusiastic supporters of the Bill spoke from the perspective of media organisations — given their background, that is understandable — be they large or small, in that regard. However, there is a question about accessibility and the ability to get remedy for ordinary people who do not have deep pockets or insurance cover, as Members referred to.

There are other serious concerns with the legislation. One is the removal of jury trials. There have been no jury trials on defamation matters in England or Wales since the Defamation Act was passed, leaving the view on whether reputations have been harmed solely with a judge. The single publication rule has also been shown to be problematic. Although it was designed to simplify matters, it may have ended up complicating them. Those

flaws were highlighted at the time and have only grown in the eight years since the Defamation Act was passed.

Dr Andrew Scott has been referred to often in the debate. He has published and spoken quite a lot on the issue, and it seems that his arguments can be mustered on either side of the debate. In his report, he advised against a straightforward replication of the 2013 Act. Instead, he proposed that we develop our own bespoke legislation. One of the messages coming from a conference of academic lawyers held in Dublin at the end of 2019 was that the Defamation Act 2013 was not a good model for defamation law. People have said that the 2013 Act has tipped the balance away from reputational rights and privacy.

That legislation could offer lessons to bespoke legislation that we might produce. It is my intention that such legislation will come forward from the Department of Finance. It could take lessons from the 2013 Act, and it could take into account the Irish Government's review of defamation law, which is expected to conclude shortly. The importance of that review is that it includes the most up-to-date examination of how to address online defamation. It is not simply a matter of our taking an all-Ireland approach to these matters but of taking examples of best practice and research from other places. Mr O'Toole said that we could come back to that and insert a clause that adds in bits of that review, if it proves OK. My argument is: why rush into this? Why not wait until we do our own research, get the most up-to-date advice and information and produce legislation in the next mandate?

My Department is ready to prepare state-of-the-art legislation. I accept, without reservation, that this has gone on for far too long. I wish that it had been dealt with from 2013 onwards. However, given the experience of the pandemic and the pressures on people's time, only now are we in a place where we can work on this. I want to see that work progress with all speed. I am very happy to work in a collegial manner with Members from all parties as we take this forward. We can take a bit more time to get it right. There is no sign, as others said, that we are beset by libel tourism, which was one of the great warnings attached to the 2013 legislation and its absence here. There is no evidence that people are choosing this jurisdiction for their defamation actions because they think that they will get more leniency and a better outcome. As a matter of fact, it has been pointed out that, by comparison, the number of cases has dropped in the intervening period.

We see no evidence that scientists or academics in our universities are mincing their words or that journalists here are more cautious. You can buy the same books, magazines, papers and academic journals here as you can buy in London, Dublin or New York. I have not heard of a single book, article or news story that could be published in London or Dublin but had to be held back here for fear of our defamation laws. I see no evidence that we need to move urgently on defamation law because major human rights or freedom of expression issues are at stake or because every other tourist here is a libel tourist. That is why, even though it is beyond time when this should have been done, the correct action is to take time to do it right.

The Assembly faces a choice. We can do our research, undertake proper consultation and bring forward considered and well-thought-through legislation, or Members can cut and paste this outdated and flawed legislation and try to fix it, which seems to be what the Bill sponsor is suggesting, as it is rushed through the remaining months of this mandate. The Bill sponsor has suggested that the Committee, which seems to be the focus of the burden of trying to correct the Bill, could deconstruct and reconstruct it. The Committee will have to decide whether it wishes to use resources in the time ahead to undertake such an onerous exercise. The Department will have to consider its approach as to what it might do in the time ahead, should the Bill get through Second Stage today.

Our efforts would be better invested in developing new and effective legislation rather than trying to fix a flawed Bill. If Members are convinced that this is the right vehicle and that they can patch it up as it goes along, good luck to them. My focus will remain on developing bespoke legislation, based on the latest consultation-led evidence, which will do the necessary task properly in the next mandate.

**Mr Deputy Speaker (Mr Beggs):** I call Mike Nesbitt to conclude and respond to the debate.

**3.30 pm**

**Mr Nesbitt:** Thank you, Mr Deputy Speaker. I thank every Member who has shown an interest in the Bill, particularly those who have spoken in the debate, and especially the Minister for turning up. He will not be surprised that I do not necessarily agree with everything that he had to say, and I will return to that in a moment.

Rather than just go through what each Member said turn by turn, I would like to address the themes that have emerged, and themes certainly have emerged during the debate. One is that just about every Member agrees that, in principle, our laws are fit for reform, upgrading and modernisation.

I make an exception for Mr Allister, who questioned whether it is broken. He asked me at Committee to come up with an example of a recent defamation case in court where there had been a bad result or where the quantum awarded by the jury was out of kilter. As he pointed out today, I was unable to do so. However, I would argue that that is not the best test. Like the swan, a lot of the activities go on below the waterline. They are unseen. There are a number of legal letters being issued, threatening potential publishers that if they make that communication, they will be sued.

As I said, in the three times that I have been involved, it was not even a question of the media organisations' lawyers weighing up the pros and cons of freedom of speech versus protection of reputation. It was the insurers saying, "If you go to court, we will not cover you. We have made a financial consideration and we reckon that you can settle it for x thousand pounds, which is a much better prospect to us than risking going to court and the jury awarding ten times x thousand pounds if the claimant wins the case".

The other clear theme is that clause 1, which relates to serious harm, is in serious trouble. Some Members, including Mr Buchanan and Mr Weir, asked whether I can assuage concerns and give guarantees that there are no red lines and no immovable clauses as far as I am concerned. I hope that it will assure them that, if it goes to Committee, let us say that it is the equivalent of a tall building built of Lego. I would expect Committee members to take it apart brick by brick, examine every brick and then put it back together. However, when you put it back together, it might be missing a storey or two, so there is no clause that I want to die in a ditch over.

I take the concerns that have been expressed about serious harm, but I do not think that it is for me to say that serious harm has this meaning or this threshold. Mr Weir made the point that we come from different backgrounds; he comes from a legal background, and I come from the media. I was reflecting on that over lunch. I am not an expert on the media. I am very interested in the media. If you had asked me, when I was working in the BBC in the 80s, if I knew the BBC, I would have said that I knew

pretty well how the BBC worked. During 13 years at UTV, if you had asked me if I knew how Ulster Television worked, I would have said, "Yes, pretty well", but I do not know about the 'Belfast Telegraph', 'The Irish News', the 'News Letter', the Sundays or the subregional weekly papers, so I am not an expert. Some people with a legal background are good on family law, commercial law or media law but not the law, period.

I suggest that, when it comes to something like serious harm, if you allow it to go to Committee, it is not my opinion that you will want to hear. Why would you not want to hear the opinion of, for example, Lady Chief Justice Keegan or Lord Justice Gillen, who carried out the review of civil justice, or experts in media law or Citizen's Advice on the number of times the ordinary person comes looking for advice on how to carry out a defamation action? I am not trying to set out the forward work programme of the Committee for Finance; I am just suggesting that that might be a better way to proceed than asking me what I mean.

Of course, the defamation law in England is from 2013. It is eight years old, so there is a body of case law. By the way, some of it is referred to on page 3 of the explanatory and financial memorandum. I am more than happy, if the Finance Committee wants to take that course of action after the debate, and the conclusion is that serious harm is not a good way in which to go forward, that we do not go forward with clause 1 and we go forward with something else. If we do not go with serious harm — I hope that this assures Mr Allister on another point, which is the concern that has been raised about non-jury trials — and we stick with the current test, which is, effectively, whether the statement that is made about you make an ordinary, decent, right-thinking person think less of you, the argument swings, in my mind, back towards having a jury trial. If it is serious harm, I can see why a judge could be put in that position, but, if it is the current test, we may wish to swing back to a jury trial. To a certain extent, clause 1 is linked to clause 11. I hope that that assures Members.

Mr Buchanan listed specific areas. I did not make a note of them. I hope that that general assurance is enough, but, if there are specifics, I am more than happy to address them. Mr McGuigan also raised his concern about jury trials. I hope that that assures him.

By the way, I should have declared that I am the vice chairperson of the all-party group on press freedom and media sustainability. Mr O'Toole is the Chair. He made the point that we

could, at a later stage, take account of any changes that are introduced in the Republic of Ireland, where they are in the process of reviewing their defamation laws. That is perfectly reasonable. I would add that we could also take account of any changes that might be made out of Westminster, because the Defamation Act is now eight years old. Many Members have made the point that it is imperfect. I would imagine that, at least behind the scenes, those who have taken a lifelong interest in the issue are thinking about it and whether it is timely to bring forward some sort of amendment or update in the legislature at Westminster.

On a couple of points of factual accuracy, I think that Mr Muir referred to the fact that I had shared a letter from the Finance Minister with the Committee. I did not actually share the letter; I referred to it. Just to be clear about references to Dublin: it was my inference that the Minister may be looking at an all-island solution. That is my inference; it is not necessarily what he is proposing. That difference highlights the need for a single meaning rule, because he is taking one meaning out of it and I intended another. On that basis, he made the point that he invited me to meet him to discuss the Bill, and he was correct — the letter was dated 21 July — but, again, there was a misunderstanding there, because I was waiting for a call from his Department. He finished by making the offer of a meeting. When I offer a meeting, for example, to a constituent, I say, "If you would like to take me up on that, please call my office on 02891 82" etc, or "email Richard at the email address". That is not part of the letter from the Minister. I was waiting for a call from the Department. I regret that confusion, because I would rather work with than against the Minister. That having been said, in his penultimate paragraph, he says:

*"I cannot support your Bill, with or without qualification".*

He is hardly playing footsie with me on that issue.

I will wrap it up there. I apologise if I have not mentioned any particular Member. Sorry: I beg your pardon. Mr McHugh said that there were many flaws but specified only the issue of serious harm. I hope that he will agree to let it go to Committee, so that he can rehearse all the other serious flaws that he believes are in it. On a matter of factual accuracy, I got the impression from Mr McHugh's remarks that he felt that, back in 2013, as soon as the Bill was passed at Westminster, we collectively decided

that we would do our own thing. That is not quite right. On 28 March 2013, in answer to my question for priority written answer, the Finance Minister of the day said:

*"There are no plans to review the law of defamation in Northern Ireland." — [Official Report (Hansard), Bound Volume 83, pWA225].*

Later that year, on 3 June, I asked the late Martin McGuinness whether the Executive was going to consider the issue. He said:

*"It is very important to say that the Executive have not taken any decision in relation to a Defamation Bill. It never appeared on the agenda of any Executive meeting, and it was certainly never given to me, as deputy First Minister, for agreement to be reached between myself and the First Minister in relation to what goes on the agenda of an Executive meeting". — [Official Report (Hansard), Bound Volume 85, p296, col 1].*

It was only after I formally brought forward the private Member's Bill that there was a change of attitude. There had been a change of Finance Minister by then. As I said, it was Simon Hamilton who engaged with David Ford and the Northern Ireland Law Commission to commission Andrew Scott. If you were cynical, you could say that Simon was kicking the can down the road. You could also take the much more benign view that Simon was saying to the Law Commission, "Give me the evidence base to do something about this — to bring on a Bill to reform the laws on defamation".

