Northern Ireland
Law Commission
promoting law reform in Northern Ireland

Consultation Paper

Defamation Law in Northern Ireland

Response to call for evidence
on the proposed reform of
Defamation Law in Northern Ireland

Mira Makar MA FCA

witness, member SME Alliance Ltd

London 20 February 2015

www.inthepublicdomain.net

NILC (2014)

"The fact that it is unusual for a director to show the determination and endurance that Ms Makar showed, and to be willing to incur the expense that she incurred, does not alter the fact that those efforts and expenses were reasonably undertaken and incurred for the purpose of complying with her duties in the face of the continuing and unsettling refusal .....to give her the information and records she needed to fulfil them."

Robert Hildyard QC 6 July 2007

HMRC, 2007: (gist) *"we accept that Ms Makar's expenses from 2005 were wholly, exclusively and necessarily incurred by her for the purposes of her employment as executive deputy chairman, finance director and chief executive officer"*

Public Interest Disclosure Act 1998, court, 4 January 2007: (gist) *"the unreasonable behaviour of those continuing to obstruct access and production, together with the reasonable conduct of Ms Makar in offering to pay the reasonable expenses of those obstructing (reasonable photocopying charges), means they cannot recover".* - served by court on BLG for PwC & Ors

Holdroyde J, 23 December 2010, Commercial Court QBD, 2010 Folio 885: *"the defendants PwC have only themselves to blame for the expenses which they incurred"*

About the witness:

The witness has operated in the rescue market since 1982, mainly as principal, with exits on the unlisted and main market quoted list.

Sector specialization has been operating and information systems in central government, national statistics, telecoms, space (ground control, simulations), defence, intelligence, trust and fiduciary, administrative, pharma, private banking. Principal customer sites include UK, Germany, Netherlands, Brussels, Switzerland, Toulouse, Crown Dependencies, Hong Kong.

She has been a witness to the Companies Investigation Branch of the DTI from September 2005.

Mira Makar MA FCA (Miss)
member SME Alliance Ltd

London 20 February 2015

The witness thanks the Northern Ireland Law Commission for the opportunity to provide evidence in response to its public call, and to assist it deliver its statutory obligations in promoting efficient, effective and accessible law in Northern Ireland.

The witness's particular experience from which this evidence has been drawn, relates to defamation, in:

1. the publicly listed main market in the UK,
2. the SME market (small to medium enterprises, private and public);
3. the "rescue" market, otherwise known as "turnarounds";
4. the trust and fiduciary market;
5. private banking, including the attempt of international banks to buy their way into the relationship-based mid and high net worth market;
6. operational systems build including managing classified data and intelligence;
7. the consequences of policy decisions not to prosecute manufacturers, wholesalers and retailers of tax evasion product (theft from the public purse), instead seeking to recover tax, interest and penalties, but neither curtailing wrongdoers nor recovering proceeds of crime;
8. use of the Crown Dependencies and tax havens for global arbitrage operations;
9. use of the courts by transaction managers, as part of financial product with underwritten outcome to eliminate risk which is fatal to revenue and profit streams ("*reputation*");
10. use of the courts, together with manufacture of false personae, to efficiently eliminate a person representing risk to reputation and profit-stream.

    This includes using cyber techniques on public websites, thereby facilitating campaigns of systematic denegration and prolonged public humiliation. Devices of aggressive damage mitigation burden shift are deployed. Victims are detained without charge for years in the justice system, as their true judicial standing is usurped. They are forced into servitude and labour for no pay. Aggressors "mimic" the victims abandoning what is theirs: "success" is "*you have no judicial standing*" being made to stick.

Key point: the case for retaining classification as a crime is watertight: the fact that the publication of the identity of a rape victim is an offence is not enough to stop publication in a cyber world in which the state has gifted so much of its core functions to the private sector with a commercial interest in the outcome, including theft of judicial standing.

[1] From the consultation documentation: "The Northern Ireland Law Commission ('the Commission') was established in 2007 following the recommendations of the Criminal Justice Review Group (2000). Its purpose is to keep the law of Northern Ireland under review and make recommendations for its systematic development and reform.

"The Commission was established under the Justice (Northern Ireland) Act 2002. The Act (as amended by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010) requires the Commission to consider any proposals for the reform of the law of Northern Ireland that are referred to it. The Commission must also submit to the Department of Justice programmes for the examination of different branches of law with a view to reform. The Department of Justice must consult with the Attorney General for Northern Ireland before approving any programme submitted by the Commission. If the programme includes the examination of any branch of law or the consolidation or repeal of any legislation which relates in whole or in part to a reserved or excepted matter, the Department of Justice must consult the Secretary of State for Northern Ireland before approving the programme."

Evidence assimilated over a decade has not been challenged

This evidence has been assimilated in the decade from February 2005 to 2015. It has not been challenged. It concerns the attempted discrediting of witnesses and victims of serious financial wrongdoing as well as its multi-layered cover-up by the unlawful trafficking of personal data and the hijacking of access to important media outlets. These include the Regulated News Service of the London Stock Exchange; the London Gazette, under private sector control and exploitation for commercial gain; other public registers previously regarded as reliable, such as the Land Registry, Land Charges Registry, Companies House, MoJ website, Official Solicitor, Official Receiver; private sector operators and publishers, as Thompson Reuters, barristers' websites, Crown dependencies website, under the control of private sector entities; embargo'ed materials.

The problem

There is no prima facie method either to curtail or to repair, save filing in the civil courts (and a private prosecution if the victim/witness can face it – the incidence of suicide indicates people cannot). This is exacerbated by police who do not necessarily record crimes notified to them, or allow civilians to contaminate police records and investigation, at least in the City of London, thereby averting the automatic issue of crime number blocking progress. Other prosecutors appear to have developed a distracting penchant for media presence, confusing serious work with extracting large budget from the Treasury (thereby opening themselves to criticism on grounds of politicizing the prosecution decision, whether true or not). Important ones as the Office of Fair Trading, have been closed down, with others "blunted" as Trading Standards, placed well down the management hierarchy of local authorities such as the Mayor & Commonality of the City of London (below docks control and jogging in air polluted streets: the joggers include those who ought to be curtailed by Trading Standards as rogues under consumer protection laws. The irony is no comfort to victims and the bereaved). The DPP does not prosecute on sight of sufficient evidence, saying DPP/CPS do not have "investigation powers".

Prosecutors have not got their mind round the fact that dilution of the criminal law has exacerbated crime, given rise to an exponential increase in the backlog. It has left judges without experience including in sentencing as admitted by the Sentencing Council. They were asked by the Director of the SFO and DPP to provide guidelines of the sentences that people would avoid if they signed Deferred Prosecution Agreements. This effectively excludes judiciary and jury. It thereby facilitates continuation of the offending. Prosecutors who place a discretionary spin on their obligation to prosecute on sight of sufficient evidence exacerbate the situation.

Courts can be the situs of defamatory wrongdoing. Effectively they operate without jurisdiction when defamatory devices are deployed to interfere with due process. This means they cannot provide a route to repair on a prompt basis or at all. "*You are between the devil and the deep blue sea.*" (High Court Judge, Commercial Court, Queens Bench Division, 22 December 2014, **HQ12XO3512**, **Mira Makar v Baker Tilly UK Group LLP** & Ors re file 3630 of 2013, a device).

It is within this context that the route to relief for the victim of defamation must be judged: Northern Ireland Law Reform should be keen to map out the path for the victims and see whether it exists; how it functions; what the obstacles are; and the nature of the damages which apply. These include loss of opportunity; infringement of human rights; usurping judicial standing; permanent disablement; loss of health; mental trauma; terror (GBH); and breakdown.

If relief can be achieved by going to a local citizens advice bureau and the "system" takes over, it can be said to exist and to operate. If it cannot, tinkering with the legislation, especially without regular review and modifying, will not improve the law nor keep it up-to-date with real problems.

The right to anonymity and privacy has been high-lighted above, as have the problems arising from prosecutors who will not prosecute and the importance to wrongdoers of discrediting witnesses and victims in crown trials and sentencing. Although the law protects witnesses and victims, irrespective of whether anyone has been charged, in practice provision is only made where there is a trial but neither before nor after. Retaliation is uncurtailed.

Prosecutors will protect "covert human intelligence" but not general informants; those compelled to report on truth or risk criminal complicity; or whistleblowers. These suffer some of the worst retaliatory defamation with accusations of breach of mutual confidence and trust; being bundled off into employment law; characterized as "nuts" or "sluts" (unbalanced or after money); boxed into "settlements" and effective gagging by the knowledge they will never work again once stigmatized as a "whistleblower". The underlying issue gets lost immediately although its exposure is critically tied to the vindication of the whistleblower and repair of the defamation.

Freedom of speech: press and commentators

Both these categories of persons are already protected in law because of the heavy duty they bear to expose the truth: there is a parallel with prosecutors who are also protected so long as they do not act with malice i.e. they can bungle so long as well meaning. Sufficient has been said this week on the financial clout that can control editorial decision-making (Peter Oborne, Daily Telegraph, HSBC, closure of accounts of charities, loans to Barclay Bros etc).

This consultation raises the question of formulating a "serious harm" threshold. It implicitly recognises that it is not right to interfere in public duties. These are required to expose the truth, free from competing financial interests/clout, such as that from advertisers. The court, crown or civil, is about exposing the truth, the same as the implicit duty of press and commentators. These duties are therefore aligned.

The introduction of other tests is spurious. It throws out years of thoughtfully worked out common law and understanding. It creates litigation risk including adverse expenses; undermines certainty of outcome; and has already thrown "practitioners" into turmoil. A citizens advice bureau has to compete on wallet not truth. Freedom of speech and protection from defamation, with speedy and bespoke repair, cease to be accessible.

Defamation and privacy

These are closely related. Often to defame a person one must have access to their personal data in order to be able to present an alternative made-up version for a purpose. The devices to achieve this are wide-ranging. They include making up a claim form with a fake claimant, with a name close to a real one, in order to flush out a defence and counter claim. A counter claim against a nothing claim is a nothing. It is available on public inspection, flushes out value and can be traded in the market with traders colluding. All are paid out of the estate of the target.

Similarly the "*bankruptcy court*" operates by opening and running a file in the name of a target.

Applications are in their name, money is taken in on account of them. The target is branded "bankrupt", with defamers unidentified. Land Charges staff adopt the same offensive vocabulary, without regard to whether it is true or not. They apply restrictions on private estates by-passing the protocols, the omission of which is an offence. The same branding applies to use of "civil restraint orders" and assertions that a person "lacks the capacity to manage their affairs".

This plethora of defamatory devices could not succeed if trading in private information and invading people's privacy and autonomy were not so rife.

The Institute of Advanced Legal Studies is currently launching its Centre for Law and Information Policy (24 February 2015). The rubric asserts that scepticism about privacy is widespread; the current generation are not interested; arguments about national security, protecting the old and vulnerable and making government more efficient are not proven; and, if privacy still matters, do the "legal tools still exist to protect it?" Without protection of privacy (right to family life), protecting from defamation does not work.

Defending human rights in a digital age

Privacy, autonomy, access to justice, including a fair trial, including on a timely basis as well as the state's obligation both to protect and to do so effectively are pre-requisites to protection from defamation and identifying and delivering the correct repair. Therefore these subjects must be considered together.

Goldsmiths College, London University, Media and Communications is currently hosting a debate on defending human rights in a digital age. Problems come out of struggles over ownership and control of the internet. How can a court establish jurisdiction and enforce it when ownership and control are elusive? As seen in regard to rape cases, anonymity is very hard to enforce.

The internet-dependent world is still dealing with the fallout of Edward Snowden's revelations of mass online surveillance. The human rights implications of state and private actors' tracking of our everyday life online, our digital imagination, and our relationships with other people through social media have been thrust into the headlines as a result.

This public debate brings long-standing human rights defenders, such as Amnesty, activists, legal experts, and journalists around the table to discuss the practical and political challenges of defending human rights in a digital age; online and on the ground. As human rights NGOs consider the digital implications of human rights abuses, so do technical and legal experts have to consider the design and legislative implications of recognizing that online we have rights too. Official recognition, e.g. at the UN, is not enough. And grassroots awareness-raising about our human rights online is hampered by government policies that undermine rights like Freedom of Expression, privacy, education, and freedom of association in the name of cyber- or state security.

This panel discusses the options available for the design, access, and use of the future internet now that the "genie is out of the bottle" as the battle for ownership and control of tomorrow's internet gathers steam.

Defamation requires control of media, publishing and access including to courts and websites which feed off them. The challenges raised above must be addressed if civil relief for defamation and its associated wrongdoing is to be effectively tackled. If it is not, the predictable outcome is unenforceable. Law is rendered legacy on launch, yet another ephemeral product as "*professional negligence*" or "*judicial review*". The customer of citizens advice is excluded.

The specific story from which this evidence derives
February 2005 to February 2015

On **Friday 4 February 2005**, whilst Executive Deputy Chairman, Chief Executive Officer and Finance Director of a main market listed company, a defamatory notice went up on the Regulated News Service about the witness. It did not emanate from the company itself, but a group comprising the company's lawyers and auditor who were implicitly supported by the company's bankers, and the sponsor, controlling access to the RNS.

On **7 November 2006** the company published an apology to the witness, she was credited with a sharp turnaround in testing market conditions together with a statement that she had been right in the concerns raised by her, as reflected in the financial statements. These showed the forced resignation of the auditor, notified belatedly, who ought properly to have been sacked by **4 February 2005**, for remaining in office after having lost independence.

Experts said;

UK experience: where reputation is tied to reputation for integrity, it is perceived to be too high risk to endorse

20 November 2006

Nigel Tristem, board member and Head of Assurance and Ethics in the Assurance practice, partnership formerly trading as Baker Tilly, a firm

"The reputation for integrity is everything."
"you have demonstrated that you have integrity in spades."
"....your reputation is higher than ever."
"I think your press coverage was brilliant .....and your reputation was enhanced."
"Your reputation has come out of this well."
"Whistleblowing is not held against you by proper companies..."
"I think you would be the perfect head of an audit committee...."

Peter Souster former Chairman Baker Tilly, a firm, author Tolleys Companies and Directors Duties:

"As a director you could not be faulted as to the steps you were trying to take...."

Ian White, member Deloitte LLP, called to Bar, Chartered Accountant, forensic accountant, expert witness

"change in BT's risk profile – now that the report is really for you, and FSA and DTI. We would be acting for the FSA / DTI / Financial Reporting Review Panel."

The favourable press coverage in the national media, that the witness was "*right*" and therefore vindicated, was echoed in the courts in November 2012. This was after judgment in default of a proper return compliant with the rules was entered by the six year dead-line under the statute of limitation in respect of the wrongdoers (2012 Folio 336).

It was not made public on inspection nor the relevant unchallenged claim forms with devastating consequences. This has been particularly so outside the courts using public registers and websites (media) (identified as "*malicious prosecution*" by presiding judiciary, 16 November 2012).

Q1 Should the Defamation Act 2013 be extended in its application, in full, to the Northern Irish jurisdiction?

1. No. The Northern Irish jurisdiction should make up its own mind. This task should start from the position without the Defamation Act 2013. It should:

   - document the status quo as it was before the Defamation Act 2013 and record problems, if any, with that status quo;
   - identify relevant benchmarks such as the Defamation Act 1952; Defamation Act 1996
   - collect its own empirical evidence and real life examples; and
   - highlight pitfalls and problems which have emerged with the Defamation Act 2013.

   These should include:

   a. establishing the reasons it took so long to enact to spot underlying difficulties;
   b. the absence of monitoring continuously, including the consequences of jury trials being exceptional only (as opposed to the "norm");
   c. the effect of the introduction of subjective tests, ending the enforcement of the duty to provide legal certainty of outcome;
   d. a well defined path for an injured party without means;
   e. identifying abuse (eg Mr A causes harm to Mr B, but pre emptively sues Mr A, who is thereby on the defensive and cannot assert their own claim) and
   f. the fact that expenses (misleadingly referred to as "costs") were not included in the pre enactment consultation but as a separate exercise afterwards.

   This latter is an important aspect since expenditure may be voluntary in nature. This applies if a party seeks to take action in regard relief a court cannot grant, e.g. in regard reputational damage which they have brought on themselves.

   An example is included in this evidence showing the defendants' activities giving rise to reputational damage to themselves, not involving the claimant and how they pre-emptively attacked the claimant to discredit her as witness and victim.

   "*Reputation*" can be synonymous with revenue and profit stream. The protection of that stream can lead to attacks on those who are perceived as a risk by exposing wrongdoing and thereby threatening reputation and revenue stream. The defender may decide they can only eliminate that threat or risk by defaming those who could expose them.

2. Attacks on witness and victim credibility are well known but only properly accommodated in the crown courts. During the period to a result, they could lead to prosecution on grounds of perjury or perverting the course of justice. In sentencing, the Criminal Procedures and Investigations Act 1996 applies: s58 imposes a requirement and process for the truth to prevail and correction of false inference which is defamatory. Criminal prosecutions of defamation alone appear left to private prosecutions, as crown prosecutors seem to be inert.

3. Please note the above is not an exhaustive list. Victims and witnesses of defamation in the course of the commission of an offence (or its cover up) have no trodden protection or path.

Q2 If the Defamation Act 2013 should not be extended to Northern Ireland in full, should any specific provisions contained within the Act be extended in their application to Northern Ireland?

4. No. The Defamation Act 2013, including its component parts should not be adopted. Northern Ireland should pick a starting point, for example the Defamation Act 1952 and consider whether developments since such as the Defamation Act 1996 added anything useful beyond complexity in the path to relief for victims including of malicious falsehood and malicious communications.

5. The 1952 Act makes an important provision which over time has got lost:

> ***Slander affecting official, professional or business reputation.***
>
> *In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.*

6. Examples of those falling in such a category are Chartered Accountants and those holding public office as public company directors and witnesses to Parliament and consultations. Their credibility is tied to their reputation and the requirements for honesty, integrity, judgment. Where a wrongdoer wishes to undermine their standing and their credibility, for example because they have been exposed by them, they are able to do so easily by getting them "struck off" as members.

7. By this mechanism the victims can no longer advertise themselves as Associates or Fellows of the Institute of Chartered Accountants in England & Wales and their ability to earn a living in their chosen profession is ended. This ploy can serve a dual function where it results in disciplinary reports to such bodies being buried or destroyed or both, until the witness/victim is also forgotten.

8. ICAEW has quirks such that membership ceases if a person declares himself bankrupt: the wrongdoer can mimic this by buying a number in the courts, converting it to another number at the Official Receiver and securing a posting on the London Gazette. If they keep this up long enough, the victim finally stops fighting and abandons what is his including judicial standing.

9. ICAEW has now hired "*litigators*" who work on the inside of ICAEW with the wrongdoers on the outside hacking into members personal details and sending out malicious letters on the headed paper of ICAEW, in contravention of the Malicious Communications Act 1988 and various public order acts. This is effective because those planting evidence and the "litigators" are not members and do not face sanction for unlawful interception, theft, malicious communications, perverting the course of justice, conspiracy. ICAEW uses the "silent treatment" against their members (form of violence), do not speak to them generally, preferring to accept forgeries and malicious hearsay from non members with no standing. Predictably such overhead has driven up the price of annual membership causing attrition.

10. Such indicators and developments show that since the Defamation Act 1952 the world has changed and what was the bedrock of non compromise has become the worship of Mammon. Where money, revenue streams or retaining the proceeds of crime involves financially eliminating the witnesses and victims including by undermining their business, social and professional standing, with the courts and other organs of state deployed, frequently perversely, "defamation" must be considered in the context of enforcement of ECHR rights. This is in particular the right to be heard in the context of right to a fair trial and freedom of expression, including ***duty to inform*** and the ***public right to know***, with truth the sole immoveable criteria.

11. Northern Ireland has the opportunity to learn from England & Wales where the commentaries show that:

    a. There is confusion of interpretation and unhappiness over throwing out the developed body of common law and replacing it with uncertainty, increasing risk;

    b. The presumption of no jury trial has exacerbated the problems faced by witnesses and victims of unprosecuted offences: there need to be charges of contempt; perjury, perversion of the course of justice before prosecutors are engaged. This heightens the risks faced by the witnesses and victims of wrong-doing and subjects them to pre-emptive retaliation before their evidence sees the light of day;

    c. It was a mistake to leave expenses (misleadingly branded "costs") as an after thought, since expenses in this field can be voluntary in nature and not qualifying;

d. There is proximity and overlap between PRIVACY; FREEDOM OF SPEECH/FREEDOM TO BE HEARD (just trial); DUTY TO INFORM and RIGHT OF PUBLIC TO KNOW; REPUTATION (integrity, honesty and judgment as well as right to dignity and autonomy), including right not to be subjected to acts of CONTEMPT OF COURT. These rights are of equal rank but almost impossible to separate;

e. "after the event" damages do not accommodate irreparable harm and injunctive relief requires knowledge the victim often does not have. The courts may not have the jurisdiction to make orders effectively, including anonymity.

12. In Australia the website *defamationwatch.com.uk* reports that in 2014 in the UK, the new Defamation Act 2013 came into effect, and reports on a number of large verdicts arising from publications on the internet, as well as a number of significant interlocutory judgments which involved injunctions, strike out applications and claims for loss of business. Australia has a Defamation Act 2005. Experience without the 2013 Act can usefully inform this consultation.

13. The report goes on as follows:

" The following cases were notable in 2014:

1. ***Cripps v Vakras [2014] VSC 279***: a successful claim by a gallery owner against two artists arising from publications on two web pages that asserted that, among other things, the plaintiff held views similar to Hitler. Justice Kyrou awarded him $420,000 in all.

2. ***Lower Murray Urban and Rural Water Corporation v Di Masi & Ors [2014] VSCA 104:*** an appeal to the Victorian Court of Appeal against judgments made by Justice Kaye in the plaintiff's favour in a 2013 trial that ran for 22 days in Mildura;

3. ***Bleyer v Google Inc [2014] NSWSC 897***: an application by Google Inc to permanently stay a case, partly on the grounds that the costs that would be involved in running the case would be disproportionate to the remedy sought by the plaintiff.

4. ***Polias v Ryall & Ors [2014] NSWSC 1692***: a poker player that won $340,000 in damages for publications made by a number of other poker playing defendants on Facebook and in oral statements.

5. ***Moran v Schwartz Publishing Pty Ltd & Anor [2014] WASC 334***: an urgent claim brought by a person seeking to prevent the publication of a book relating to an unsolved murder from 2005.

6. ***North Coast Children's Home Inc & Ors v Martin [2014] NSWDC 125***: successful claims made a foster care home, its manager and CEO against a former foster carer for publications on Facebook and in email.

7. ***Setka v Abbott & Ors [2014] VSCA 287:*** an appeal by a plaintiff to the Victorian Court of Appeal in respect of how the defendants had pleaded a fancy type of truth defence.

8. **Dabrowski v Greeuw [2014] WADC 175**: a claim for damages by a man against his estranged former wife for publications on Facebook.

It would be constructive for Northern Ireland Law Reform to review these cases (and any others outside England & Wales) where the Defamation Act 2013 has not been enforced and to consider whether its application would have assisted: certainly in the above cases, one would have expected knowledge of its existence to have been highlighted, had the parties considered it would have helped. Injunctions, strike out applications and claims for loss of business and loss of opportunity generally are a well trodden path without the Defamation Act 2013. The pre-existing problems are not addressed by it. Indeed they may have been exacerbated by it.

These pre-existing problems include:

1. Injunctive relief is ***after the event*** and damage cannot be repaired (mental breakdown; depression; need for psychological and other medical after the event measures giving relief to symptoms, if possible; broken relationships; heart attacks; divorce; what "sticks"; exclusion by trade and professional bodies; consequences to family, businesses, employees, customers, suppliers, and the wider social circle of the victim, as church and charities supported);
2. The courts' ***jurisdiction is limited*** in effect because they cannot enforce cross border;
3. The prevalence of financing products and trading in civil litigation which operate to increase the price of a claim in the courts, making ***access to the law a theoretical possibility*** only;
4. ***Other influences*** at play, such as:
    a. the increase in ***unlawful trafficking of personal data***, which government calls technological advances and efficiencies;
    b. increased ***surveillance of personal data*** and its misuse in false or distorted ways (contraventions of the Malicious Communications Act 1988);
    c. restrictions on the grounds of ***national security or classification***, which are not necessarily technically supportable and which have the effect the witness or victim cannot secure public vindication i.e. exercise their right to control of their own ***public image***;
    d. balancing rights which are of prima facie equal rank: freedom of expression is often balanced against the duty to inform and the right to know of the public. Of lesser frequency is concern between one entity's freedom of expression and another's right to assert and protect their own image.
5. The prevalence of using the target's own resources and relationships against that target and planting false "evidence" with prosecutors and professional bodies adds to the obstruction. The impact of "regulation" and "regulators" should be evaluated. This is in particular those which collect "evidence", engage "skilled persons" and secure a report for themselves, the skilled person and the wrongdoer, with the public, the auditor and the witness and victim excluded. Once the evidence and the witness whose evidence it is, are separated, it is trivial to mount a successful discrediting campaign against the witness. The witness has no hope of being heard or protecting their image.
6. Northern Ireland Law Reform needs a "snap-shop" of issues it identifies without the Defamation Act 2013 and to use this as a benchmark against which to measure the developments it should have and what role if any there is for the Defamation Act 2013. This can usefully be informed by other jurisdictions and the European Courts.