My final thought is directed to the Minister, who has been saying, "Why rush?". It is 14 September 2021, and the first record of me mentioning reform of defamation law was on 28 March not 2021, 2020, 2019, 2018, 2017, 2016, 2015, 2014, but 2013: eight and a half years ago. If that is a rush, good luck on the doorstep looking for a vote. Eight and a half years. Do we really want to let the perfect be the enemy of the good at this point?

I remember that when I was campaigning to get into this Assembly 10 years ago, I was listening to a news conference on the radio when a then Executive Minister was being grilled about why it was taking so long to make a decision about a certain issue. The Minister said, "Well, this is a very important issue, so we have to take the time to get it right". I remember thinking, "That is nonsense; there is no right decision. What you have is a series of options, all of which have downsides. Your job is to make the

judgement call about which one to go with and how best to manage that downside".

That is where we are with this private Member's Bill on defamation. There is no right answer; there is a series of options that have good aspects but also downsides. Ivan Turgenev, a Russian novelist, put it like this:

*"If we wait for the moment when everything, absolutely everything, is ready, we shall never begin."*

We have enough in this Bill to begin. I commend it to the House at Second Stage.

*Question put and agreed to.*

*Resolved:*

*That the Second Stage of the Defamation Bill [NIA 25/17-22] be agreed.*

**Mr Deputy Speaker (Mr Beggs):** I ask Members to take their ease for a few moments.

**3.45 pm**

*(Mr Speaker in the Chair)*

## **Increased Financial Burden on Workers, Families and Pensioners**

**Dr Archibald:** I beg to move

*That this Assembly is firmly committed to a fair economic recovery from the COVID-19 pandemic; recognises the damage to our health and social care (HSC) as a result of a legacy of British Government austerity; further recognises the need to rebuild our health and social care services as we emerge from this pandemic; expresses its deep concern that the British Government intend to tax the least-well-off through increases in National Insurance contributions and reduced increases in pension; and calls on the British Government to remove the burden for funding health and social care from ordinary workers, families and pensioners and to place this, instead, on the many companies and individuals who have made huge profits during or from the pandemic.*

**Mr Speaker:** The Business Committee has agreed to allow up to one and a half hours for the debate. The proposer of the motion will have 10 minutes to propose and 10 minutes in which to make a winding-up speech. All other Members who wish to speak will have five minutes.

**Dr Archibald:** I am glad to have the opportunity to bring the motion before the House today. Hopefully, it will gain unanimous support across the Chamber and send a message that the Assembly opposes the measures announced by the British Government last week, which put the burden of paying for the pandemic on lower- and middle-income workers, families and pensioners.

I have no doubt that everyone recognises the need to adequately fund our health and social care services and their transformation to ensure that people can receive the care they need when they need it and that those who are most vulnerable are looked after. We also have to recognise that a decade of British Government austerity has deeply damaged our public services. The removal of over £1.5 billion from our block grant damaged the Executive's ability to properly fund our public services, including health and social care services. Delivering on the necessary transformation of our health services will require investment, not cuts.

The British Government's response to the pandemic, spending billions of pounds supporting jobs and public services, betrays once and for all that austerity was always a policy choice and never a necessity. Now, of course, the former champions of austerity, including the International Monetary Fund (IMF), the World Bank and other financial institutions, have recognised that it does not work and are on the same page about financial stimulus being required to drive recovery. Now is not the time for punitive taxes on low-paid workers; now is the time for government investment to stimulate economic recovery. This Tory Government, however, are cynically using the current crisis to introduce these taxes on an emotive issue such as social care, wrecking their own manifesto pledges in doing so, although, from any rational person's perspective, no pledge from Boris Johnson or his Tory cronies is worth the paper that it is written on or the ink that it takes to report what he says.

The 1.25% increase in National Insurance contributions (NICs) means that, from next April, you will pay 13.25% on income below £50,000, with no increase on the higher-level rate for the proportion of income over £50,000, meaning that the impact of the increase will be felt worse by those on lower incomes. Let us face it: that includes many of our front-line key workers, such as our carers, our nurses, our retail workers and our utility workers. Those who led from the front to get us through the pandemic will now shoulder the burden of bad fiscal and spending decisions by consecutive

British Tory Governments, and the DUP and the UUP have both played a role in supporting those Tories over that time, the DUP most recently through its confidence-and-supply arrangement.

The increase in National Insurance contributions will also hit smaller businesses, which, of course, make up the vast majority of businesses here. The head of the Federation of Small Businesses (FSB) in Britain has described the increase as "anti-jobs, anti-small business, anti-start-up". It is not what our businesses need coming out of the past 18 months. It is not what the economy needs as we try to deliver a recovery, and it is certainly not the "Build back better" that we have all heard so much talk about.

The increase in National Insurance contributions will be replaced after a year by the health and social care levy at the same rate, so our young people — those just entering the workplace and those who are working towards buying their own home and starting a family — will foot the bill for bad government decisions for decades. The tax increases come at the same time as the British Government are ploughing ahead with the cut to universal credit that will also hit lower-income workers and families at a time when the cost of living, in particular the cost of electricity and heating our homes, is soaring. What did Thérèse Coffey, the Secretary of State for Work and Pensions, suggest that workers do to cover the cost of the cut in universal credit? Apparently, they should work a few extra hours. Talk about being out of touch.

Contrast the target of those tax increases with the other end of the financial spectrum. Over the course of the pandemic, the number of billionaires in Britain jumped by 24%, and their combined wealth increased by 22%, up over £106 billion, which is about nine years' worth of Executive Budgets. What have the British Government proposed as progressive measures to ensure that those who are most able to afford it pay their fair share? A big fat zero. Nothing. Last year, I proposed that the British Government should introduce a windfall tax on companies that were benefiting from the pandemic, and, in fact, there was talk in advance of the Budget in March that there were some murmurings that the British Chancellor was looking at an online sales tax aimed at the likes of Amazon, ASOS and Deliveroo, all of which had seen sales soar during the pandemic. There was also talk of an excessive profits tax. Neither of those things materialised. One can only assume that they were for the optics, or else such suggestions were slapped

down by big companies. Meanwhile, Amazon, which saw its sales increase by about £1 billion over the year, paid just £3.8 million more in tax. The British Chancellor announced an increase in corporation tax in March, but he gave businesses a reprieve by not introducing that increase until 2023, in order to give them some time to recover. Workers have been afforded no such luxury.

Paying for the pandemic now rests on the shoulders of workers, and those who are lowest paid are carrying a disproportionate share of the burden. No such measures are imposed on wealth, and there are no attempts to tighten tax loopholes. Boris Johnson and this British Government make their policy decisions with their millionaire and billionaire friends in mind and with one and a half eyes on their investment portfolios. The Executive's limitations when it comes to revenue raising means that those decisions directly influence our Budgets and our ability to fund our priorities. That is why the Finance Minister has put in place the fiscal commission, an important initiative that, I hope, will pave the way for the devolution of greater fiscal powers. However, the reality is that, while we are tied to the British Government's budgetary cycles and rules, we remain limited in how we can fund the needs of people here.

Over recent months, I have heard and seen commentary from some who like to limit discussion and debate on Irish unity or assume some sort of moral high ground. They say such things as, "We need to deal with the real issues facing people". By that, they mean seeing a GP, the cost of school uniforms, university fees or access to mental health services. We need to deal with those issues, but, for me, those issues are fundamentally why I advocate Irish unity and constitutional change. We need to have the ability to make our own decisions about what is best for the people of this island, what to fund and how to fund it for ourselves and not to be at the whim of a Tory Chancellor or British Government who make decisions with neither interest in nor knowledge of what is best for people here. We have an alternative, and we can do better for all whom we represent by ending the British Government's role in our affairs and by debating, discussing and shaping a new and united Ireland together. I urge Members to support the motion.

**Mr Frew:** It is important that we debate the issues; they are important to our people. Inevitably, when decisions are taken by Governments, especially in what could be termed "emergency sessions", it is the working people and the most vulnerable who pick up the

tab and carry the can. The Tory Party has certainly lost the run of itself and can no longer be construed as being conservative in nature.

I can support and agree with many aspects of the motion. We need:

*"a fair economic recovery from the COVID-19 pandemic"*

and the lockdown measures that were implemented by not only the Westminster Government but this House. Those measures hurt businesses and business people. They were able to put their staff on furlough, but, in many cases, they could not obtain any grant funding or support.

I also support the aspect of the motion that:

*"further recognises the need to rebuild our health and social care services as we emerge from this pandemic; expresses its deep concern that the British Government intend to tax the least well-off through increases in National Insurance contributions and reduced increases in pension".*

I agree with that because the problem with the health and social care levy is not that it tries to find a practical way forward — we need a practical way forward — but that it represents regressive and unfair taxation. It applies a flat rate increase in National Insurance contributions to everyone but ultimately grants the rewards to those who are better off. It benefits those who have the most assets. Those who have more wealth in financial assets, rather than in their main home, will continue to be worse off. The levy will support those who can benefit immediately and will disproportionately hit young people, because state and private pensions will not be counted when calculating it. The working pensioners who have held low-paid jobs to support their retirement savings will be disadvantaged, and it will place additional costs on employers at a time when the focus should be on recovery and renewal. That is what the Tory Government should look at; that is what we should encourage them to do. We should do everything that we can to endeavour to mitigate the worst excesses of those decisions and to ensure that our working people, their families and the most vulnerable in this society are looked after and protected as best we can.

Make no mistake about it: the COVID emergency that we have just come through and the lockdown measures that have been applied by the House have brought pain, and more pain

is coming. Pain costs, and, when pain costs, try shifting the onus and burden from working families — just try. I have yet to see the party opposite or, for that matter, any other party shift the burden from the working people. They are the very people whom we need to protect. They are the people who will grow the economy and put bread on the table for their young people.