Example 1: Supreme Court of British Colombia, 5 February 2015 -2015 BCSC 165 Weaver v Corcoran, Burke J

7. Without the UK Defamation Act 2013, this judgment elegantly set out both definition and approach to remedies. The case itself involved scientific reporting and author credibility. The relevant extracts are:

IV. defamation

[122] The elements required to establish defamation are set out in the Supreme Court of Canada decision in Grant v. Torstar, 2009 SCC 61 at para. 28 [Grant]:

A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages:

(1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;

(2) that the words in fact referred to the plaintiff; and

(3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism... The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

[123] Where the plaintiff succeeds in proving the elements of defamation, "the onus then shifts to the defendant to advance a defence in order to escape liability": Grant at para. 29.

There are no limitations on the manner in which defamatory matter may be published. Any act which has the effect of transferring the defamatory information to a third person constitutes a publication.

(Stanley v. Shaw, 2006 BCCA 467, 231 B.C.A.C. 186, at para. 5, citing Raymond E. Brown, The Law of Defamation in Canada (2nd ed.), vol. 1, at No. 7.3.)

[249] The Supreme Court of Canada summarized the basic legal principles behind republication in Breeden v. Black, 2012 SCC 19 at para. 20. The Court noted:

20 ... It is well established in Canadian law that the tort of defamation occurs upon publication of a defamatory statement to a third party. In this case, publication occurred when the impugned statements were read, downloaded and republished in Ontario by three newspapers. It is also well established that every repetition or republication of a defamatory statement constitutes a new publication. The original author of the statement may be held liable for the republication where it was authorized by the author or where the republication is the natural and probable result of the original publication (R. E. Brown, The Law of Defamation in Canada (1987), vol. 1, at pp. 253-54). In my view, the republication in the three newspapers of statements contained in press releases issued by the appellants clearly falls within the scope of this rule.

VIII. Damages

[288] Some general principles applicable to an assessment for damages for libel were outlined by Cunningham J. in Leenen at 728-729, as follows:

In attempting to arrive at the appropriate level of general damages in a defamation case, one must always be aware of not only the damage inflicted to a person's reputation but also the fact that once damaged a reputation is very difficult to restore. Always mindful of the fine balance between freedom of speech and the protection of reputation, once the scales have been tipped through defamation, a plaintiff is entitled to be compensated not only for the injury caused by the damage to his integrity within his broad community but also for the suffering occasioned by the defamation. A number of cases including Nagy v. Webb, [1930] 1 W.W.R. 357, [1930] 2 D.L.R. 234 (Sask. C.A.); Thomas v. C.B.C., [1981] N.W.T.J. No. 12, supra', Vogel v. C.B.C., [1982] B.C.J. No. 1565, supra, and Thompson v. NL Broadcasting Ltd. (1976), 1 C.C.L.T. 278 (B.C.S.C.) established factors which might be considered in assessing the appropriate level of compensation. While not all inclusive, some of these factors are as follows:

(a) the seriousness of the defamatory statement;
(b) the identity of the accuser;
(c) the breadth of the distribution of the publication of the libel;
(d) republication of the libel;
(e) the failure to give the audience both sides of the picture and not presenting a balanced review;
(f) the desire to increase one's professional reputation or to increase ratings of a particular program;
(g) the conduct of the defendant and defendant's counsel through to the end of trial;
(h) the absence or refusal of any retraction or apology;
(i) the failure to establish a plea of justification.

[289] As in Leenen, the defamation in this case was serious. It offended Dr. Weaver's character and the defendants refused to publish a retraction. The libel was widely published by at least one high profile journalist and two others. In addition, the libel effectively ran through a serious of articles in a national newspaper published over a short and continuous time period. Republication of the libel occurred as established by the plaintiff.

[290] I am of the view a significant award is appropriate. The inferential meaning of the words implies a serious defect in character that impacts Dr. Weaver's academic and professional world.

The evidence establishes Dr. Weaver was deeply affected by what he perceived as a barrage of articles impugning his integrity and academic reputation. These gave rise to the "Wall of Hate" that he maintained outside his office; comments, he noted, which arose after the publication of those articles.

[291] I consider an award of $50,000 in general damages against all defendants jointly and severally to be appropriate in this case. I decline to award aggravated or punitive damages.

I have not found malice to be present in this case.

[292] Dr. Weaver sought an injunction and assignment of copyright. I direct the defendants to remove the offending articles from any electronic database, where they are accessible under the control of the National Post Internet sites and electronic databases. In addition, the defendants are required to expressly withdraw any consent given to third parties to re-publish the defamatory expression and to require these third parties to cease re-publication.

[293] Further, the defendants will publish a complete retraction of the defamatory expression in the hardcopy National Post Internet sites and electronic databases in a form agreed to by the plaintiff. Failing agreement, the parties are at liberty to apply to this Court for directions concerning the form and content of such retraction. As to the question of ordering an assignment of copyright, without more foundation, I am unable to accede to that as requested by the plaintiff in this matter.

14. It is this witness's evidence that current examples from around the world is the best way for Northern Ireland to decide how it best wishes to reform law and deal with issues that were left as afterthoughts or problems post enactment, such as "costs" and the consequences of removing the presumption of jury trial.

15. This is an extraordinary and unwelcome development since relief for victim and witness credibility is most needed in the context of crown proceedings and therefore those using the civil courts to avert being charged and pre-emptively attacking the credibility of the victims/witnesses. Where this happens in the crown court, such as in sentencing, there are provisions to trigger a "truth" based process to resolve the matter. Perverting justice, contempt and perjury are in point.

Q3 If the Defamation Act 2013 should be extended in its application to Northern Ireland in whole or in part, should any provisions to be adopted be revised in any manner prior to their adoption?

16. No. Northern Ireland should not adopt the Defamation Act 2013 without a post enactment review and international comparisons including outside the EC.

    Northern Ireland should not be rushed into making a decision bearing in mind the Defamation Bill was very long in gestation and may only have got through in order to bring the process to an end. There will be much time to rue that development.

17. Attempts to generate a niche market of celebrities including public figures potentially spending large amounts does not tackle the underlying issues of discrediting witnesses and victims including where a charging decision has not yet been made, and pre-emptively in regard sentencing.

Example 2: Couderc and Hachette Filipacchi Associes v France (application 40454/07), Strasbourg 12 June 2014, Grand Chamber referral by France on 13 October 2014

18. This related to balancing of Prince Albert of Monaco's right to respect for privacy and private life (also a public figure) and to be able to control his personal public image over similar rights of the mother of his only child born out of wedlock. The mother is not a public figure. The child is entitled to have his identity publicly established. Media Legal Defence Initiative has intervened. The decision is due on 15 April 2015. So far:

.... "The Court notes that in making these disclosures, the child's mother clearly sought to secure public recognition of her son's status and of the fact that the Prince was his father, which she saw as crucial factors in ending the secrecy surrounding her son. In order to do this, she made public, in addition to the facts concerning the child's paternity, certain information which was not necessary and which fell within the sphere not only of her own private life but also of that of the Prince."

An individual is entitled to make public information about their personal and/or social identity, standing and to be able to protect the image of themselves. Obstructing them from this is wrong and constitutes interference with that individual's autonomy in the conduct of their lives. It is a right to express your self and to protect that image and the duty of media publishers, including the courts as publishers of decisions to ensure the integrity of informing the public accurately, taking into account witnesses and victims and not merely public figures, as celebrities, royalty, officials. The EU Resolution of 1998 is in point:

Example 3: Axel Springer AG v Germany (399954/08) , Grand Chamber

2. Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy

51. The relevant passages of this resolution, adopted by the Parliamentary Assembly on 26 June 1998, read as follows:-

"...

6. The Assembly is aware that personal privacy is often invaded, even in countries with specific legislation to protect it, as people's private lives have become a highly lucrative commodity for certain sectors of the media. The victims are essentially public figures, since details of their private lives serve as a stimulus to sales. At the same time, public figures must recognise that the special position they occupy in society - in many cases by choice - automatically entails increased pressure on their privacy.

7. Public figures are persons holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain.

8. It is often in the name of a one-sided interpretation of the right to freedom of expression, which is guaranteed in Article 10 of the European Convention on Human Rights, that the media invade people's privacy, claiming that their readers are entitled to know everything about public figures.

9. *Certain facts relating to the private lives of public figures, particularly politicians, may indeed be of interest to citizens, and it may therefore be legitimate for readers, who are also voters, to be informed of those facts.*

10. *It is therefore necessary to find a way of balancing the exercise of two fundamental rights, both of which are guaranteed by the European Convention on Human Rights: the right to respect for one's private life and the right to freedom of expression.*

11. *The Assembly reaffirms the importance of every person's right to privacy, and of the right to freedom of expression, as fundamental to a democratic society. These rights are neither absolute nor in any hierarchical order, since they are of equal value.*

12. *However, the Assembly points out that the right to privacy afforded by Article 8 of the European Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media.*

13. *The Assembly believes that, since all member states have now ratified the European Convention on Human Rights, and since many systems of national legislation comprise provisions guaranteeing this protection, there is no need to propose that a new convention guaranteeing the right to privacy should be adopted. ..."*

19. It is important that this respect is not restricted to interference by public authorities (such as the Official Receiver, Official Solicitor, the courts) but includes interference by private persons, as the banks, insurers, lawyers, others. The individual who finds himself under attack ultimately has recourse only to the courts and therefore this "journey" must be effective including starting at the local Citizens Advice Bureau without budget to speak of.

The courts: an important publisher

20. There is a very explicit problem in the courts in respect of the ability of a witness or victim of unprosecuted offences who files by way of damage mitigation when wrongdoers have done no such mitigation. They can get as far as serving and entering default judgment where there is no acknowledgment of service or defence. In such circumstances this action per se on the part of the claimant is sufficient to make the claim form available on public inspection. This means that if a member of the public knows the court, claim number, name of parties, they can go to the court and buy a copy (called "inspect").

21. If they do not know, or the court officials do not accurately maintain the records, the claim form disappears, is not public and relief including reparation and restoration (retraction statements, apologies, public notices) do not materialize.

22. The effect is that the person who has already suffered the defamation (and possibly other effects) can never regain control over their public image, standing and identity, let alone regain autonomy in their lives.

23. The position is wholly anomalous to the case where there is a trial however thin the basis. In that case there is a full blown judgment, a neutral citation number and reporting in the various law reporters, secondary publishers, media and trade rags and blogs. The person damaged automatically get the relief which comes with the exposure, not least curtailment of the attacks.

24. The courts have yet to address this anomaly and provide a trodden path where no trial for findings of fact is required. The claim form itself should be published when not defended.

25. This problem relates also to hiring legal resource to assist, should filing in court be necessary. Some jobs are not very big in terms of labour effort required but are valuable to the person seeking the relief. Counsel should be accessible for small hard fought jobs as well as those requiring advocacy experience. Defamation is a classic area for this support.

Q4 Irrespective of whether the 2013 Act is adopted in whole or in part, would it be desirable to introduce into Northern Irish law a measure withdrawing the "single meaning rule" in combination with the introduction of a bar on claims where a publisher has made a prompt and prominent correction or retraction?

26. No. There is a judgment call in respect of determining what this "single meaning" should be, which increases litigation risk. The judgment is not prescribed. Examples of failed law in respect of attempts to impose such restrictions include that relating to whistleblowing. The claimant must show the detriments suffered resulted from the protected disclosures made, and the "sole or main" reason was the whistleblowing. It is trivial to say, "yes" the whistleblowing caused the detriments, but the reason X was badly treated was that no-one liked him. "Sole or main" reason causes a claim which should succeed, to fail.

27. A prompt and prominent correction or retraction does not per se repair the damage done. It may reduce quantum of damages.

Q5 Are there other desirable reforms of defamation law in Northern Ireland?

28. There is a case for regular benchmarking against other jurisdictions, the cases which come to court, and those which do not see the light of day. Media outlets include those under the control of the legal industry which makes claims against them practically very difficult.

Q6 If the 2013 Act is not adopted in its entirety, would it be desirable for a rule equivalent to section 2 of the Act, the "defence of truth", to be introduced into Northern Irish law?

29. No. It should be taken as implicitly there. The criminal law in regard sentencing has special provision for hearings on this, where a defendant seeks to defame victims and witnesses to secure a lesser sentence. Claim forms should always be required to be signed by the claimant (not someone who is not witness) and "the claimant believes" removed.