I ain't seen anything yet. That disturbs me, because I want to see an effective Assembly and Executive.

**4.00 pm**

The party opposite that tabled the motion does well to do so, but its Members sit here and lecture the British Government. They have the opportunity to go to Westminster and vote against some of those very measures, and they will not. The Member opposite talks about a united Ireland, but all I hear from Sinn Féin about the Republic of Ireland are utterances about the debacles that go on and the basket case that it is. You cannot have it both ways. You cannot ride two horses and get away with it. Even though you try to be populist in everything that you do, somewhere along the line, the rubber will hit the road and people will see through your populist policies. It is a bit of a straw man argument to propose motions here but not to go to Westminster to fight against the measures.

**Mr Speaker:** The Member's time is up.

**Ms McLaughlin:** I support the motion. Who in their right mind would not? We used to hear the British Government Ministers say, "We are all in this together". It is no wonder that they seem to have stopped saying that, as it is clearly not true.

Loading extra National Insurance contributions on to our low-paid workers is unfair and unjust. A low-paid worker who earns about £200 a week pays National Insurance contributions at about 12%, yet a chief executive who earns £1,000 or even £2,000 a week pays National Insurance on their salary at about 2%. National Insurance is a tax where the rate comes down the more that you earn. It is a prime example of an unfair tax. If the British Government wanted to generate additional revenues to pay for the National Health Service and social care, one solution is clear and very obvious: they should charge National Insurance to the highest paid at the same rate as the lowest paid. How novel is that?

Another option is to increase the tax on unearned investment income. That, of course, would not suit the Conservative Party donors. In reality, the main purpose of the British Government's rise in National Insurance payments is to protect the assets of wealthy Conservative Party supporters, particularly those around the South of England, from using what they earn and have in their bank accounts to pay for social care in their old age.

Our poorest citizens here are about to be hit by an extraordinary amount of pain with the proposed cut to universal credit. I appeal to Minister Hargrey to listen to my constituency colleague Mark Durkan and to fund the continuation of the £20 uplift through her devolved welfare powers.

Another phrase that we do not hear very much any longer is "build back better". We know why that is too. That ambition has gone. We can see government investment in our future economy falling instead of rising. When the United States and the European Union are planning massive — I mean massive — injections of cash into their infrastructure, the British Government are scaling back their aspirations. We will not be hearing any more of the absolute nonsense about the Boris bridge or the Boris tunnel, because it ain't happening.

Yet, just as there is a clear solution on how to increase revenue for health and social care, there is a clear solution to providing a better future. The British Government and the Departments in the North of Ireland must invest in that future. That means that the Minister of Finance must release the funds needed to renew our infrastructure, and it means that the Minister for the Economy and the Minister for Communities must invest in our energy future by putting much more money into home insulation and energy efficiency, cutting our energy use and investing in a diverse supply of renewable energy. That can protect our citizens from the fuel poverty that is about to get worse this winter, with the shocking and eye-watering rise in gas, electricity and oil prices. Those are not coming: they are here, and our people will have to pay them.

It is essential that we focus on the future. The climate change protest at Stormont yesterday should remind us all of that. Please let us have no more threats from the DUP about the collapse of these institutions, which should never have been collapsed by Sinn Féin. Instead, let us get steely. Let us really get into delivery mode, reform and investment. We need to get our own programme for reforming healthcare delivery and addressing the already

emerging climate crisis, which is likely to worsen the health outcomes for the constituents whom we serve. Let us get back to our job.

**Dr Aiken:** I thank my friend the Chairperson of the Economy Committee for tabling the motion. We in the House all agree that we need to see a fair economic recovery from the COVID pandemic. Indeed, we can also clearly see the benefits of being part of the United Kingdom, with over £3.6 billion to date in additional support being provided directly and hypothecated since the crisis began. It is noteworthy that the support that we have received for being part of our nation far outstrips that which we could have expected if we were not part of our United Kingdom. That said — this is recognised by all fair-minded people in Northern Ireland — we also have to deal with the horrendous waiting lists that our National Health Service faces and the challenge in how we pay for our social care services. That means that we have to raise additional moneys on a United Kingdom basis. That will probably cost £36 billion or more. The questions are these: where does that additional funding come from, and how can it be raised in as fair a way as possible?

There are further questions about the removal of the additional £20 for universal credit, the significant impact of rising fuel and energy costs and the very real issue of a rise in fuel poverty, particularly among those who will be most impacted by the proposed increases in National Insurance contributions. The UUP is no friend to many of Boris Johnson's ill-thought-out plans, and we must, indeed, add our opposition to the proposal to raise National Insurance contributions. It is noteworthy that Paul Johnson, head of the Institute for Fiscal Studies, as well as our Independent Fiscal Commission have argued that funding social care just from National Insurance would be very inequitable. It would hit those of working age while protecting pensioners, even though it is for something designed to benefit people well over pension age. Even somebody as august as the Archbishop of Canterbury stated that Boris Johnson's plans to increase National Insurance contributions to raise around £12 billion for the National Health Service and social care could pose a "serious problem" for low-income workers and that to privilege wealthy pensioners over the poorest young people was "not a people-centred policy".

We know that National Insurance causes lots of problems. We know that individuals do not have to pay National Insurance after they reach state pension age, so the burden lies on younger people. We know that lower earners pay more

for a National Insurance rise than an income tax rise. We know that as National Insurance is levied from earnings and not from unearned income, those in work would have to contribute more. For example, those who get income from renting out property, owning a business or having investments would not have to contribute. Incomes from pensions would also not be covered. That could lead to a 21-year-old earning £50,000 paying £404, whereas a 66-year-old pensioner with an income of £50,000 would not have to pay anything. It would also deepen the gap between employees and the self-employed.

Given that the change is inequitable, what do we need to do to raise much-needed funds for our health and social care services? How should we do that, given that £36 billion over the next three years is a conservative estimate of the level of funding required for our nation? The move should have been towards raising additional funds through modest increases in income tax, thereby spreading the tax burden across those who can best afford it. We also should have looked critically at an examination of a one-off windfall tax on online retailers, the pharma and healthcare sectors and other sectors that have shown excessive profits during the pandemic. There is a precedent, and we should follow it.

We should also be calling clearly for the rescinding of the cut in universal credit and looking at how we might help those facing severe fuel poverty.

Given that, with an 80-seat majority, the Conservative Government have already pushed the measures through, it is difficult to see how we can further challenge them. As Sinn Féin, of course, refuses to represent its constituents in Parliament, it is left to the other parties to do so. What we can and must do is to make sure that the Barnett consequential that is raised for health and social care is used precisely for that. We cannot be seen to fritter away the increase of around £400 million a year on anything but health. That would be a dereliction of care to the most vulnerable. We must ensure that that does not happen. I call on all our parties here to commit to making sure that the additional £400 million is, and remains, ring-fenced for the use of our most vulnerable and our health service.

**Ms Armstrong:** I thank Dr Archibald for tabling the motion on a very important issue. On behalf of Alliance, I confirm from the outset that we will support it. I will discuss the impact of the tax increase. Later, my colleague, the Alliance health spokesperson, Paula Bradshaw MLA, will go into more detail about the health and

social care system. As the motion states, the people most impacted by the Government's changes to National Insurance and pensions will be the least well off.

I will speak to National Insurance first. The HM Revenue and Customs policy paper on the health and social care levy confirms that the people most likely to be affected are employers, employees and the self-employed who are liable to pay National Insurance contributions, and individuals who would be liable to pay National Insurance contributions were it not for the pension age restrictions. That means that anyone who pays Class 1, 1A, 1B or 4 will be affected by the increase. Employees who earn more than £184 a week and are under state pension age will be affected, as will employers who pay Class 1A and 1B contributions directly on their employees' expenses or benefits and self-employed people who earn profits of £9,569 or more a year.

The Government were disingenuous when they affirmed that the increase would be 1.25 percentage points. They did not make it clear that that does not equate to a 1.25% increase but, instead, means that employers will see their contributions go up by 1.25 percentage points from 13.8% to 15.3% of wages. Across the UK from next April, for every £1,000 in a typical wage slip, a further £12.50 will be removed from employees before they get their pay. The HMRC report confirms that individuals' actual losses may have an impact on people's family formation, stability or breakdown, as individuals who are just about managing financially see their incomes reduced.

Turning to pensions, the Government's decision to stall the triple-lock protection for one year shows how they will use their majority to do what they want. The triple lock was supposed to be protected and maintained under this Government. Is it protected? No, it is not. The Government have confirmed a one-year suspension of the triple lock for annual state pension increases. The triple lock is a formula used to guarantee that pensioners' incomes rise by either September's rate of inflation, earnings growth or a minimum of 2.5%, whichever is larger. However, the Government confirmed that the average earnings component would be disregarded in 2022-23, as it was last year, and that the rise will be replaced temporarily by a double lock, linked to either inflation or 2.5%. We know that pensioners were on track to get a record boost, but the Government's announcement means that they will not have it. That is an actual detriment to someone's pension.

Why is this an issue? Clearly, the Government, with their majority, can do what they want. They have broken electoral promises to protect the triple lock. The Institute of Fiscal Studies has said that more tax hikes could be on the cards. This must not degenerate into an issue of wealthy older people versus poor younger people, however. As the Archbishop of Canterbury stated:

*"If we — as it were — privilege the wealthy older against the poorest younger, that will not work. That's not a people-centred policy. The policy needs to be centred on people and care for the poorest, as well as ensuring that we have an embedded system that will work and is acceptable to all."*

#### 4.15 pm

As others have said, this comes at a time when energy costs are soaring and are expected to continue to rise. There is the impact of the end of furlough and the expected increase in the number of people having to apply for universal credit and having to suffer for at least five weeks before benefits are paid. The cost of living is higher than pre-Brexit and pre-COVID times. Families are hammered by increasing childcare costs, and do not get me started on school uniforms. The prices are astronomical, yet the Assembly has not made any progress to stop schools — the schools that we fund — from putting families into poverty over the sake of a jumper and a blazer.

There is the end of the £20 per week COVID uplift, which will hit families the most. This is important to note: a third of people on universal credit are in work, a third are looking for work and a third cannot work due to sickness, disability or terminal illness. It is simply not those who are not in work who are impacted; it is the working poor — people already struggling financially. This is at a time when business is trying to recover from COVID and to deal with the fallout caused by Brexit.

We heard from Carál Ní Chuilín, in the question that she had answered by the Health Minister, that pensioners are faced with independent nursing home costs rising to up to £822 per week.

**Mr Speaker:** The Member's time is up.

**Ms Armstrong:** Pensioners are being hit by this, too.

**Mr Speaker:** Thank you. Members, as this is Pádraig Delargy's first opportunity to speak as a

private Member, I remind the House that it is convention that a maiden speech is made without interruption.

**Mr Delargy:** Go raibh maith agat, a Cheann Comhairle. I want to begin by saying how honoured I am to be addressing this debate on behalf of the constituents of Foyle. As a newly selected Sinn Féin MLA, I am determined to be a voice for the people of Foyle — a voice to demand first-class health services, particularly in regard to mental health; more affordable social housing; and job creation.

I will use my role as an MLA to encourage young people to play an active part in their communities and to help to create opportunities and futures for them. Today's debate underlines the importance of that work, because what future is there for our young people when any part of it remains under the influence of the British Government?

The Tory Administration have repeatedly demonstrated their disdain for the people who live here. They ignored our wishes on Brexit, forcing it upon us against our will. Now, they are forcing ordinary workers, families and pensioners here to pay the price of the pandemic by hiking National Insurance contributions and reducing pension increases.

Of course, increased investment is needed in our health and social care systems, and I want to take this opportunity to thank the incredible staff within that system who continue to put themselves on the front line in the battle against COVID. What the Tories do not tell you is that our health and social services were already decimated by vicious austerity cuts that they ruthlessly imposed. If they want to invest in health and social care, they should start by restoring the millions that they have plundered from our block grant. They should start by investing in health rather than in imperialist military adventures. They should start by taxing the wealthy, the big businesses and the billionaires who have done very well out of the pandemic. They are the people who should be shouldering that burden, not ordinary workers, families and pensioners.

While the rich have gotten richer under Boris Johnson, the number of children on free school meals has increased by 300,000 to 1.74 million. Inequality, deprivation and the number of children going hungry is increasing as a direct result of the policies being implemented by this Tory Government. As a young Derry man and as a teacher, I see the impact of that every day. I challenge anyone in the Chamber to tell me that hardworking families in Derry should pick

up the tab for the British Government, that Creggan should bail out the Cabinet, that Ballymagroarty should bail out Boris or that the Bogside should bail out billionaires.

All of us in the Chamber have a responsibility and a duty to ask ourselves, "Is that what we want for our children?". We do have a choice. I want to see a new Ireland, based on equality and fairness. In the interim, I want to see us taking control of our own economic destiny by transferring fiscal powers. We can do better ourselves: better for our workers, better for our families, better for our pensioners and better for our young people. I support the motion.

**Mrs Dodds:** I rise to voice my concerns at the flawed, unjust and unacceptable proposals that are being pursued by the Government, and my grave concern about the unacceptable proposals that are being made by those who tabled the motion.

As a party, we have been consistent and unwavering in our desire to protect the most vulnerable in our society before, during and as we emerge from the pandemic. No one denies the need to deal with waiting lists and to invest in our health and social care, but the health and social care levy is a regressive and unfair form of taxation that disproportionately hits young people and punishes working families at a time when they can least afford it. Over the past few weeks, we have seen the squeeze on incomes continue, not just with the tax hikes from the Conservative Government but with the huge rise in energy bills, which will be very difficult for many families to contend with. That is why we used our votes in the House of Commons to oppose the levy.

The Government's decision to break the triple-lock guarantee for state pensioners is also an act of bad faith of the highest degree and sets a really dangerous precedent. The United Kingdom already has one of the least generous state pensions of any major country, and pensioner poverty is on the rise. The Northern Ireland Poverty Bulletin indicated that approximately 43,000 pensioners live in poverty and that, of that number, 34,000 live in absolute poverty. The DUP opposes any move to reduce the income of our older people. That is why we, as a party, made maintaining the triple lock a precondition of the confidence and supply agreement. That was done to protect pensioners throughout the United Kingdom.

We will also continue to oppose the removal of the £20 uplift in universal credit, which is due to come in this October. That, coupled with the end of the furlough scheme and potential rises

in unemployment, will push many families to an unsustainable position. We call on the Government to rethink their approach and ensure that the most vulnerable in our society are protected at these most difficult of times.

Whilst my party has consistently stood up for working families, our pensioners and the most vulnerable in our society, the party that tabled the motion has let them down. When all other Northern Ireland MPs united to oppose the rise in National Insurance contributions, where was the party that tabled today's motion? Absent, neglecting its electorate and its duty to the most vulnerable in Northern Ireland. When the Government announced that they were cutting the universal credit uplift, where was the party that tabled today's motion? Absent. When Boris Johnson moves to break the triple lock on pensions, where will the party that tabled today's motion be? Absent. That is a huge dereliction of duty.

Not content to neglect the most vulnerable and the squeeze on family income, this motion also proposes to punish those companies that will lead our economic recovery from the pandemic. Sinn Féin wants to follow in the footsteps of the British Conservative Party by offering us a different unjust tax regime. The redirection of the full burden of new taxation to businesses and entrepreneurs, as proposed by Sinn Féin, would serve only to further strain our economy, restrict job creation, deny economic innovation and, ultimately, punish workers and working families. All of that would be done at a time when we should be striving to attract inward investment, help the expansion of indigenous companies and encourage innovation and entrepreneurship to grow and rebuild our economy. The DUP is committed to delivering a fair and balanced recovery, one that protects the most vulnerable in our society and ensures that everyone pays what is fair and proportionate to their circumstances.

**Mr Speaker:** As this is Stephen Dunne's first opportunity to speak as a private Member, I remind the House again that it is the convention that a maiden speech is made without interruption.

**Mr Dunne:** Thank you, Mr Speaker. I count it a great honour to stand here today as a Member of the Northern Ireland Assembly for North Down following the very sad and untimely passing of my late father, Gordon Dunne MBE, in June this year.

Gordon served in this House for 10 years, having been first elected in May 2011, and I know that he counted it a great privilege to

serve the people of North Down in this place. Since he first entered elected politics as a councillor in 1981, he always sought to represent his constituents diligently and with the utmost dedication to improving their lives and, ultimately, trying to make a positive difference. I know that many from across the House and beyond built up a respectful and trusted relationship with him during his years in the House, particularly those he got to know best, often in Committees. I take this opportunity to express my thanks to all the people from across the House, across the local community and right across Northern Ireland who expressed condolences and sent genuine and heartfelt messages of support to our family in recent months and weeks.

North Down is a wonderful constituency, and I intend to build on the work and legacy that has been laid down over many years by those who have gone before me. I will do my very best to provide service and deliver for local people across my constituency — in Bangor, Holywood, Donaghadee, Millisle and everywhere in between. As in every other constituency, there are many challenges and needs locally, and I know from being a councillor over the last eight years that there is much work to do for the people whom we are so privileged to represent.

As my colleagues have stated, today's motion rightly highlights the need for a key focus on our economic recovery as we try to emerge from the global pandemic, which has been an incredibly challenging time for everyone across Northern Ireland. The news today from our Economy Minister, in launching the £100 Spend Local card, is an example of a positive, proactive measure that can bring a much-needed economic stimulus directly to local businesses. It is also designed to positively impact behavioural change and get people to spend and shop locally in person, once again supporting employment and greater economic activity on our road to economic recovery, which is mentioned in the motion.

Every sector has faced a very challenging time over the past 18 months, and our excellent health and social care sector continues to face many challenges in dealing with the health impacts of the pandemic along with the additional demands that the incoming autumn/winter period will undoubtedly present to our health service. Taken together with the end of the furlough scheme next month, the removal of the uplift in universal credit, rising energy costs and changes to TV licensing, there is a real risk that this recent levy on National Insurance contributions will create a

perfect storm that leaves older people, vulnerable households, young people and working families really struggling to survive and having to make very difficult decisions. That is of great regret.

The decision by the Government to remove the triple-lock guarantee on state pensions also sets a very dangerous precedent that further policies that sideline the interests and needs of our older people can be introduced at such a critical and challenging time. This health and social care levy applies a flat-rate increase to everyone regardless of circumstances, and it will disproportionately hit our younger people, as state and private pensions will not be counted when calculating the levy. It will also target our working pensioners in lower-paid jobs, many of whom have made significant sacrifices to make ends meet over such a difficult time.

We recognise that there is a cost in having a modern, fit for purpose health and social care system and that there is a need for significant investment that is focused ultimately on improved health outcomes. However, we must be clear that redirecting the full burden of new taxation to successful businesses and entrepreneurs would be totally counterproductive and could only result in greater costs ultimately being passed on to consumers and pose a real risk to low-paid jobs. We need to encourage business, innovation and entrepreneurs at a time when growth is so greatly needed on our road to recovery so that we can create employment and prosperity. I look forward to the work ahead.

#### 4.30 pm

**Mr O'Toole:** Before I make my remarks, I acknowledge the Member who spoke previously and his father, who was clearly universally held in affection and esteem across the Assembly. I welcome the Member and echo the words of many others in paying tribute to his father. I did not serve on a Committee with him, but he was clearly a gentleman, was very well thought of and is sorely missed by everyone here. I also welcome Pádraig Delargy to the Assembly. I am quickly becoming one of the older Members of the Assembly, but that is fine.

As my colleague Sinead McLaughlin said, we will support the motion. It would be hard to oppose it. It is important first to reflect on the context that we are in, which is that the COVID-19 pandemic has been the biggest disruption to our lives in peacetime in any of our lifetimes. Large parts of the economy were shut down

last year, large parts of the economy continue to be shut down and people have been plunged not just into health insecurity — with thousands of lives, not just here but around the world, being lost — but into severe financial vulnerability. That continues to be the case and will be even more the case in the weeks ahead, when, as mentioned, the furlough scheme comes to an end and the cost of living increases bite across people's lives, including and particularly utility bill increases, about which we heard more today.

**Ms Armstrong:** I thank the Member for giving way. Very quickly, does the Member agree that the Government, in placing them in further financial stress with the increases in National Insurance and what is happening with their pensions, will make people more stressed and sicker, which will force more people towards our health service, at a time when it does not need more patients being added to its lists?