Q7 If the 2013 Act is not adopted in its entirety, would it be desirable for a rule equivalent to section 3 of the Act, the "defence of honest opinion", to be introduced into Northern Irish law? Would it instead be preferable to continue with the common law approach as restated in Spiller v Joseph?

30. Continue status quo. There is no such thing as an "honest opinion" or a "dishonest opinion". Nothing should hang on it. Tim Dutton argued in a Tribunal by the FRC against PwC's audit of JP Morgan, where they allowed the mixing of client monies, that they made an "honest mistake". The criminal law would say they were reckless or acted knowingly.

Q8 Should it be confirmed that the defence of honest comment/honest opinion extends to encompass inferences of verifiable fact from underpinning facts?

31. No. Miles too complex. Lawyers are adept at saying, "we concede certain facts for the purpose of trial, but not the underlying truth". This is mumbo jumbo and should be eradicated promptly.

Q9 Should it be possible for a defendant-publisher to rely on the defence of honest comment/honest opinion where he or she held a "reasonable belief" in the truth of the underpinning facts on which a defamatory comment was made?

32. No. Either they have checked or they have not. The repetition of a defamation is a defamation. If they are a prosecutor or media with duty to inform, they should be protected if they have not acted maliciously and had proper checking in place. Thompson Reuters, London Gazette, MoJ, BIS/Insolvency Service, the Institute of Chartered Accountants in England & Wales (ICAEW) for example have no checking whatsoever, nor do they comply with the DPA. Doubtless they will all say they had "reasonable belief".

Q10 If it is desirable for a rule equivalent to section 3 of the 2013 Act to be introduced into Northern Irish law, would it be desirable for the provision to be amended so as to allow opinions published contemporaneously with privileged statements to benefit from the defence?

33. No. Miles too complex. Privilege has been so misused that it needs to be withdrawn UNLESS shown to relate to ADVICE from a lawyer to his client, with burden on those claiming it.

Q11 If it is desirable for a rule equivalent to section 3 of the 2013 Act to be introduced into Northern Irish law, would it be desirable for the definition of "privileged statements" in section 3(7) to exclude reference to section 4, and instead to include in section 3(4) reference to 'any fact that he or she reasonably believed to be true at the time the statement complained of was published'?

34. No. As above.

Q12 If the 2013 Act is not adopted in its entirety, would it be desirable for a rule equivalent to section 4 of the Act, the "defence of publication on a matter of public interest", to be introduced into Northern Irish law? Would it instead be preferable to continue with the common law approach as restated in Jameel v Wall Street Journal Europe and Flood v Times Newspapers Ltd?

35. No. Article 10 rights are already accommodated with equivalent rank to other rights.

Q13 If it is desirable for a rule equivalent to section 4 of the 2013 Act to be introduced into Northern Irish law, would it be desirable for the extension of the defence to opinions in section 4(5) to be excised?

36. No. As before.

Q14 If the 2013 Act is not adopted in its entirety, would it be desirable for a rule equivalent to section 6 of the Act, the qualified privilege for statements in peer-reviewed scientific or academic journals, to be introduced into Northern Irish law?

37. No. This operates to exclude whose work is not published in this way. In an internet and global communications age, such publications do not have a monopoly over standards.

Q15 If the 2013 Act is not adopted in its entirety, would it be desirable for the extension and clarification of various privileges set out in section 7 of the Act to be introduced into Northern Irish law?

38. No. Too complex.

Q16 If the 2013 Act is not adopted in its entirety, would it be desirable for the new defence for website operators set out in section 5 of the Act to be introduced into Northern Irish law? If so, should this include an obligation for website operators to append a notice of complaint alongside statements that are not taken down?

39. No. The person reporting erroneous publication will not generally wish to give publicity to it or to themselves.

Q17 If the 2013 Act is not adopted in its entirety, would it be desirable for the new defence for secondary publishers set out in section 10 of the Act to be introduced into Northern Irish law?

40. No. At present the complexity is so great, that an organization that publishes through an external publisher will blame them and vice versa. The victim is excluded. Even just deciding the status of author, editor, publisher, secondary publisher is a nightmare, let alone how the public can influence how these behave and what financial pressures/ leverage they are under.

Q18 If the 2013 Act is not adopted in its entirety, would it be desirable for the changes made to the law of slander by section 14 of the Act to be introduced into Northern Irish law?

41. No. Please note that since most territories have moved to merge slander and libel into "defamation", it is practical to follow suit. Unclear that new law is required to achieve this.

Q19 If the 2013 Act is not adopted in its entirety, would it be desirable for a rule equivalent to section 11 of the Act which reverses the presumption that defamation claims will be heard by a jury to be introduced into Northern Irish law?

42. No. The crown (more below) is inclined to prosecute other offences, like perjury, perverting the course of justice, contempt, rather that the defamation of the witness or victim, the effect of which can be so bad that the wrongdoer does not get charged. Importantly activities flourish to "plant" false evidence with auditors; regulators; prosecutors and for these to accept and even elicit such to enable a file to close with purported impunity.

Q20 If the 2013 Act is not adopted in its entirety, would it be desirable for a rule equivalent to section 1(1) of the Act, the "serious harm" test, to be introduced into Northern Irish law? Would it instead be preferable to rephrase the statutory test so as better to reflect the stated intention of the authors of the Act? Would it instead be preferable to continue with the common law approach reflected in Jameel v Dow Jones?

43. No, definitely not. The predicted and predictable confusion that this has cause in England & Wales is all over the commentaries now. It now means that a potential claimant is put off by the ***risk of adverse costs*** because a ***subjective test*** has been introduced i.e. there is no legal certainty about "serious".

44. Second the common law meaning of defamation before the Defamation Act 2013 was understood (libel/slander) with the courts recognizing that trivial complaints infringed freedom of expression. This experience was well developed and followed trodden paths. Rights of the deceased have been recognized. Protection is clear for those of the press and commentators who have duties to ferret out the truth and publish it; if the source is apparently reliable (e.g. the court) and the author does some checking and repeats it, they will be protected, even if it proves wrong and defamatory. Prosecutors are also protected if they do not act out of malice: the court itself is a prosecutor when enforcing the law.

45. The Republic of Ireland Defamation Act 2009 is clear on these matters. However it derails itself by entanglement with the "Press Council" and "Press Ombudsman" and their internal quality assurance. Good law should properly be standalone and not hijacked by "policy" staff or other unelected persons who are not accountable directly for what they impose on others.

46. Third there is a rebuttable presumption of evidence of seriousness, which detracts from the purity of the defamation, with quantum affected by "seriousness". This ***evidential burden*** means that a straightforward case becomes arguable, with all the risks that entails. A finding of defamation ought properly to be sufficient for liability.

47. Fourth section 1 (2) randomly picks on "traders" and determines that UNLESS there is serious financial loss, the "serious" test is not met. This arbitrarily splits the world in two, traders and non traders and means that the law is based on random and arbitrary definitions. There is no basis for introducing UNLESS provisions or for restricting section 1

    (1). An investor in a trading business or an individual are indistinguishable from a "trader".

48. Fifth the effect of the above is to interfere with what was previously clear. This was that slander and libel is unrestricted in interpretation but cannot be the basis of a claim if trivial i.e. restrictive on freedom of expression, in particular where there is a duty to inform (media).

Q21 If the 2013 Act is not adopted in its entirety, and irrespective of whether the standard "serious harm" test is adopted, would it be desirable to introduce into Northern Irish law a rule that 'bodies that trade for profit' must show 'serious financial loss' if they are to bring a claim in defamation? Would it instead be preferable to introduce a bar on corporate claims equivalent to that introduced under the Australian Uniform Defamation Acts?

49. No. This has been dealt with above, as part of the reply to Q20. In regard the second question, the answer is also "no". There is no difference between an individual and a "corporate". Defamation of the dead must be contemplated, and those who defend their reputation (profit stream) by destroying that of others need to be accommodated explicitly.

Q22 If the 2013 Act is not adopted in its entirety, would it be desirable for a rule equivalent to section 8 of the Act, the single publication rule, to be introduced into Northern Irish law? Would it preferable instead to retain the multiple publication rule, or to introduce an alternative defence requiring the attaching of a notice of complaint?

50. No. The single publication rule means that once a defamatory publication goes up, the publishers/authors are totally disinclined to remove it, as there is no repeat sanction. This includes publications in the London Gazette, the MoJ website (England/Wales), BAILII, Lawtel (Thompson Reuters), the Insolvency Service, the Land Registry and Land Charges register, and websites of chambers of barristers.

51. "Complaints" are not effective as there is no incentive to reach the truth but rather to get rid of the complainant by eliciting contrary "evidence" from or created by the wrongdoer. These often say "go somewhere else", for example to the "court" or the Information Commissioner. The courts refer to such activity as "bureaucrats creating work for bureaucrats".

Q23 If the 2013 Act is not adopted in its entirety, would it be desirable for a rule equivalent to section 9 of the Act, the rule on "libel tourism", to be introduced into Northern Irish law?

52. No. It is not workable. Domicile is not always known (although residence might be) and multinationals, as the banks are globally networked and supported by "lawyers" in the crown dependencies (under MoJ) and the tax havens.

53. There are particular complexities with the Crown Dependencies where those with courtesy "QC" accreditation, can preside as judges and hear barristers from England & Wales. This has created court or jurisdiction tourism, with advocates being paid on the grounds of "*having the ear*" of the XX court. Although the courts in these circumstances cannot possibly have jurisdiction, they will go ahead and publicly publish "judgments" that are wholly fictitious, extremely offensive and plainly created to avert crown prosecution in the UK.

54. The “problem” therefore is with the courts, globalization, and the huge amounts of money that can be made, potentially not declared anywhere, from breaking the law in the UK. This is a huge subject in itself, tied to tax evasion, and taking “defamation” back to where it started. This was in the context of crown/jury proceedings, where victims and witnesses were defamed to deny their evidence by undermining their credibility.

    Although the Crown will prosecute perverting the course of justice, contempt and perjury, it appears not to prosecute defamation unless in these contexts. Witness/victim defamation in the context of sentencing is dealt with by measures to challenge on the grounds of truth.

    The civil courts “should” have a path for relief for victims and witnesses, regardless of whether anyone is charged or not. A focus on “libel tourism” does not do it, misses the point and is a diversion.

Q24 Irrespective of whether the 2013 Act is adopted in whole or in part, would it be desirable for remedial powers of court equivalent to those set out in sections 12 and 13 of the Act to be introduced into Northern Irish law?

55. Not as drafted as emphasis on the repair mechanism is needed especially fast tracking without trial. Section 12 requires the defendant to publish the judgment in favour of the claimant. Section 13 requires the publisher to take down or remove the offending material.

    Both envisage a trial/judgment. It is excessive burden on the claimant to be compelled to go through a trial to have defamatory material removed or correction, retraction, right of reply or apology made (and published, if required).

56. It should be possible to articulate the complaint (e.g. trafficking personal data without seeking authorization, as purported data controller or processor), expect the defendant to file an admission on grounds of the truth, and procure the relief quickly, either making good an omission or undoing a falsehood. Speed is the key because whilst the offending material is circulating, the effect is that the wrongdoers who authored it or permitted it to be authored, are benefiting from the effects of the falsehood, including warding off reputational damage to themselves. It stops mattering that it is false, because the world becomes one of manufactured reality.

57. These influences are often seen in the courts, for example, treating a victim of banking crime as a “creditor”; referring to someone as a “bankrupt”, or having a “trustee in bankruptcy”; asserting there is an extended or general civil restraint order against someone; asserting that someone is incapacitated under the Mental Capacity Act 2005; or they are a “vexatious litigant” or simply “won’t take no for an answer”.

    Almost as bad is referring to someone who does not happen to have representation, as a “litigant in person”, “as though” that were synonymous with being stupid; ill informed; not professional; or not part of an elite in some sense. People get judged on the “impression” without being heard. The defamation has succeeded and the truth is relegated to an irrelevance.

58. Therefore the objective must be to facilitate a quick turnaround, without trial based simply on truth and admission with adverse orders if the admission and repair is not quick.

Q25 Would it be desirable for any other "discursive remedies" to be introduced into Northern Irish law?

59. No. Currently the publisher has absolute clout. Examples include the London Gazette; the Companies House; the Land Registry, including the Land Charges register; BAILII, notionally a "charity"; magazines, as the Lawyer, and Economia, of the Institute of Chartered Accountants in England & Wales; the websites of the MoJ and HMCTS; publishers of judgment amounts made against a person; the Insolvency Service; the Department of Business Innovations & Skills; publishers as Thompson Reuters, with "judgments"; transcribers; websites of barristers' chambers which receive feeds from these. The list is endless.