**Mr Speaker:** The Member has an additional minute.

**Mr O'Toole:** Thank you very much, Mr Speaker, and thanks to the Member who intervened for getting me the additional minute. She is exactly right: the point about what is happening with the ending of the universal credit uplift, the additional taxation on low-paid workers through National Insurance contributions and, indeed, the other cost of living increases that will bite is that they will make, certain health inequalities, mental health problems, at a bare minimum, and anxieties that have been created over the past 18 months much, much worse. I am sure that MLAs across the Chamber already see that in their constituency caseload. I am also sure that Advice NI and other agencies will see a lot more of that in the weeks and months ahead. That is not just a tragedy; it is unacceptable, and it is a moral indictment of the Conservative Government in London that they are doing that.

It is a moral indictment because it is a choice. Why is it a choice? It is a choice because the Treasury and Boris Johnson have decided that they will not continue with what are called the "fiscal stabilisers" or "levers", which, we are told, including by some Members opposite, are great and show the fiscal strength of the United Kingdom. By all means, significant fiscal steps have been taken by the Treasury. The UK Government deciding to tighten fiscal policy now is an outlier in international terms. They do not need to do that. It is not being done anywhere else in Europe or in the United States. Congress has just passed and

President Joe Biden has just signed an enormous stimulus package in the US, but the UK Government have made the decision to tighten. Neither the IMF nor any other major international economic institution is telling Governments to do that. The UK Government have decided to tighten fiscal policy at precisely the worst moment for workers and the economy here and, indeed, in Britain. That is a choice. It was a choice that the Government also made at the beginning of the previous decade, but it is a choice that they do not have to make. Let us be absolutely clear: the burden will be borne by those who can least afford it.

Mr Aiken mentioned the £36 billion: I presume that he was referring to the £12 billion a year that has been scored by the Treasury through the health and social care levy. Again, that is a choice. The UK Government chose to impose taxation that is regressive and disproportionately falls on the lowest paid. For all those reasons, what the UK Government are doing is scandalous, and we will continue to oppose it. I would be remiss if I did not point out that my party takes its seats at Westminster. Although we are only two seats, we take them for the people of South Belfast, which is my constituency, and for the people of Foyle, which is my colleague's constituency, and we vote against those scandalous rises.

I say to colleagues, whose motion I agree with, that I agree in many ways that we need more powers in this place. Ultimately, I agree, of course, that a different constitutional set-up would allow us, on this island, to make different decisions. With the best will in the world, that will not happen this winter, and, literally, we will not be able to protect citizens and the people whom we serve in the weeks and months ahead. While I agree that, yes, the best end point for us on this island is a different arrangement that allows us to target our priorities and raise money to change people's lives in a different way, I also have to say that, in the weeks and months ahead, we will see people in real and severe stress. The people who have the power in this place to help to change that are, among others, the Finance Minister and the Communities Minister. Yes, I agree with the motion, but it is just a motion. I would like the Finance Minister, the Communities Minister and other Ministers across the Executive to agree a package of help, where we can, for people who will face the immoral challenge of the universal credit uplift going and real, severe stress in the weeks ahead. Yes, let us pass motions and call out the squalid, immoral choices that are being made in London —

**Mr Speaker:** The Member's time is up.

**Mr O'Toole:** — but let us not forget that we have choices here. We need to do what we can —.

**Mr Speaker:** The Member's time is up.

**Mr O'Toole:** Even if it is not enough, we need to do what we can to support people here.

**Mr Chambers:** I have no difficulty fully supporting elements of this private Members' motion. Equally, however, I feel that I need to question certain assertions. The motion claims that damage has been done to our health and social care system as a result of the legacy of British Government austerity. Of course, our health service has been damaged, and there is an obvious need, which we can all see and appreciate, for us to rebuild our health and social care services in order to tackle the historical and unacceptable waiting lists for initial consultations and subsequent treatment.

The wording of a portion of the motion sounds as though it is coming from a party that is either in denial or attempting to rewrite history. The reasons for much of the damage that has been inflicted on our health service are closer to home than in the corridors of Westminster. Over the past decade, the big decisions around health that created a pattern of underfunding lacked foresight or planning. Those decisions were made in this Chamber, and they were made under the leadership of a number of Health Ministers from parties here, including the party of the motion's proposers.

It has been widely accepted that multi-year Budgets would make a huge contribution to rebuilding our health service. How can any Minister make plans for reform and rebuilding if they do not have guaranteed, ring-fenced multi-year funding? The fact that recent Finance Ministers struggled to set a Budget has not been helpful in putting together a sustainable recovery plan for our health service. Neither was the three-year absence of an Assembly or Executive helpful while the Bengoa plan gathered dust. The uncertainty that has arisen in recent days over the future of the Assembly has also put a huge question mark over long-term recovery plans.

I agree with my colleague Dr Aiken, who referred to the additional funding that has come to Northern Ireland from the UK Government: it has been a very welcome lifeline for everyone here, especially our hard-pressed businesses. Extra Barnett consequential funding will come

soon, and, hopefully, all parties represented in the Executive will ensure that the totality of that money is ring-fenced for the recovery of our health service.

My party wishes to register its deep concern that Her Majesty's Government intends to disproportionately tax the least well-off through increases in National Insurance contributions and the removal of the pension triple lock. We call on the Government to give a commitment that the additional burdens created for ordinary workers, families and pensioners by those changes, which are to fund health and social care, will be reviewed frequently with the intention of relieving them as soon as possible.

**Ms Bradshaw:** As my colleague said, the Alliance Party will support the motion, although there are some gaps in it. First, we totally share the view that, while it is not unreasonable for the UK Government to face financial reality by seeking to raise moneys specifically for health and social care after the pandemic, that should not be done through a pernicious raid on National Insurance, which, as has been stated, amounts, essentially, to a workers' tax. In fact, when it is all worked back, we see that less than £3 billion is being allocated to social care reform across the UK. Frankly, that is a piddling amount across a population that is approaching 70 million.

There are two aspects to the matter. First, if money must be raised, that must be done fairly. Secondly, once that money is raised, it must be spent on the declared purpose. We also have to face up to the reality that, since 2007, the DUP- and Sinn Féin-led Executive have failed to properly embrace the need to reform and fund the health and social care system. I welcome the Health Minister's announcement today that he will soon go out to consultation on the full package for the reform of social care.

In the last decade, health funding has risen by less in Northern Ireland than it has in England. That reduced rise in spending has been directed by DUP and Sinn Féin Finance Ministers. In the first part of the last decade, it was common for an uplift in funding to health in England to arrive in Northern Ireland through Barnett consequentials and to not be allocated fully, or, in one case, even partly, to health here. Even after the 2008 financial crash, there has been an unwillingness to look seriously at issues such as free prescriptions, which, in practice, benefit those who are better off, because those who are less well off get them for free anyway.

Devolution means self-government, and self-government means taking responsibility for allocating spending and raising revenue fairly and appropriately. We need to be careful about who we include in the companies and individuals mentioned. Many local businesses took significant risks to shift their production and services to help people during the pandemic by, for example, producing PPE and monitors or whatever else was necessary. They were entitled to do that, and they are also entitled to some reward for the risks that they took and the hard work that they put in. Many local businesses should be so proud of what they did.

In closing, we must remember that we are not obliged to follow England in how we spend the money that will be added to the Northern Ireland Budget as a consequential. We have specific needs not just for rebuilding, as noted in the motion, but for a comprehensive transformation of health and social care that will deliver a more patient-centred, specialist approach and ensure that we can maintain a system that is truly world class and free at the point of access. It is easy and, in my view, essential, to criticise the pernicious workers' tax as the means and a lack of allocation to actual social care reform as a consequence. However, we also have to do the hard bit and assess how we will swiftly proceed to grasp this opportunity for a comprehensive reform of our system.

In supporting the motion, I emphasise that this is a call for us to get on with the job and transform our health and social care system without delay. Thank you.

**Mr Carroll:** Although I will speak in favour of the motion, there are some glaring contradictions in what the Member and her party propose and what their Executive colleagues are pursuing, but I will come to those later.

There is no doubt that, if it were not for the actions of workers, our society would truly have collapsed during the COVID pandemic. There is often sneering or dismissal when you talk about the role of working-class people, but, if you think about it for a second, this point has to be underlined and emphasised: where would vulnerable people be if it were not for the delivery drivers for supermarkets who dropped off food when people could not leave their houses? When they could not see their families, where would the people who needed a care package during the pandemic be if it was not for the brave and often underpaid care workers going into homes and donning PPE? That is without mentioning care home workers or the

role of public-sector workers in processing benefits and doing many things during the pandemic or, obviously, NHS workers in keeping people alive in ICU and consoling the loved ones of those who died from COVID. The list goes on.

This is where we get to the problems with implementation and action. Unless there is a dramatic change of direction, it seems that the Executive are pressing ahead with pay cuts for health workers and public-sector workers in our communities. As people said, electricity and gas prices are shooting up astronomically, yet health workers are being offered only 3%. That is in line with Tory policy in that it does not keep up with inflation and falls way below either the 12.5% or 15% rise or the £2,000 or £3,000 direct payment that healthcare workers and their unions are calling for.

All of us clapped health workers, but the Executive will not pay them what they are owed or are worth. The offer should be withdrawn. Money was not a problem before and was found. Money should be found for health workers for all the work that they have done in the past year and a half.

**4.45 pm**

To be clear, there is no "fair economic recovery", to which the motion refers, if those who carried us through the pandemic are treated in such a disgraceful and disdainful way. It may not come next week or even next year, but I think that there will be an uproar of anger against the continuation of neoliberal, unimaginative policies that do not provide people with the ability to afford to live a dignified and decent life.

**Ms Armstrong:** Will the Member give way?

**Mr Carroll:** Sure.

**Ms Armstrong:** Does the Member agree that, as part of our reform, we certainly need to consider those members of staff who have worked so valiantly throughout the pandemic, and always do? Are we investing more in buildings than we are in our resources, who are our people?

**Mr Speaker:** The Member has an additional minute.

**Mr Carroll:** Thank you.

That is a good question. We are definitely not investing enough in our staff. That is certain. However, I get nervous when I hear that question being posed. I am not saying that the Member is suggesting this, but it could lead to the closure of services when we need to protect them. On one level, we hear, "Defend the NHS", which I am for, but we also hear, "Reform". When I hear "Reform", I get nervous because it means a reduction in services. The Member may not be arguing that, but that is how I interpret it in most cases.

If that were not bad enough, it gets more sickening and obscene: at a time when the Tories and the Executive are implementing pay cuts and freezes, and, as Members referred to, when there is the implementation of National Insurance increases and universal credit cuts, the wealthy are having a picnic and popping champagne. The super-wealthy have increased their lot during COVID in such an outlandish way. Household wealth in Britain, for example, has surged by £900 billion during COVID. That is sickening stuff. There are at least an extra 24 billionaires in the UK compared with before COVID. Where is the action from Executive Ministers to even raise the flag about that issue? Where is the plan to change the debate? Where is the plan from Ministers in the Executive to put a mountain of pressure on the Tories to implement a COVID wealth tax? I have listened carefully throughout the past year, but I have not heard it. It is ironic to hear the DUP, in particular, talk about poverty and to almost talk about inequality when its whole economic approach has always been to pull the carpet of support from under vulnerable or working people. Where is the new party leader talking about poverty eradication? I have listened, but I have not heard it.

I am happy to support the motion, but it would be remiss of me not to call out the obvious contradictions today.

**Mr Speaker:** I call John O'Dowd to wind on the motion. The Member has 10 minutes.

**Mr O'Dowd:** Thank you, a Cheann Comhairle. I thank everybody who contributed to the debate. It has been a good debate. It is unsurprising that, in a political forum, there are differences of opinion and maybe wee jibes. I might get into a few wee jibes myself before the end of my contribution. I think that, overall, we have a united voice from the Chamber that the proposal from the Tory Government to fund social care by a 1.5% increase in National Insurance is wrong. That is a very clear message that can come out of the Chamber this evening.

We agree that those who can afford to pay should pay. There may be a difference of opinion about the level that somebody can afford and who they should be, but I think that there is general agreement on that. There may be a divergence of views on taxing big business. I have no objection to taxing big business, but the motion is quite clear; it:

*"calls on the British government to remove the burden for funding health and social care from ordinary workers, families and pensioners and to place this, instead, on the many companies and individuals who have made huge profits during ... the pandemic."*

I do not think that anybody can realistically argue against that. I think that, when the motion is broken down, there is agreement across the Chamber.

What do we do next? Some voiced concern about or opposition to Sinn Féin's position of not attending Westminster. That may be a political jibe. It may be a genuine belief that, if we had been there, we could have prevented the Tories from introducing this tax. However, that is not the case.

That goes back to the comments made by my party colleague Caoimhe Archibald. We have to start thinking about a new beginning or how we, as a society, collectively, govern ourselves. The central part of governance is taxation and fiscal powers. I welcome the fact that Conor Murphy has set up the Fiscal Commission to look at what fiscal powers we should start to seek to have devolved. Ultimately, in my opinion, they should all be brought here. That is going to present a huge challenge to the Assembly because, then, we will have to decide who is taxed, how much and when.

**Dr Aiken:** Will the Member give way?

**Mr O'Dowd:** In one moment.

Instead of standing in Westminster, being constantly defeated by the Tories and their allies, we could set the agenda here, in this Chamber. Would that not make a very interesting debate? It would be a new chapter in our society, in the devolution and evolution of our politics. I give way to Mr Aiken.

**Dr Aiken:** Thank you very much indeed. The Member may not be aware that Paul Johnson, who is looking at the Fiscal Commission issues and the rest of it, recently said that one of the most significant issues we have in Northern Ireland is that we do not know how effectively

we are spending the money that we have at the moment. Do you not think it more important that we get our own Budgets right first, before we even consider asking for additional powers?

**Mr O'Dowd:** If I were you, Mr Aiken, I would take that as a personal criticism. You are the Chair of the Finance Committee, and it is your job to make sure that we are spending our money properly. You and Mr Johnson may want to sit down, have a cup of coffee and talk that one through, because the role of our Committees is to scrutinise how we spend our budgets. I jest somewhat.

Of course every penny we spend must be accounted for and pay dividends for the public we serve. I do not dismiss that in any way. However, for us as an Assembly to move forward, we have to have fiscal powers to create that change, momentum or step change. It would not only bring change to society, it would also change politics. It would be a huge step forward for politics here.

Something that we have to be very cautious of, in wider society and among those who attend Westminster, is that Boris Johnson says that he is going to use the funds raised from this tax to fund social care. Apparently, that is going to go into legislation. However, Boris Johnson is a confirmed liar and he has shown that he is prepared to break promises: pledges in his manifesto, deals with his former colleagues in the DUP, deals with the European Union and anyone else. Why should we believe that the significant amount of money that they claim will be raised from taxing low-paid workers, families and pensioners will eventually end up going to social care? This is the great danger: those who are most impoverished now will pay significant amounts towards what they believe to be their futures and their families' futures, only to find out that it is squandered and spent — or maybe not spent — or used elsewhere? That is a danger, and it is another reason why our Executive should ensure that we are the ones who scrutinise, raise those taxes and move forward, on behalf of the citizens we serve.

I will move on from this, for the moment, to the criticism of Sinn Féin not being in Westminster. Mrs Dodds said that we were absent. You are going to be absent in a few weeks. In a few, short weeks, according to your leader, you, the DUP Ministers and the DUP First Minister will be absent. What then? There will be no power in Belfast and no power in Westminster. What then for the citizens you serve? When it comes to abstentionism, we told the electorate what we were going to do. You did not tell the

electorate what you are about to do. That is something for you to think about.

As to the change needed in our health service, I fully agree that our health service needs reformed. Strategic changes need to be made to it. I have said this in the Chamber before: I am a former Education Minister, and I led strategic change through the Department of Education. I closed and amalgamated schools when it was necessary, and I can assure you that no one welcomed that in their constituencies. There is the challenge for us as MLAs. "Not in my back yard" will not work when that comes. If we are up for that, there is another challenge for us moving forward.

I will bring my remarks to a close. I just want to check my notes. The burden placed on workers, families and pensioners has been noted. The National Insurance increase and the fuel and heating increases that they face over the winter will be astronomical, and there is universal support in the Chamber that those things should not happen.

Other nations are doing it differently. Across Europe, they are doing it differently. Even at the very start of the austerity measures and the collapse of the world economy in 2008, the United States — a capitalist institution — invested. They spent trillions of dollars supporting their economy, but the Tories made a conscious decision to cut public services and public spending because that is what the Tories are about. That is at the core of the Tories.

I was a bit surprised by Mr Frew's comments earlier when he said that this Tory party is no longer conservative. That might be a whole other debate, but that is what Tories do. The challenge for us is this: what can we do different? I believe that we can do different. Despite our differences, we can do different.

In my opinion, the future is a united Ireland where we all work together. As Mr O'Toole said, that is not going to happen this winter. It is not, but we need to start thinking now about what fiscal powers we use, what difference we make, how we work together and how we move towards that direction, because, let us be clear about this: the Tories will always do this. They will always do it, regardless of whether you are in Westminster with them or not. Whether you are unionist, nationalist, republican or an unbeliever, they will always do this, so let us collectively do something different.

**Mr Speaker:** I thank all Members for their contributions.

Question put and agreed to.

Resolved:

*That this Assembly is firmly committed to a fair economic recovery from the COVID-19 pandemic; recognises the damage to our health and social care (HSC) as a result of a legacy of British Government austerity; further recognises the need to rebuild our health and social care services as we emerge from this pandemic; expresses its deep concern that the British Government intend to tax the least-well-off through increases in National Insurance contributions and reduced increases in pension; and calls on the British Government to remove the burden for funding health and social care from ordinary workers, families and pensioners and to place this, instead, on the many companies and individuals who have made huge profits during or from the pandemic.*

**Mr Speaker:** Members, please take your ease before we move on to the final item.

5.00 pm

*(Mr Principal Deputy Speaker [Mr Stalford] in the Chair)*

Motion made:

*That the Assembly do now adjourn. — [Mr Principal Deputy Speaker.]*

## Adjournment

### Roads in South Antrim

**Mr Principal Deputy Speaker:** In conjunction with the Business Committee, Mr Speaker has given leave to Mr Trevor Clarke to raise the matter of roads in South Antrim. The proposer of the topic will have up to 15 minutes.

**Mr Clarke:** Whilst the topic may be roads in South Antrim, it could refer to any roads across Northern Ireland, where we are seeing a lack of repair, with roads falling very much into disrepair. Indeed, it is causing much frustration to many people. Many of us believe that there has been a lack of investment in roads.

I want to say at the outset that none of my comments is directed at individual staff. Staff in each of the offices have worked extremely well with us, as elected representatives, and have always shown professionalism. That having been said, there is an issue with replacing staff when they leave. In the local section office, a good gentleman who left in the past number of months has never been replaced. That adds to the problems and frustration that we, as elected representatives, face when we contact them to raise issues on behalf of our constituents. I am sure that, if that happened in other areas, Members for those areas would express the same frustration. We want to hear from the Minister about what she will do to bring the staff complement back up to where it should be, so that the service that was previously delivered in those areas can be delivered.

That leads me on to the delay in repairs. In many areas, we see yellow circles or lines drawn around the potholes that need to be repaired. However, those repairs remain undone for so long that, in many instances, the lines need to be redrawn. Many of us are aware of legislation on the depth of potholes. Some time ago, after a review of the policy, less serious potholes were not fixed and the focus was put on those that were more severe. It is time that we got back to fixing all potholes, given the damage that they cause to vehicles

on the roads. The condition of roads is visible. Daily, many people who use the roads will witness and suffer an experience that is caused by those conditions.

Road safety features are another issue that have come to my attention through my office. I can cite one example from outside Randalstown in my area, where we waited almost 12 months — again, I am not referring to DFI Roads staff, because this is down to contractors — to get safety lines and signage on site. That is unacceptable, given where we are now. I am sure that the Minister will agree that it is unacceptable given that we are trying to improve road safety and decrease the number of people who lose their life in road accidents. From many of the conversations that I have had, even with staff from the old Roads Service, it seems that that is merely down to contractors. The work is passed to contractors that are on a list, but it does not seem to go anywhere. My perception is that the contractors decide what is a priority for them, rather than what is a priority for the people of the areas that we represent. That should not be the case.

Indeed, we have heard anecdotal evidence that contractors have lost staff because of COVID. Unfortunately, some have returned home; they have left this island to go off to different places and never returned. That is not acceptable. With so many people unemployed now, there are opportunities there. Roads needs to provide an evidence base to show that it has gone out to actively recruit people to carry out those roles.