60. Indeed, if a person of no standing in proceedings, pays, for example to file a notional "respondent's notice" they can get heard on the back of the appellant, and receive the embargoed judgment when they have no proper entitlement (an offence). This can get published via Thompson Reuters/BAILII, spread amongst barristers' websites, and traded from there, "as though" true.

    Additionally these can be used to trigger insurance and underwriting benefits to which there is no proper entitlement and withdraw from the courts, thereby triggering disadvantages to others which are not transparent to them at the time.

61. Secondly there are many private and public sector operators in this area: there is no mechanism that compels them to respond, enter a dialogue or repair the damage. Indeed the London Gazette and Thompson Reuters each have internal lawyers who block operations from communicating or replying and say, in essence, "get lost".

62. The only relief is to file in court and secure a court order to bring down the defamatory materials. The public can expect to have to fight all the way. There should properly be a fast track way to achieve this. The court is the only forum.

NEXT PAGES HQ12XO3512 Mira Makar v Baker Tilly UK Group LLP & Ors

Extracts from claim form (next page to the end):

1) showing that the group felt compelled to mount litigation (2007-2015) to defend their reputation in regard fatal damage to it brought on by themselves not involving the claimant;

2) head 5 of 5 of the claim form.

Judgment in default of acknowledgment of service or defence was entered on 27 February 2013. The Claim Form has not been made available on inspection and properly ought to have been from 27 February 2013. Had it been, the continued hostility would have been curtailed. This facilitated engaging perversely with each of the Official Solicitor and Official Receiver.

APPENDICES (separate):

1) Submission to the Ministry of Justice in response to consultation on costs in respect of action under the **Defamation Act 2013** (after enactment);

2) Second submission to the above on the use of the Mental Capacity Act 2005 to both defame and exclude simultaneously whilst other untoward activity is carried out

Contact details: these are each of

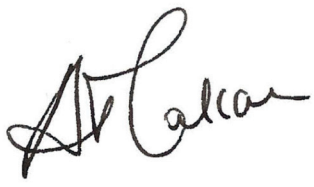
(1) the office of Jim Shannon MP who has presented evidence on the above in Westminster and to regulators from April 2011, along with Mark Field MP, City and Westminster;
Belfast: c/o Naomi Armstrong-Cotter, Parliamentary Aide to Jim Shannon MP for Strangford

34a Frances St. Newtownards, BT23 7DN - 028 9182 7990

and

(2) my details.

London: 333 Cromwell Tower, City of London, London EC2Y 8NB – 07768 610071



Mira Makar MA FCA (Miss), witness

20 February 2015

Post script: 17 June 2015

Continuing retaliation for provision of coal-face evidence to Parliamentary Commission on Banking Standards 2 September 2012, published 20 December 2012.

Admission by Christopher Semken 28 July 2009

to His Honour Judge Seymour in asking for a cost order for £1/2m

"we were compelled to undertake these actions to protect our reputation"

16 August 2011

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Chronology of arbitrage transactions and of reputation damage

2004	• partners trading as Baker Tilly • List BetOnSports on AIM with Evolution (NOMAD): crashes July 2006
2005	• 7 January Baker Tilly no longer has ICAEW license to audit – hides the fact • 1 Jan ICAS statutory audit licence registered by BT using a motto • BT report on G4S merger and others as "registered auditor"
2006	• MARCH: Sanctuary sacks Baker Tilly - fundraising undermined • JULY: BetOnSports delisted vanishes with shareholders considering legal action against BT: AUGUST BT commits to report adversely on Evolution & PwC • BT facing client action from Pinsent Masons for suspected underpayments of tax • £22m tax negligence. Defended by Barlow Lyde Gilbert, opponent acting for PwC
2007	• Kingston Smith report on incorporation to LLP's on tax free basis, all outstanding obligations transferred in. KS and insurer uninformed of reporting commitments from 06 that were not met due to trading without licence and lack of independence
2008	• £22m tax case forced to settle- tax product manufacture and retail; reported sold on commission by Baker Tilly
2009 - 20011	• 28 July 09: High Court action by BT LLP's with Reynolds Porter Chamberlain finally admitted to "protect its reputation" : claimant(s) not identified

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2004 VAT number only tracer

BakerTilly.co.uk

VAT Registration Number 602 4620 84

Source:
http://web.archive.org/web/20041119210404/http://www.bakertilly.co.uk/messagebox.asp?type=2468

The VAT number is the only unique public identification of the partners' business, trading as Baker Tilly to 1 April 2007. Number only known by a third party if a bill has been raised or in the period until any website showing the VAT number comes down. There is no permanent record of who the partners were. There was no pre warning of conversion to LLP or the disappearance of the list of partners at the trading address.

result: (1) third party cannot claim or defend; (2) any orders of the court are not binding on "claimants"

P3 of 20

2004 – 06 cross border arbitrage

BetOnSports flotation on AIM

"Evolution under renewed fire as BetonSports crashes 52%"

Source:
http://www.independent.co.uk/news/business/news/evolution-under-renewed-fire-as-betonsports-crashes-52-534536.html

BetOnSports cross border arbitrage US; South America; UK

BetOnSports shares suspended July 06, after which it "disappeared" while prosecutions proceeded in US.

Baker Tilly and Evolution Securities under the spotlight

Baker Tilly accepted instructions to report on market abuse and split market by Evolution in August 06 when it was not independent of Evolution or licensed

P4 of 20

from January 2005 – trading without licence

in aftermath of BetOnSports launch in mid 2004, and from 7th January 2005, Baker Tilly no longer licensed by ICAEW to trade as statutory auditor and vendor of public accountant assurance reports

hidden: **NO LICENCE FOR ANY PUBLIC ACCOUNTANTS ASSURANCE REPORTS (NON AUDIT). ICAS LICENCE LIMITED TO STATUTORY AUDIT**

sold as: **"Baker Tilly is licensed by ICAEW and ICAS for audit."** Baker Tilly continued to tout for and accept business for which it was not licensed or insured; it attempted to protect its reputation and profit from insider knowledge gained as an "ICAEW auditor in the main market"

as described in:
"11 05 18-AS ISSUED-BAKER TILLY LICENCE (updated ICAS info).ppt"
"11 05 18- AS ISSUED-Litigation risk swap.ppt"
"11 06 07-AS ISSUED (v 2) -Insurers and Risk Presentation.ppt"

ICAEW

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2005 – dissolution 7 June 2007

May 2005 Baker Tilly reports as registered auditor on:
G4S, £1.9m, including merger fees, lose audit thereafter,
BetOnSports, Bloomsbury, others.

the outside world is unaware of the loss of ICAEW audit licence: impression is of dual licence ICAEW and ICAS

"Baker Tilly is regulated by ICAEW and ICAS for audit"

motto used for ICAS licence "Baker Tilly UK Group LLP"

no LLP existed

ICAS licence statutory audit only

individual not firm liable- Scottish law

unlicenced for assertion based assurance business

ICAEW

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February 2006: sacked by Sanctuary

Sanctuary Plc →

"However, the group stressed it had made no secret of the dispute with its auditors, and that its placing will be fully underwritten by Evolution Securities"

"Sanctuary shares have fallen more than 90 per cent since last June"

Source:
http://www.independent.co.uk/news/business/news/baker-tilly-exposes-audit-rift-with-sanctuary-466755.html

Sanctuary SACKED BT. Fundraising undermined at last minute. BT refused to accept prior years accounting policy change

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April 2006: HMRC tax investigation

Baker Tilly facing client action from Pinsent Masons after HMRC launches investigation into suspected underpayments of tax

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June 06: sued for selling tax-based product

June 2006 - 25 September 2008

£22m negligence suit against tax specialist Shipwright and Baker Tilly concerning tax based product in investments in film finance. Forced to settle 2008.

Baker Tilly criticised for product manufacture and retail, and selling to the public on commission.

Defended by Barlow Lyde & Gilbert, opponent acting for PwC in 2006, obstructing access, from whom BT had to secure disclosure, exposing PwC and others

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July 2006: BetOnSports crash

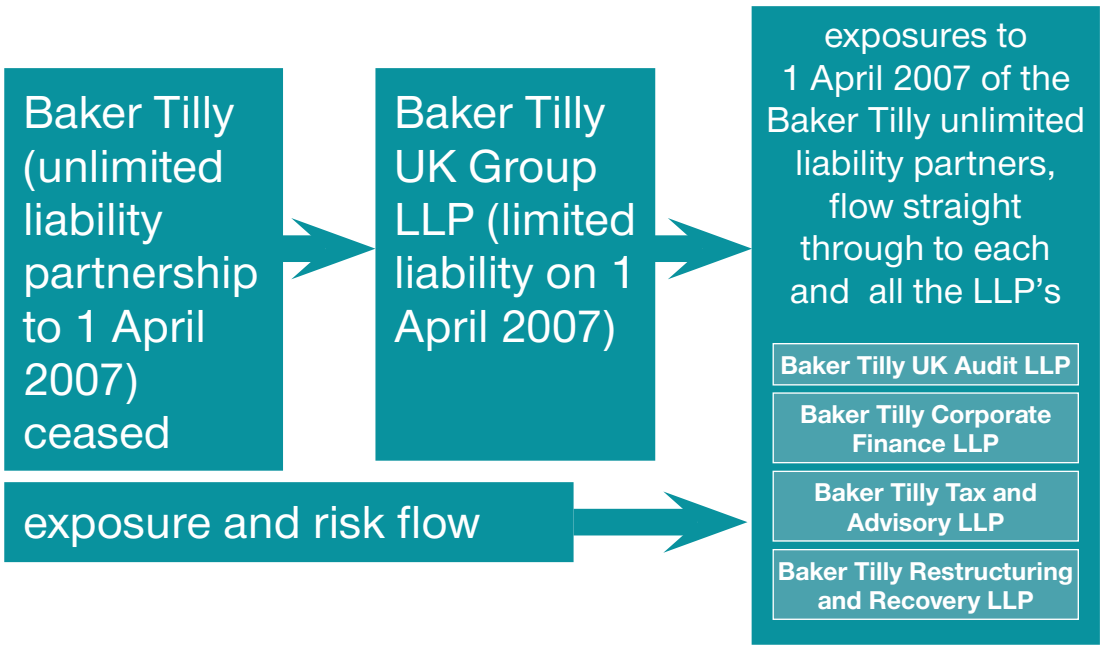
BetOnSports

""Recently it was reported in the British press that shareholders in BetOnSports were considering suing the company's advisers, Evolution Securities and Baker Tilly"

Source:
: http://www.forbes.com/2006/08/17/betonsports-carruthers-bail-cx_po_0817autofacescan02.html

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April 07 incorporation retains exposures



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mid 2008 – financial product manufacture on commission fails

Tax product case forced to settle mid 2008; criticised for illegitimate product manufacture and sale on commission basis launches investigation into suspected underpayments of tax

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2008: use of court to deflect crown proceedings and steal assets

Catherine Elford, Jane Howard, Reynolds Porter Chamberlain, Christopher Semken, with third party off balance sheet secret funder/underwriter mount proceedings using motto, not identifying Claimant(s). Court deceived 07-11. Auditor Kingston Smith and Insurer Markel not told. Costs secured on target's family's assets already charged to raise money to pay lawyers to safeguard public company assets. Action with Tim Manning Simon Rylatt and Sophie Hoffman, Boodle Hatfield to steal assets held by Royal Bank of Canada as well as those charged to RBC. Hidden from RBC Toronto. Secret co-operation with Andrew Clark and David Sui, A&O, hidden from David Morley and Ceris Gardner A&O. Bankruptcy to purchase target's intangible assets from trustee in bankruptcy (civil relief for white collar offences)

Case assigned to Master Leslie in the High Court

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June 2010: TRANSPARENCY REPORT ABOUT IMPORTANCE OF INTEGRITY

Nigel Tristem Head of UK Audit emphasises "integrity" ten times whilst simultaneously telling the Court he was the auditor of G4S (listed) for December 2006, (he was not) and he was the independent expert who committed to provide evidence in 06 (he was first trained by Bond Solon in 08, paid for by RPC). Notes of meeting 20 November 06 (reporting meeting) were withheld by RPC; as were the notes after 2.5 hours modification; as emailed and agreed with Ian White and Peter Souster: Elford gave her own evidence that Baker Tilly does not back up emails (June 2009). Trial purged of any of the relevant evidence. Witnesses, SFO, FSA, CIB, court, April 11

source :
http://www.bakertilly.co.uk/SiteCollectionDocuments/Transparency_Report_30June2010.pdf

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June 2010: TRANSPARENCY REPORT ABOUT IMPORTANCE OF INTEGRITY

He omitted to tell His Honour Judge Seymour that:

- the independent assurance report on FSMA 2000 was not provided to the retail customer who the court had ruled was entitled to the benefit as a matter of public interest;
- he knew what that report should say and had recommended that he should provide it in writing to the FRC; that an adverse report on books and records ("B&R') was incompatible with an auditor authorising release of figures to the market; that the removal and back-dating of the removal of the adverse report was the same as the auditor resigning without reporting; that his failure to secure delivery up from Barlowe Lyde & Gilbert, obstructing access to records created or commissioned by PwC, was fatal to the opinion (not "weakening it") in particular those showing the agreement between PwC and A&O to doctor public company accounts to exclude the costs of proceedings to gain access and report to the FSA and Sec of State;
- an "application for payment" is a periodic reminder in regard monthly book keeping services or other services and is neither a bill nor represents a VAT taxable supply; cannot sue

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June 2010: TRANSPARENCY REPORT ABOUT IMPORTANCE OF INTEGRITY

- notes of meeting 20 November 06 (reporting meeting) were withheld by RPC;
- the notes were modified over a period of 2.5 hours, to refer to documents which were not available at the time of the meeting to "point the finger" at PwC and A&O; shipment crates were manipulated and "copied"; and notes were found to have been e-mailed and agreed with Ian White and Peter Souster;
- Elford gave her own evidence that Baker Tilly does not back-up emails (June 2009). No evidence came from the IT department. Copy of version in trial had been doctored and referred to dates of public company announcements that had not been notified; referred to the DTI instead of the FSA as regulator of the market; and referred to the victim as having "resigned", when, had there been a resignation, no opinion would have been required (reasons for a resignation are notifiable); and
- "trial" at first instance purged of any of the relevant evidence.