A former Roads Service employee told me that, in many instances, the contractors much prefer to come to where there is a good road, drop their spreader and drop as much tar as possible; they are not interested in the smaller-scale schemes. As you will appreciate, Mr Principal Deputy Speaker, for your constituents and my constituents who live in more confined areas, that is not the key issue. In the past few weeks, I spoke to a lovely lady in Newpark. She said to me, "I have lived on this street for 50 years. With the amount of money that they have spent on potholes over the last 50 years, they could have resurfaced this street." In Newpark, she said, her street has not been resurfaced in the whole time that she has lived there. That is an unfortunate indictment of DFI Roads.

I am not blaming the Minister, because there have been many Ministers in the past 50 years, and I am sure that the current Minister is not even 50 years of age, so I will afford her the privilege that the mistakes of all the previous Ministers are not her responsibility, but it is high

time that we got to the position where people can see delivery on the ground. It is awful that a woman in her later life — I was much younger than she was — can tell me that the amount of money that was spent over those years would have resurfaced that street many times.

I can give examples of many different issues in my constituency. On a Saturday night on the A26, the main road between Ballymena and Antrim town — a dual carriageway — five cars, one after the other, burst their tyres, and immediate repairs had to be done to the road that night. I congratulate the officials for bringing someone out on a Saturday night to carry out those repairs. I feel very sorry for the five individuals whose cars were damaged and who could not continue their journeys. That example poses the question of why we have to wait for a road — a dual carriageway — to get into such disrepair that it takes five cars to be damaged before DFI Roads will do something about it. It is an indictment of the underinvestment in the maintenance of our roads.

I will be very parochial, with an example from outside my house. I remember awakening one morning — I live on the Portglenone Road — to see four cars at the end of my drive in a similar scenario: pothole marked, yellow lines, contractor had not come. The pothole was so deep that four cars, one after another, had smashed their wheels and could not carry on. Again, that is a main carriageway that carries thousands of cars a day, and it is an example of the disrepair.

I will cite another example. I had the pleasure of attending a recent surgery that was carried out by our MP. On that day, it was stark. As many of the other representatives here will know, quite frequently, where you have surgeries, not many members of the public turn up, but on that occasion they did. Without fail, every person who turned up at the surgery in Randalstown that day complained about being awakened by lorries from 5.30 am, not because of the noise of the lorries per se but, again, because of the condition of the road. There have been so many repairs over the years that there are so many trenches or divots, if we want to call them that, that those lorries bounce along the road.

I was with an official on Friday — I will not name him; I know that I am not permitted to — and I was glad to hear that he intends to bring that work forward. He was aware of that scheme and intends to bring it forward for an improvement. Having had that conversation, I feel — I will choose my words carefully — sorry for the individual staff members. The amount of

money that they have got to carry out those repairs means that many other streets and roads will go unrepaired. We are beyond the point of picking and choosing. Much more money needs to be ploughed into repairing our roads.

Also from that visit on Friday, I learned — I put on record that I welcome it — that the spreader is in Randalstown again, in Neillsbrook, another social housing development that has suffered. The potholes were so bad that they were repairing the pothole repairs rather than the road. I am glad to say that I got word yesterday that the spreader is in Neillsbrook carrying out those essential repairs, but, again, it took 18 months. It takes people to get their cars damaged before these things are actioned.

This is no reflection on the constituency that the Minister represents, because it is something that I say to my colleagues — indeed, I say it to you, Mr Principal Speaker — but there is life outside Belfast.

Minister, I extend an invitation to you to come to South Antrim. I know that you have been there recently, because I have seen you in the village visiting some of the improvement work that has been done. We thank you for that, but I would love you to spend some time with all the representatives of South Antrim. Take some time to come and see the condition of the roads that we drive on. Maybe, when you get back to the office, you will decide that we are more deserving than some of the schemes in Belfast and that the rural constituencies deserve bigger input from your budget.

**Mr Principal Deputy Speaker:** I was tempted to bring the Member to order at that point, but, no, he expressed his sentiment very well.

**Dr Aiken:** Speaking for all the Members for South Antrim, I will say that we could all give a litany of some of the roads that we have in our constituency. Regrettably, in the great town of Ballyclare, I have the Ballycorr Road. The Ballycorr Road is deemed to be the third-worst road in Northern Ireland. It can be deemed to be the third-worst road in Northern Ireland only because no one has seen it recently. It is now probably, along with its connection to Church Road, the first-worst road in Northern Ireland.

I do not want to denigrate Ballyclare, because a lot of good work is going on across South Antrim. There has been an awful lot of investment going in, particularly by property developers. We can see the out-turn of that, with many new houses going up. At long last —

thank goodness — we see the new bridge coming across the Sixmilewater. I would be delighted if we were to have a competition to name it: maybe it could be the "Willie John McBride bridge" or something like that. The new link road that is going around Ballyclare is good. In Antrim, we see lots of development and improvements, as well as new housing. What we are not seeing, however, is investment in the roads and infrastructure between those areas.

Like most MLAs, I dread Friday mornings when I get the knock on the door. It is always some new contractor from, say, a gas or fibre company. It is great that contractors want to invest in the town, but I always say the same thing, which is, "Please tell me that you are not digging up the Rashee Road again". I look around the Chamber at Members. Yes, every time, it is exactly the same: they are digging it up.

There seems to be a lack of coordination in the developing of plans with the council. There has to be an approach whereby the roads are restored to the level that they should be at. They are getting progressively worse. What we see now is that, because we continue to patch roads, the infrastructure is never being restored to the level at which it should be. We are aware that bonds have to be raised for a lot of that work. We should insist that the bonds are made good. Minister, Ballyclare may be a good example to spread across Northern Ireland. If Ballycorr Road and Church Road were to be restored to something passable, rather than being a good testing track for tractors and Land Rovers, that would be an excellent opportunity to make a start on where we need to get to. We need to see that kind of thing.

We have good roads in South Antrim outside that. We have the A6 and the A8. However, we now see the interfaces where drivers come off roads on to the A- and B-grade roads breaking down. We see a lot of outward investment, but we do not see maintenance. When, hopefully, we get to multi-year Budgets, my party will be very supportive of making sure that the Department for Infrastructure has money in its budgets for the necessary infrastructure improvements. We will have to invest heavily in our roads. If South Antrim is to continue to be the best place by far in Northern Ireland in which to live, which all its MLAs will attest to, we have to make that investment.

Minister, we are here to help. We are here to work with you. We are here to support you when it comes to making sure that we get multi-year Budgets. We must, however, restore the

infrastructure and the critical roads that we have at the moment. We cannot allow the deterioration of the roads to continue.

**Mr Principal Deputy Speaker:** I remind Members about how the Adjournment debate works. The debate needs to be over at 6.01 pm. The Minister has 10 minutes in which to respond, so, on the basis of the number of Members who have indicated that they want to speak, I can give Members seven or eight minutes each, should they choose to use them.

**5.15 pm**

**Mr Blair:** Mr Principal Deputy Speaker, I assure you that I am not likely to stretch your 6.00 pm deadline.

I thank my fellow South Antrim Member Trevor Clarke for securing this important Adjournment debate. Constituency MLAs are reminded regularly of the real need to continue to repair and upgrade our existing road infrastructure in the interests of road safety and, of course, pedestrian safety. At this juncture, I should acknowledge the efforts made by local Department for Infrastructure Roads officials to continue services and responses during the recent very challenging COVID-19 period. It is appropriate that I make comments that are supportive of local officials and, indeed, of officials who work centrally in the Minister's office and in other places, just as Mr Clarke did in his opening remarks. We mean that; we understand and know the pressures that people are under.

Of course, in South Antrim, as you would expect in all constituencies, a distinction must be drawn between remedial repair and road safety-related works, and the longer-term plans and strategies that, by their nature, should be more medium to long term. If we are serious at all about a green recovery, it is vital that such planning is collaborative so that it encompasses the numerous though necessary strategic programmes aimed at improvements in relation to active travel, greenways and reducing car use.

Departmental and council efforts to create new cycling infrastructure from Glengormley to the north foreshore will be of assistance to my South Antrim constituents in Glengormley, Carnmoney and Mallusk, all of which are at the southern end of the constituency. However, these welcome improvements in turn highlight the need for similar schemes associated with necessary park-and-ride facilities in, for example, the more rural parts of the

constituency. I expect that other Members representing rural constituencies will say the same about the areas that they represent. In light of that, I acknowledge the Minister's publicly stated commitment to bringing forward such planning and schemes, and her willingness to engage with us in doing so. While we await scheduled improvements, it is my hope that resources will also be dedicated to meeting the long-term needs of all constituencies, including South Antrim, with an appropriate focus on a sustainable transport system. Hopefully, cooperation on these matters will be cross-party, interdepartmental and a priority for all levels of government.

**Mrs Cameron:** I also thank my colleague Trevor Clarke for securing the Adjournment debate this evening. Obviously, this is a matter that needs focus, a plan and sufficient investment. There needs to be a marked change in the conditions in South Antrim for all road users and for the residents. I suspect that, as my colleague mentioned, Members representing every constituency in this place could propose a similar debate, particularly those of us elected to represent large rural areas. At times, in our role as MLAs and on personal business, we visit other parts of the country, and we see the same issues everywhere: potholes, uneven surfaces, lack of adequate road markings and dangerous junctions. So much needs to be done.

We are now left to address this situation, and I have several examples of where we need investment, particularly in resurfacing. In the Ballyclare area and surrounding villages, numerous locations need further attention. A resurfacing scheme is badly needed on the main Hillhead Road into Ballyclare and on Rashee Road, both of which are main arterial routes, of course, and very heavily used by commuters. In the more rural areas, residents in places such as Grange Road in Parkgate, Ahoghill Road in Randalstown and Moyra Road in Burnside have regularly been in touch with my office to complain about the poor condition of the roads and some poor path and pothole repairs carried out by contractors.

In more residential streets, such as Sherwood and Fairview in Newtownabbey or very close to my home near the Dublin Road estate in Antrim, a number of locations have been the source of many pothole reports over recent years. Also, the state of footpaths and, indeed, disabled access are issues. The need for quality dropped kerbs and safe routes for mobility scooters is just one example. We have many regular complaints in many areas of South Antrim about all these issues. The list

could go on, and I have raised many more issues with the Department in recent months.

Like my colleague, I put on record my thanks to staff on the ground in the Antrim and Newtownabbey district office, who do their best.