  Witness from late 2010: SFO, FSA, CIB, court esp. April 2011.

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April 2011 lack of candour to be deprecated

2007-2011 risk swap and court action with RPC stated on 28 July 09 to be to "protect reputation". RPC forges documents extracted from stolen public company records accepted by Baker Tilly, to deliver a public interest assurance report in 06 for which it was unlicensed and therefore uninsured. Baker Tilly UK Audit LLP reports as auditor on RPC

21 April 2011: Master Leslie on Semken and RPC *"lack of candour to be deprecated"* (HQ0802310; A/2009/1711)

10 June 2011, Equiniti Financial Crime Designation on public company register further to attempt to bankrupt owner and steal a 29% stake in a public company. Co-operation PwC (Jack Naylor), A&O (Andrew Clark and David Sui); RPC (Jane Howard and Catherine Elford) with Boodle Hatfield (Tim Manning Simon Rylatt and Sophie Hoffman)

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Audit revenue under 1% of turnover

Baker Tilly main market audit	Audit fee £'000	
Bloomsbury Publishing (lawyer RPC) Mark Harwood, statutory auditor (note)	(49%)	£ 337k
CML Microsystems PLC	(19%)	£134k
London Associated Properties PLC	(20%)	£140k
Treatt PLC	(12%)	£ 82k
TOTAL 0.9% of £69m turnover in 2010		£693k

note: individual handling tippee information from Fiona Kelsey, PwC, that was knowingly suppressed together with RPC, Christopher Semken (HQ08XO2310)

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2006 Baker Tilly partners act with others to suppress fact of PwC resignation without reporting from the market

September 2007 – letter to Laurence Longe, National Managing Partner, Baker Tilly:

"seldom could it have happened that a CEO and FD of a main market public company walks into a mid tier firm as yours with an opportunity as this to report on firms supplying the main market – the SFO wants to know "Why have you not reported?"

source:
in the public domain

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Lobbying the House of Lords by Laurence Longe for mid tier firms to be empowered on risk

11 November 2010 – "supplementary memorandum" by Laurence Longe, National Managing Partner, Baker Tilly UK Audit LLP submitted to the House of Lords promoting the "mid tier" to report on the bigger firms by being part of Risk Committees "advising on process" independent of the auditor

source page 2 :
http://www.parliament.uk/documents/lords-committees/economic-affairs/auditors/EACSuppEv.pdf

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FIFTH HEAD: ABUSE OF COURT (issued 24 August 2012)

BY Ds SEEKING TO SALVAGE DAMAGE TO Ds' REPUTATION (GOODWILL AND PROFIT STREAM) BY DESTROYING THAT OF C

5) Actions taken by Ds against C to salvage damage to Ds reputation at the expense of C's, including in court (abuse of court):

a. in the knowledge of Ds that the civil courts do not grant relief for damage to reputation that a party has brought on themselves and for which they have only themselves to blame.

This has already been admitted on **28 July 2009 by Christopher Semken**, of counsel, who had secured only a pyrrhic success in an Approved Judgment handed down on 17 July 2009 (**HQ08XO2310**), that explicitly recognised the 2006 court orders to C's benefit, independent of Ds, and the existence of a contract with reference to these including in regard delivery up to C of her records and data (evidence); evidence within Ds knowledge or in its head; and an opinion under FSMA 2000 (the courts do not need a further trial on facts, as this is res judicata).

This was a fresh pleading that first saw the light of day on **28 July 2009**, in proceedings to which Ds were not a party.

Christopher Semken purported to be instructed by Reynolds Porter Chamberlain, 138 Leadenhall Street, an unincorporated partnership that ceased business and had no licence or employees from 30 April 2006, three years and three months earlier.

This was a firm with which he had enjoyed an earlier relationship trading on the basis of extending the law on "vexatious litigants" on know-how advertised on the internet by Simon Love of RPC in connection with realizing value from the property of the estates of deceased to pay counsel.

The clients included counsel, Penrose Foss, who had taken the action against their former clients, and now a member of Baker Tilly UK Group LLP, from 1 April 2012. Ms Foss popped up on **17 July 2012** in the SCCO in connection with these matters. She was heard in the court, that had been unable to provide a Notice of Issue which identified the Claimants behind Reynolds Porter Chamberlain LLP, who had made the request for a costs trial, paid over £5k for a three day trial, they said, and then walked out half way through Day 1, 17 July 2012, with Simon Goldring, member, telling the SCCO just before walking out that his papers "had disappeared". These had been sealed on 16 January 2012 by the SCCO and marked on a Certificate of Service signed by C "*received with thanks on behalf of Simon Goldring*".

His walk-out left behind Ms Foss; a member of Wragge & Co LLP, not previously appearing, as a non party in these events; and a costs draughts-person instructed, it seemed, by no-one.

This person had not attended the previous hearing, may or may not have been informed on the identity of the Claimants (non parties), if he knew he was not divulging his knowledge to the court. However he had earlier told the court that a three day trial was required.

Ms Foss gave live evidence without notice or the opportunity for cross-examination to the effect that:

i. Ds were behind the transactions, effectively, to escape the consequences of the contraventions of the orders from 2006.

Ds did not succeed in securing a nil assessment as opposed to a strike-out and the trial is adjourned indefinitely. The SCCO has referred Ds to the Official Solicitor.

Ds have not filed accounts showing appropriations to a reserve for these consequences and the fatality caused by the 2006/7 transactions, including:

1. Special Purpose Vehicle (SPV) without audited history to seek to separate goodwill from contingent and fatal liabilities;
2. The benefit of HMRC financing on the basis of a tax free incorporation, that could not be properly justified without the SPV;
3. Distribution of the proceeds of fixed asset investments pre 31 March 2007 without audit; and raising of debenture guaranteed financing (Royal Bank of Scotland) secured at the time the priority was given by goodwill which had not been audited and redeemed from distributions of earnings before accounting for the contingent liabilities and fatalities pre 31 March 2007;
4. As accountants, Ds know that they cannot lawfully achieve an outcome on incorporating from a partnership to LLPs, which is different with a SPV (Baker Tilly UK Holdings Ltd), to without an SPV; or by using short accounting periods, so the 27 March 2007 (or thereabouts) balance sheet effectively drops out of account.

5. ATTACK ON C'S REPUTATION AND RELATED BY Ds: DETAILS

The following are relevant admitted facts/undisputed facts/public domain information ("irrefutables"):

1. On 1 August 2006, C secured a COURT ORDER (reference 2200613/2006) under the **Public Interest Disclosure Act 1998** entitling her to:

1.a. delivery up to her of records and data to which she was entitled to unfettered enjoyment, as being her property; together with

1.b. the entitlement to an INDEPENDENT assurance report on historic financial statements in respect of FSMA 2000 on that evidence from an individual expert.

Underlying facts were never disputed and were formally admitted by around 8 August 2006 or shortly thereafter, rendering any trial to establish facts redundant; the effect of which was that,

1.c. as of that date, **1 August 2006**, C's independence, including right to enjoy unfettered privacy, autonomy, family life, capital wealth and absolute vindication in regard the public market was assured in the courts as well as the market and national press.

This vindication was ratified by an unprecedented Regulated News Service ("RNS") announcement on **6 November 2006**, crediting C with a corporate turnaround in adverse market conditions (2003 to March 2005), achieving a "BUY" recommendation on the shares; and an apology for the events that had taken place, with national press coverage of the vindication.

2. Since then Ds have ruthlessly and callously undertaken an unbroken and continuing six year campaign of:

2.a. **systematic denigration** of C (and her family);

2.b. **malicious acts of corporate and personal vandalism**. These have been targeted at the destruction of the Company which C had successfully co-founded, securing a main market debut in March 1996 at a maiden valuation of £34m, and £178m three years later, with a cash exit valuation £200m; a set of actions culminating in:

2.c. **Ds obtaining false so-called "charging orders" from Master Eyre in September 2009** that Master Leslie declared on 21 April 2011 the court had not given on the Company.

This was in circumstances in which (i) Ds were in possession of insider information in regard the quoted securities (so could never trade in them) and; (ii) there was no proper entitlement to any pecuniary benefit (a trial which is split, liability, causation, quantum, at liability stage gives no money benefit).

Further, Ds placed these interim charges on the public register run by Equiniti, share registrar, without notifying C; the court; BDO the auditor, of what they had done and in flagrant contravention of FSMA 2000, transactions in quoted securities. This was until 10 June 2011, 21 months later, when Ds were found out by Equiniti, who removed the so called charging orders, and placed a FINANCIAL CRIME designation, 178-11 on the register.

The effect of blocking transactions in a 29% stake, owned by C, was to block the sale of the Company and dealing in shares, rendering the valuation of the Company nugatory and shares incapable of sale including lawfully under FSMA 2000;

2.d. retaining; passing without authorisation from C to others; and **refusing to return to C her property,** being:

i. personal data and evidence,

ii. personal financial information;

iii. privileged instructions to her lawyers;

iv. statutorily confidential data, records and information; and

v. price sensitive information, (the duty to retain confidentially, and use properly, belonging to C and not Ds); and, further,

2.e. **using same maliciously against C and her family** for the entirety of the period, including but not limited to, in the unlawful and irregular use of **pre-emptive remedies in court.**

These have been used effectively in reverse, ie not protectively, with submissions and statements properly justifying the actions and accepting responsibility for damage (Part 25 etc), but, rather, maliciously and as a tactical devise to:

i. damage C's reputation irretrievably;

ii. frustrate C's legal right to civil relief;

iii. compel C to put up with circumstances of servitude, uncertainty and forced labour for no money, as well as trapping C in court hearings, brought about by telling the court that C had:

2.e. iii.1. CONSENTED to DISPENSATION OF SERVICE (untrue);

2.e. iii.2. CONSENTED, informed of Ds actions, to VACATING HEARINGS to voice objection and repair damage (untrue, C did not consent);

2.e. iii.3. CONSENTED TO WAIVER OF PRIVILEGE ON C'S PRIVILEGED DATA that was under the physical control of Ds on purpose trust for the sole purpose of complying with delivery up to C in 2006 (above);

2.e. iii.4. CONSENTED to Ds putting in AMENDED PARTICULARS, when there was no CAUSE OF ACTION ab initio, (untrue, C did not consent), agreeing to restrict her response to CONSEQUENTIAL (untrue, C did not consent);

2.e. iii.5. RECEIVED ALL RELEVANT DISCLOSURE for establishing the true position for which Ds sought relief from the court, being damage to Ds reputation that Ds had brought on themselves. In fact:

2.e. iii.5. a. Ds, through Christopher Semken, did not tell C this was the issue for which they sought relief from the court until 28 July 2009 after a "trial", (court fees paid by non parties), nearly three years after C's life was paralysed by Ds;

2.e. iii.5. b. It was not until 5 May 2011, in the wake of unlawful charging orders destroying the Company, before their belated removal by Equiniti share registrars, that ICAEW revealed that Ds were no longer licensed to carry out statutory audits, from 7 January 2005. An "anticipatory" licence from ICAS, did not come into practical effect until 1 April 2007, in the name of Baker Tilly UK Group LLP, leaving Ds with no audit licence from 7 January 2005 to 1 April 2007, with the full consequences. This included:

- existing audit clients with a December 2004 year end, as G4S, (signed May 05);
- those reliant on audited results for assurance reporting for fundraising, as SANCTUARY, raising money through Evolution Securities, who, with the market, were let down by Ds, who they sacked, their CEO being forced out, the business goodwill going with him, and the company sold at a reduced valuation the following year;
- Bet On Sports, audit client, with Evolution, NOMAD, floated summer 2004, suspended summer 2006, 22 criminal charges in the US, Evolution under enquiry, Ds taking a "back seat". However its July 2006 printed terms of business stated complaints could be made to ICAEW or, for audit, to ICAS, thus giving an impression of dual licensing and not no license at all, points bound to interest regulators and enforcers and Ds evidence to the US investigations and charges;
- Bertram & Anors v Baker Tilly ("the Guy Hands case"), summer 2006, the sale retail on commission by Ds of film financing tax arbitrage product, unlicensed by the FSA, that Ds had manufactured, that was devoid of commercial risk. These mimicked the investment products that C had been turning down in the late '80's and early '90's, with Ds wrappering counsel's opinion in the product manufacture

2.e. iii.6. C's obligations to file for relief on six year deadlines by way of damage mitigation;

2.f. seeking, unlawfully, with or without others, to **impose UNLESS conditions on delivery up to C of her property and data**, started in December 2006, by Barlowe Lyde Gilbert LLP, for and with PwC, in attempts to negotiate unlawful undertakings that C would not usher property and data in a Claim against PwC or to discredit it; continuing through 2007, with attempts (November 2007) to coerce C into an undertaking that Burges Salmon LLP were responsible for Ds defaults, failing which C's property and data would not be returned;

2.g. **frustrating C and her accountants and auditors, Egan Roberts**, from being able to prepare her annual financial statement of affairs for the year to 31 March 2006 and all following years up to and including months to July 2012;

2.h. **interference in vital business and personal relationships** with bankers (Royal Bank of Canada; HSBC), causing the break in accountability to C and Egan Roberts; former auditors with ongoing business and personal relationship (PwC), now destroyed; family and business lawyers from the mid '80's (Allen & Overy); co- investors; investee companies, their directors and staff and families, including the closing of Headway Consultancy Limited, space and defence contractor co founded and managed by the Technical Authority of the European Space Agency, a relationship from 1987; law enforcers, in particular, CIB, FSA, SFO, and their consequent default on the return required from them by court order by 21 April 2011, as a result of false information emanating from Ds, that they were justified in securing the charging orders that stopped the Company being sold, ie closing it.

Non parties for Ds gave the false impression C was a common thief and cheat who had commissioned £30k of work, had been billed but would not pay because she no longer needed the work.

Ds have punished C by securing she has been excluded from the market for the calendar years from 2006 to date, a period long enough for client and supplier goodwill to be dissipated and investors/fund managers to "forget" C, credited with achieving being a CEO of a main market company aged under 40, a valuation in 1999 of £178m based on real recurrent profits and not "bubble", typical contract value in 2005 between £13m (over 2.5 years) and £22m (over 6 years); and the successful post millennium turnaround to March 2005, giving rise to the BUY recommendation from Sponsor Evolution, as well as regular approaches by those seeking to head hunt C and/or use the Company as a platform for European build-ups, led by C.

2.i. **terror and uncertainty** focussed in particular on old and vulnerable members of C's family until their untimely death and/or permanent weakening and disablement through trauma and oppression, together with compulsion to work in circumstances of servitude without pay devoid of dignity or relief, or access to normal levels of medical care together with alienation from their capital and records, lawyers and bankers, whilst retaining circumstances of uncertainty as to who it was behind this war of attrition and terror campaign.

This was until 17 July 2012 when Penrose Foss gave impromptu evidence of off balance sheet litigation funding and intention to deprive C and her family of the benefit of civil relief in regard the Herbert Smith proceedings (**HQ06X01803**, **Herbert Smith LLP v Mira Makar,** June 2006, Defence and Counterclaim, conservative estimate of damages £21m);

2.j. attempts to take **dishonest advantage** of the fact that the Land Registry entry recording the **priority charges of the Royal Bank of Canada, over C's homes in the Barbican**, granted in 2005 and 2006, was **not entered on the register until July 2008**, with a view to driving C into bankruptcy by July 2010, upon which a trustee in bankruptcy could set aside those charges, on allegations that the charges were not in fact granted in 2005/6 but at the later date;

2.k. **Secret negotiations with Boodle Hatfield**, including through intermediaries, in particular Simon Rylatt and Sofie Hoffman, who had previously consented in C's name and on her behalf, without her knowledge or authority, to giving up client monies returnable by Russell Jones Walker; and have responsibility for payments of bribes to remove false interim charges for which permission had been granted on the basis they had been procured by forgery and deception, together with acting with others to secure third party debt orders over C's HSBC's accounts, with a view to laundering the bribe through them and calling it together with the Client Monies given away, "loan to C".

3. The Order was secured on C's behalf by Russell Jones Walker, now **Slater & Gordon UK LLP**, under a contract with ALLIANZ LEGAL PROTECTION ("ALP"), cover for legal expenses and disbursements confirmed by ALP to C on **30 June 2006.**

4. On or shortly after **24 August 2006**, Michael Taub, advertised expert in regulatory investigations with 66 (sixty-six) court appearances, undertook the independence verification process of the firm of which he was then member. The process followed was hopelessly inadequate, involving email circulation to partners with list of names from whom independence had to be established, and relying on individuals to report jlack of independence.

5. The principals from whom independence had to be established were:

5.a. **Herbert Smith LLP** (HQ06X01803 **Herbert Smith LLP v Mira Makar**, issued **June 2006**, defence and counterclaim £21m), who accepted instructions from C on behalf of the directors and Company on 7 February 2005, further to **Allen & Overy LLP** accepting instructions on 13 January 2005 but defaulting. This was to hold PwC to account in respect of auditor's report signed 27 July 2004 and compel delivery up of proper records, being PwC's resignation on grounds of loss of independence.

These instructions were publicly vindicated in an RNS on 25 July 2005, that there was non compliance with the Companies Act 1985, in regard the insufficiency of proper records, the most notable of which was the resignation notification on grounds of loss of independence and the further notification in April 2006 of the resignation with a false record that there were no reasons associated with the resignation that required notification to shareholders (including the market) and creditors.

Steel J has held on 11 July 2011, 2011 EWHC 3950, 2010 Folio 885 **Mira Makar v PricewaterhouseCoopers LLP**: "*It appears that it is common ground that the defendant decided to resign, but did not actually put that fact into writing for a period of time.*"

At the start of June 2005 **Herbert Smith LLP** declared greater commercial interests with PwC, and in particular their relationship with Tim Pope, head of assurance risk (to PwC) and legal, to whom C was compelled to report, over their obligations to deliver up to PwC knowledge relevant to PwC's duties as auditor in particular to resign citing grounds of loss of independence, and proceeded to delay further issue of proceedings to gain access to the true position from 7 February 2005, the date the instructions were accepted, to 29 September 2005, when they finally requested the court to issue;

5.b. **Allen & Overy LLP**, C's family and business lawyers, and witnesses, in particular individual members and staff (fire Iron Mountain warehouse July 2006, not notified to C or the court issuing the delivery up orders, 0LV30091 **Mira Makar MA FCA v Allen & Overy LLP** ("A&O"), default judgment 15 April 2011, return required from David Morley, senior partner, before Master Leslie on 21 April 2011);

5.c. **PricewaterhouseCoopers LLP**, statutory auditor of the Company and A&O;

5.d. Barlowe Lyde Gilbert LLP, now **Clyde & Co LLP**;

5.e. **Evolution Securities**, operating a split market from 4 February 2005 in contravention of FSMA 2000, the date they withdrew a BUY recommendation and stopped marketing shares in a main market listed Company on grounds not notified, but within the knowledge of Evolution, A&O, and PwC, auditor to A&O and the Company.

APPENDIX 1

Response to public call for evidence by the Ministry of Justice on expenses of Defamation Act 2013 claims after enactment:

8 November 2013

Q1 Do you agree with the scope of the protection? If not, what should it cover?

No, I do not. It should cover:

1) whether the expenses are "voluntary" and do not qualify ab initio;

2) whether the expenses are proper or whether they are on a "winner takes all" basis, ie the principle the "loser pays". This is wrong in law and ought not to have been in the instructions "The issue";

3) whether the expenses relate to a contract in which full disclosure has been made of the party financing the transaction and the party benefitting;

4) whether, in cases where expenses are incurred according to labour time, there have been roundings, making the time incurred uncertain and the reimbursement claim fail on grounds of uncertainty;

5) whether the system used has been independently audited; and the audited accounts provided together with the signed approved time sheets, full budget, and evidence of "shopping around", conditional fees; acting in person;

6) whether counsel has carried out POCA compliance and documentary evidence that they have (not privileged);

7) evidence that the civil courts are not being used to create a "win", the effect of which is that indictment in the crown courts is averted;

8) evidence that counsel is informed of the truth by the ultimate client, who has signed all statements, and is in a position to assist the court to the truth, and not that counsel has been hired by a solicitor to achieve a commercial outcome i.e. the person of no standing is the true party instructing;

9) the fact that judges still operate on the basis that counsel's entitlement to be heard means counsel is asserting the truth; whereas in fact counsel may be acting on blind eye knowledge, and the true position is not before the court. Costs relief in such a case is nil;

10) the fact that "*publication and privacy proceedings*" ought to properly include the use of the courts and explicit recognition that the civil courts are being used perversely to achieve acts of:

- defamation (reputational damage, loss of profit stream);
- malicious prosecution (falsehoods, omissions, impressions);
- double and triple whammies (by discrediting);
- breach of trust (including publication of embargo'ed "judgments" which are defamatory, classification as MENTALLY INCAPACITATED to exclude and steal, use of the MoJ website to advertise a non existent CRO etc);
- theft of personal data and its use perversely in the courts, hacking into the court records and interception of judicial communications in the course of transmission, provision of forged evidence to judges who act as "scribe", use of private investigators to identify sources of leverage on witnesses and victims, private bailiffs, notaries, process servers as intruders;
- harassment of the victims whose reputation is being slaughtered in the civil courts by entrapment and unlawful detention in the courts without saying why, fraudulent misrepresentation and identity theft, purporting consents and undertakings by the victim/witness that they neither gave nor could properly give, and knew nothing about.

11) the fact that the publisher must be unrestricted as is RIPA in its application of the definition of interception (**R v Edmondson & Ors, 2013 EWCA (Crim) 1026**).

12) the Ministry of Justice which must be explicitly included in regard its operations. This includes in regard ensuring POCA and RIPA compliance, DACU, referrals to police and DPP, as well as providing a path that such referrals do not disappear down any of a black hole, internal audit, omitted audit trails, purported orders, judgments without appeal route, use of "*official*" private sector transcribers, RCJCRATU, all "listing" departments and ensuring MoJ carries out immediate review of all courts where the registry and listings have been separated such that there is no quality control in force over "*applications*".

13) provision of digital recording at the end of each hearing at nominal charge. These must be independence from "*official*" transcribers, or compulsion to use them; and all public documents should be accessible on the web, without having to pay on inspection.

14) provision of a bar code on all court documents that is identified with counsel and changes of counsel with loss of knowledge should automatically mean no recovery.

15) use of expenses as a "*litigation weapon*" to destroy and asset strip a target/victim whose reputation is being trashed in the courts and as a punishment for requesting the court to issue. Only banning recovery will stop this repulsive habit which has made the UK courts very unattractive internationally.

16) the apparent lack of exams for court officials including those who drafted these notes before taking up post/office and make fundamentally wrong statements such as “costs are a punishment for losing”, branding the loss as a “non-meritorious claim”.

17) the fact the SCCO is operating without notice of issue. Its masters have not been examined in VAT and what constitutes a “bill”- this could be a wider malaise than merely in the SCCO.

18) the fact that inflated expenses have become a litigation weapon, and so have ancilliary matters e.g. Part 36 offers, and forced “mediations”. These weapons, together with out of court blackmail, and willingness of aggressors to bring about the circumstances that mean that death is inevitable, demonstrate that the courts are no longer fit for purpose. They should have their operations immediately suspended pending full enquiry into the linkage between death and destruction of reputation to enable unlawful and irregular activity to continue and flourish.

Q2 Do you agree with this process? If not, how should it be improved?

No, I do not.

1) The “*application*” is vulnerable to disappearing before read or heard, and otherwise being truncated.

2) The “*application*” is vulnerable to being rebuffed by a so-called order, that purports to come from a judge, who has in fact never seen it, or, if he has, without the papers that are required to understand the prejudice.

3) “*Notification*” between the parties is ineffective because that gives rise to harassment by those with no capacity acting for and with beneficiaries whose identity has not been revealed.