They are really good and are responsive in addressing all the issues that we, as elected representatives, raise with them. Again, those are issues such as potholes and emergency repairs to things that pose an immediate danger. The staff are dedicated to their roles and to delivering the best service possible with the resources given to them. However, I stress the need for greater financial resource to be made available.

I know that the Minister has priorities in Belfast and other major urban areas, but we need to see rural areas benefit too from our budget. Rural communities are long awaiting proper attention to their roads. Roads such as those in South Antrim should not be at the bottom of the priority list. We need to see proper resurfacing schemes instead of surface dressing or patching, more money for rural road recovery programmes and investment in improving pavements where surfaces are uneven and have become dangerous for certain users. Our constituents may note the debate and listen to plenty of talking, but what they want from the Minister is delivery, so I urge the Minister to deliver for my constituents in South Antrim.

**Mrs D Kelly:** I thank the Member for South Antrim for securing the debate on roads in his constituency. Members might wonder at me participating in it, but I live in south Antrim, although not in the constituency. Many of the roads in my constituency lead directly into the Member's area. They need repairs; there is no doubt about that.

Participating in the debate also gives me the opportunity to congratulate the ladies of Antrim Camogie for their outstanding win in Croke Park at the weekend. It has been a great weekend for women in sport. I congratulate all those who participated but particularly the winners and those who volunteer on their committees.

Many Members who have spoken thus far have shared their concerns about the cuts to the funding that is required to enhance and repair roads year after year and have acknowledged that that is unacceptable. I have no doubt that the Minister is here to outline the work that she has been doing in South Antrim and across the North to repair our road network. However, the absolute truth is that, in 2015, deep cuts were imposed on the then Department for Regional

Development, and those cuts have never been repaired by the Executive. We all welcome increased capital funds, but we know that the reality is that, without the resource funding, the capacity is simply not there to get the work done.

I welcome the fact that Minister Nichola Mallon has consistently bid for additional funds, but I am pretty disgusted that full funding for those bids has not been awarded. Members across the Benches will, no doubt, have similar questions to ask. Why have the Executive not prioritised that funding? Why does the Sinn Féin Finance Minister, Conor Murphy, continue to short-change Minister Mallon's Department, ultimately, short-changing our constituents, for whom we want delivery? I know that a lot of work has been done in South Antrim — Members acknowledged that fact — and that, as is the case in my constituency, there is much to be welcomed, but the absence of the required funding, the impact of COVID and the bad winter we have just had mean that more and more roads are suffering decay.

We also have to acknowledge the fact that, in some constituencies, legal challenges have delayed work. That has been a huge concern for the representatives of the constituencies directly impacted by those challenges.

I hope that Members will agree that Minister Mallon is clearly doing all she can, but the decay will continue if roads are not prioritised by the Finance Minister and, ultimately, the Executive. If that continues, the rot will continue. Members across the Chamber have expressed their concerns about the impact that that might have on road safety.

We are debating the need to improve our roads and the need for more funding to help the Minister and her Department to deliver, but, at the same time, there are parties here that are threatening to collapse this place. They are threatening to walk away. Only a few months ago, Sinn Féin was threatening the same; it was doing just what the DUP is doing today. Let me be clear about this: we cannot fix the roads, increase our budgets or improve lives if politicians walk off the pitch. We had three years of decay and rot in our services and on our streets thanks to the stand-off and the stalemate between the DUP and Sinn Féin. People have had enough. Let us get on with the job and get back to work.

**Mr Principal Deputy Speaker:** No other Member has indicated that they wish to speak to me — speak in the debate. It is normal for no other Member to indicate that they wish to

speak to me. *[Laughter.]* No other Member has indicated that they wish to speak in the debate. I call the Minister for Infrastructure, Ms Nichola Mallon, to respond.

**Ms Mallon (The Minister for Infrastructure):** I thank Mr Clarke for securing the debate on South Antrim roads. I join Mrs Kelly in congratulating the Antrim ladies' camogie team on its outstanding win. I know that that is replicated throughout the House.

I listened with interest to the comments and issues raised by Members, and it is clear that it is a topic relevant to not only South Antrim but, as Members rightly said, places across Northern Ireland. The truth is, as Mrs Kelly pointed out, that this is the damage that was caused by the deep cuts imposed on the Department's predecessor in 2015. As a result of those severe budget reductions, the Department was forced to reduce its level of service. That is the reality within which we operate. Certainly, since I took up the post of Minister, I have made bids, and we are trying to do what we can in the Department to restore funding to pre-2015 levels, but that is still proving to be hugely challenging.

Mr Clarke also mentioned staff vacancies. As a result of the voluntary exit scheme, there are staff shortages across the Civil Service. Ministers have raised that issue with the Civil Service. We need to address it, but, again, that is caveated by the fact that staff cost money, and we are in a challenging budgetary environment.

I assure all Members who have spoken that I am determined to improve the condition of our roads and to recover some of the large backlog of road maintenance that currently exists and that was referenced in the 2019 Barton report on the structural maintenance of our roads. Members will know that it has been independently established that £143 million at 2018 prices is needed to maintain the structural integrity of Northern Ireland's road network. However, for many years, the funding allocated to the Department has fallen well below the level required. I welcome the fact that Mr Clarke recognises that the issue predates me as Minister, and I acknowledge and appreciate the fact that he and other Members have put on record their appreciation of and gratitude to DFI officials on the ground. I will make sure that that is fed back to them.

While everyone is aware that the outlook for the capital budget is somewhat better, the resource budget for my Department still faces real pressures that affect capacity in particular. I

assure Members that I will keep battling for the resources that we need, particularly for infrastructure, after the significant cuts that impacted the budgets as far back as 2015.

I reassure Mr Clarke and Mrs Cameron that I realise that life exists outside Belfast. Addressing regional imbalances and improving rural roads is a priority for me. That is why I set up the roads recovery fund, and, in 2020-21, I allocated £12 million of my capital budget to that fund, of which £10 million was specifically directed towards rural roads. Those improvements targeted many short lengths of rural road that were in particularly poor condition, with over 750 locations on the rural network benefiting from that initiative. Following that fund's successes last year, I have set up an enhanced fund in this financial year and have allocated £17 million of my capital budget to a roads recovery fund, of which £15 million is again specifically directed towards rural roads. As a result of that decision, rural roads will benefit from a 50% increase in funding in that initiative. That is the highest level of funding yet. It reflects my commitment to continue that important work to benefit rural communities.

I will continue to press for investment for infrastructure as part of the next spending review, the outcome of which will determine funding availability for 2022-23 and beyond. I absolutely agree with Dr Aiken: we must move with great urgency to multi-year budgets so that we can plan ahead, give forecasts to contractors and others and deliver the improved infrastructure that we need on the ground. I assure Members that, while I am Minister, I remain committed to establishing a further roads recovery fund in future years.

I turn specifically to South Antrim. My Department spent some £6.7 million last year in the Antrim and Newtownabbey area on contractor expenditure.

In addition to structural maintenance, which had an out-turn of £3.5 million, over £3 million was spent on other essential road functions, such as street lighting, structures, traffic management, winter service and routine maintenance activities. The past year was unprecedented due to the impact of the pandemic. However, we worked closely with our contractors to develop new ways of working to ensure that much-needed road maintenance and improvement works could proceed. As a result, most of our 2020-21 programme was successfully delivered, despite the absence of work over the first part of the year.

**5.30 pm**

I want to assure Mrs Cameron that I am very focused on delivery. What is the point of seeking election or being a Minister if you are not focused and determined to deliver for citizens, wherever they live in Northern Ireland? During the year, a number of significant resurfacing schemes have been completed in the area, including O'Neill Road, Newtownabbey; Belfast Road; Steeple Road in Fountain Hill; Main Street in Crumlin; Staffordstown Road; Derrygowan Road; and Church Road in Ballynure. I am pleased to advise that there are further structural maintenance and road improvement activities planned this financial year in the Antrim and Newtownabbey area. I remain committed to pressing for investment in our infrastructure as part of the next spending review to ensure that all that work is realised.

In South Antrim, my Department is targeting the completion of the following activities up to the end of March 2022: asphalt resurfacing, at a cost of £2.4 million; 25 road recovery schemes, at a cost of £600,000; 56 kilometres of surface dressing, at a cost of £450,000; footway resurfacing, at a cost of £360,000; the commencement of two minor improvement schemes, totalling £1 million; and three local transport and safety schemes, at a cost of £140,000.

Dr Aiken mentioned the Ballycorr Road, the Ballyeaston Road and the Rashee Road, and I can confirm that they are due to be resurfaced this year. In addition, the A57 Templepatrick Road was resurfaced three years ago, but I can confirm that the Hillhead phase 1 will be done this year.

That is not all, however. Since I was appointed Minister, I have made it clear that my focus is on doing what I can to improve the lives of people in Northern Ireland. An important part of that focus is on ensuring that I increase the proportion of everyday journeys made by walking and cycling across the whole region. Whilst I am fully committed to supporting the proper management and maintenance of the road network, we must also be mindful of the need to be forward-looking. Walking and cycling are key elements of liveable towns and cities, and more walking and cycling, especially for those shorter journeys that make up one third of all the journeys that we make every day, will help to create a cleaner environment and tackle the climate crisis, which is the biggest global challenge of our time. I very much appreciate Mr Blair's continuous support for our work in that area.

To that end, I was pleased to note the recent completion of the £100,000 footway and cycleway along O'Neill Road in Newtownabbey. I am very pleased to advise that, this year, the Antrim and Newtownabbey area has received just under £1 million of funding from my blue-green fund, and we will be progressing an additional five schemes in this financial year. Those schemes will further enhance the active travel provision in the area, improving air quality, the local environment and, of course, the health and well-being of the local population.

I would like to take this opportunity to mention the great progress that my Department is making on delivering the A6 Randalstown to Castledawson dualling works. The flagship scheme, which runs through South Antrim, will provide a dual carriageway from the western end of the M22 near Randalstown to the Castledawson roundabout. This significant investment of £189 million will reduce journey times and improve road safety.

I recognise the need for proper, sustained investment in our roads. I have inherited a very difficult financial environment. I welcome the fact that that is recognised fairly by all Members. I am committed to doing what I can. I assure Members that I will continue to make representations around the Executive table to ensure that we can get the required funding in order to maintain our road network and have the right infrastructure in the right places going forward. I very much look forward to having the support of all Members and all parties as I make those representations to the Finance Minister.

*Adjourned at 5.34 pm.*

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