4) Destroying a target’s reputation in the courts to keep tainted profit streams going, involves the target being blocked from access to their own resources as these will be under the control of the offenders acting together.

5) The government is wrong in believing those who can pay should, because the courts are being used to steal and the victim’s assets, data and money are being used to conclude the asset stripping and land the target in the bankruptcy court, discredited, humiliated and ruined.

6) The MoJ operates a call centre that blocks communications to Ministers Grayling and Grant, such that neither is in a position to be informed. MoJ does nothing when it received reports of abuse from MPs of victims beyond referring to prosecutors who do not prosecute.

7) the MoJ's agreement with police (December 2012) stated to be for protection of witnesses and victims, is stated by police to be "policy and strategy" and with no delivery capability.

8) HMCTS is currently calling in police to forcibly remove victims/targets of reputational damage from the court and to cover up on the destruction of certificates of service of claim forms which are fatal to those seeking to preserve tainted profit streams at the expense of the witnesses who become their targets and victims.

9) HMCTS staff see no value from those working in Petty France. It is hard to disagree, including the absence of line management, refusal to admit a mistake or correct it, lack of audit trails, access to the computer file, and the prolific use of "bundles" to create a parallel set of proceedings.

10) A basic reputational damage claim, should give rise to an admission. The failure to admit or block others filing on a deemed admission, should at the least require a referral to a prosecutor with mechanisms to secure a return to the judicial system.

11) The above should be sufficient to debar the defendant from being heard on quantum (a fatal claim leaves them with no capacity).

12) Damages and loss of opportunity where circumstances have been created that have made death inevitable (not an offence per se unless there is intention to cause serious harm), should mean that damages are uncapped, with calculations based on those amounts that would be recoverable on disgorgement in the crown court from when the offending started. This basic matching does not currently exist.

13) Expenses should be de minimus in this basic model. There should be no expense relief for discovery (production) since the relevant papers should be delivered up before the first claim form is served. Delivery up orders with penal sanctions should deal with all evidence. A "trial" should be a voluntary matter, if and only if, both sides sign up to a mandatory issues list, and no intermediary is involved.

14) Expense recovery for those who cannot be bothered to turn up, and send "representatives" should automatically be nil, unless they are sick or immobile, in which case televised attendance/phone hearings/hearsay notices should be deployed as far as possible.

15) Quantum should be clear from the start, and claims "just to clear a name" should be discouraged. Currently the courts deal brusquely with those on a draft indictment list who then come off i.e. put no weight on tainting, stress and distress. That being the case, those filing because their nose has been put out of joint should be treated curtly and at the bottom of the queue (or as filler activity in the vacations).

Q3 Do you agree with the approach of allowing full costs protection for those of modest means, partial (capped) protection for those in the 'mid' group, and no costs protection for those with substantial means? If not, what alternative regime should be adopted?

No I do not.

1) Expenses are very flexible. They do not go by winner and loser. A person can be a winner and get no relief. A person can be a loser and get full relief.

2) Voluntary expenses do not qualify. The request should not be made at all. A "nose out of joint" claim is very close to voluntary expenses, and at the very least ought to be low priority, after all the cases of true hardship have been concluded.

3) HMCTS has no backlog reporting or MIS, management information systems, to inform on what the proceedings are and whether hardship is involved or not. This must change.

4) Proceedings where the court is being used to trash a person's reputation maliciously or preserve a tainted profit stream by wiping out the witness must be identified and stopped immediately, as must those where the beneficiary is not identified and is operating off balance sheet using the assets of his victim, supported by complex arrangements which if unbundled, would show expenses are voluntary.

Q4 Should there be any further clarification of the level of means for each group? If so, what levels of means would be appropriate?

Yes.

1) The comparative means should never be revealed and each side should be treated equally. This is a fundamentally private matter and a party should have access to justice without divulging any more than:

   a. their address for acceptance of service,
   b. identity,
   c. relationship to the other,
   d. notice of funding,
   e. VAT on financing,
   f. underwriting arrangements, voluntary expenses excluded,
   g. all expenses (not cherry picked expenses),
   h. off balance sheet funding,
   i. financing contracts,
   j. insurance contracts,
   k. full details of mediation (wrongly treated as secret now, thereby penalizing those of good faith),
   l. full details of shopping around in the event a party is not in person,
   m. early provision of statement of the applicable law,
   n. contentions on law, and
   o. whether any indictable offences are in point and have been reported.

Q5 Do you agree that the test of 'severe financial hardship' is the right test to exclude the very wealthy – whether individuals or bodies (including, for example, national newspapers that report a loss)? If not, what is the appropriate test?

No.

1) This approach is fundamentally unsound. Social services, citizens advice, bar pro bono, RCJ Advice, lawworks, housing benefit, legal aid, other means tested activities proliferate. The Court of Appeal has its own disastrous Court of Appeal Scheme.

   This ensures effectively that an appellant does not get heard, but an unidentified aggressor does, with the papers of the judiciary contaminated. Orders are truncated, appellants are bullied by UNLESS orders, papers are lost and shredded before being heard with little or no chance of an airing four and a half years after issuing and no regard paid to any STAY that might be in force.

2) A "victim centric" approach would do away with all these obstructions to access that mean that achieving access before dying is a remote to non existent prospect.

Q6: Do you agree that a party in the 'mid' group should pay a 'reasonable amount'? If not, what is the appropriate test?

No.

1) This approach is about making arrangements for representatives to be paid. Indeed in one report recently it asserted that £3m was required. This is ridiculous.

2) Those seeking to make money out of the misery of victims and their dead and dying dependants should not be rewarded by the courts. They ought to find a more honest way of making a living such as serving in the local CAB, that has to cope with the victims and the humiliation and indignity they are made to suffer, as they watch their dependants die or permanently lose their livelihood and careers.

Q7 What factors should be taken into account in determining what is a 'reasonable amount' for a party in the 'mid' group to be liable for?

1) Postage stamps, paper, toner cartridge, bus fares, nominal fee for a digital recording of proceedings (eg 50p per disc), expenses of copies on inspection but not at current rates, broadband, expenses of public purse application for fee remission.

2) Public purse funding for someone unfairly given a general CRO is not available until after the event. This is a breach of every human right that exists, and is a device that encourages bad practice as it makes a CRO a device to get rid of someone in judicial terms because they are "inconvenient".

3) In such circumstances a person defamed has no recourse at all.

4) The same applies when a judge retires having given an aggressor "permission" that properly they could not give, in particular defamation judges from whom defamation objections have been withheld i.e. they decide without the full and true picture. There is no mechanism for repair because they have left, and if informed, will acknowledge the position and no more.

Q8 What evidence do you have on the legal costs for claimants and defendants in defamation cases? We would be particularly interested in information on the average level of costs for each party and how this varies across cases.

My evidence is that the costs are:

1) public purse funding for issuing the Claim Form and transcripts;

2) first class postage stamp for service of the claim form and again for service of the notification of entry of judgment;

3) paper, printer, photocopying, broadband etc;

4) bus fares to the court.

My experience is based on a Claim which is not contested and is fatal to defendants, damages starting at £200m. The defendants did not acknowledged service but should have filed an admission. Their expenses are therefore nil. I was obliged to provide their auditor with a copy of the Claim Form when it was issued for legal reasons. I took my file copy to them and waited while they copied it. This saved me the photocopying expenses which would otherwise have been 10p a sheet. This is good service as they must by law pass it on.

The defendants have organised that the certificates of service of the Claim Form were destroyed and not entered on the computer, and that judicial case communications went to them rather than the judiciary for whom they were intended. However this exercise was executed by court officials so there was no expense to them. They have also arranged a defamatory "extended CRO" email to be sent to the MoJ to be uploaded onto the MoJ website, in the period after service on them of the fatal Claim Form, when they no longer had capacity and ought to have called in administrators. Again someone with access to court computers and email did this, so no expenses were incurred.

Q9 What evidence do you have on the financial means of claimants and defendants in defamation cases?

Plenty. A person who has knowingly destroyed their own reputation, operated opportunistically on what they could get away with, and used the assets of others to block a fatal claim against themselves, will stop at nothing. They will exhaust the capital of their targets (witnesses), their family and dependants. They will continue to spend thereafter because the reputational damage of their skeletons coming back to life will automatically bring their activity to an end i.e. they are fighting to survive and are or become ruthless.

Q10 What impact do you think the proposals will have on businesses? We would be particularly interested to understand the impact the proposals may have on Small and Medium sized Enterprises and Micro businesses, as both claimants and defendants.

Totally destructive. This type of "litigation" and use of "expenses" is yet another financial product, such as pre pack administrations or auditors and solicitors operating together to access underwriting markets the auditor cannot get to alone, which create a set of circumstances in which the voiceless innocent are destroyed.

When a target is wiped out, the public and private companies in which they are interested are also destroyed, family breadwinners are made redundant, families are not supported, careers are ended, untimely deaths and permanent disablement proliferate.

The legal industry focus on purporting to limit liability to acts of conversion, and are not held to account for damages, consequential damages, loss of opportunity and breaches of human rights for which only the state can be held to account. In other words such financial terrorists are not curtailed or held to account, to multiple levels of remoteness.

Q11 Do you agree with the proposed additional provisions? If not, how should they be improved?

No.

1) Improved by abolishing.

2) A person's means are private. If they have been asset stripped, humiliated, tormented, harassed, forced to watch dependants die, had their money stolen, lost years of their life, been through multiple means testing aberrations, the last thing in the world required is to continue that process.

3) Court officials do not keep confidential information confidential and habitually give it away to anyone blagging their way in calling themselves a "solicitor".

4) There is no mechanism for ensuring that documents get to judges as they typically get deflected or key parts truncated, therefore the suggestion of an "application" is not workable.

5) There are no judicial issues and a judge is not required. HMCTS had a perfectly good fee remission office that could deal with such matters, did so and was audited: it decided to close it, and decided instead to staff the fee remission function by the non specialist fees staff, who have no idea how to handle fee remission clients, victims and witnesses, a speciality.

   It is ridiculous to close a functioning skilled department that is audited, and replace it by judges (with whom much of this ends up) who are not experienced in handling victims and trauma, as the fee remission specialists were.

6) This suggestion has all the hallmarks of a job creation exercise.

Q12 Should there be any specific provision in the rules concerning which party should pay the costs of an application for costs protection? If so, what should the provision be?

Yes, if the idea goes ahead at all.

1) The provision should be the same as that of fee remission and handled by the same people, with the judge not knowing or being coloured.

2) Judges often, in the course of deciding an issue, state party A is reputable, and in the conclusions of the judgment that B is not i.e. bending over backwards for one side, with no mechanism to appeal the finding, absent a declaration.

   Second a party using the court anonymously to trash a witness's reputation, i.e. aggressive pre-emptive damage mitigation burden shift, solely in order to attempt to salvage damage they have brought on themselves, will not care about "costs". This is because they are using "costs" as a litigation weapon, to leverage all assets and contingent assets away from the target/victim.

3) The expenses in such cases are the expenses of obtaining a s3 injunction under the protection from harassment act, and of civil restraint orders of the court's own motion, which under the court's duties under CPR 1.4, should not impose expense on the victim/witness.

Q13 Should the Pre-Action Protocol for Defamation be amended to take account of these new provisions? If so, how?

Yes. There should be early examination of whether indictable offences are in point and case directions accordingly.

Q14 Do you have any comments on how the drafting of the rules might be improved?

Yes. They should be scrapped without replacement.

Q15 From your experience, are there any groups of individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this consultation paper?

Yes.

1) Solicitors, accountants, banks and insurance companies and those they hire (notaries, private investigators, private bailiffs, process servers operating irregularly, court "experts" who are not expert, witness trainers), will all benefit at the expense of witnesses, victims and the voiceless. This in turn will undermine HMCTS services, RCJCRATU, fee remission, RCJ Advice, compliance and collections (now being outsourced to this jungle despite warnings from the unions at the devastation this will cause).

2) Those who make money from this industry at the expense of the witnesses and victims, including by moving from QC to judge, allowing it to develop and grow, thereby causing further pressure elsewhere in the system including on the dire circumstances of those trying to keep legal aid and the criminal courts going.

3) Those who exploit the civil courts to make them work perverse by treating a contingent claimant as a "defendant" and controlling the outcome by never revealing who they are and their true objective or purpose. These vandals will continue until curtailed by indictment. These proposals help them, not curtail them.

4) There appears to be a market for a spurious civil claim as a mechanism to avert crown proceedings. This will fuel it. It will not make sure that referrals are made to prosecutors, nor that those referrals which go out of the system come back in with a properly cast net such that those who are innocent can be exonerated and allowed their freedom with a victim's statement in the Crown Court. This currently has limited circulation only.

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