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Joint Committee on Justice
Houses of the Oireachtas
Leinster House
Dublin 2

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Re: Copy of opening statement

Dear Chair and Members of the Committee,

Thank you for the opportunity to comment on the General Scheme of the Defamation (Amendment) Bill. I am an Assistant Professor in Media Law at Durham University. I conduct research on the development of defamation law across common law jurisdictions.

In general, I welcome the Bill. It better promotes freedom of expression on matters of public interest, which is vital to any democratic republic. It also aims to curb abuse of defamation proceedings to silence those who would speak out in the public interest. I recognise, however, that although globally connected this remains a close-knit society, where a person's reputation is not just a commodity but an important right. In many ways, new media has only multiplied the scope and consequence of defamation. Any reform must therefore be careful to strike the delicate balance between the rights. Admittedly, this is not an easy task.

On specific provisions of the General Scheme, I summarise the points made in my written submission.

First, I welcome the reversal of the presumption of jury trials. I understand the theory behind having juries try defamation cases, but in practice they rarely play this role, and their prospect only delays and complicates proceedings and makes them more expensive. There is no doubt that this delay, complication and expense can be gamed by those who would initiate what the General Scheme refers to as 'SLAPPs'.

Second, I recommend a more general serious harm test, rather than the limited serious harm thresholds introduced under Heads 4 through 6. It appears somewhat odd that the General Scheme introduces an early dismissal mechanism (which I would say goes too far), but leaves out a general serious harm test which would help to deal with SLAPPs in a way which more effectively strikes the balance.

I recommend a simplification of the public interest defence under Head 16. As I said in the submission, I think the easy way to achieve that is simply to excise subhead 1(c) there.

On the 'measures against abusive litigation to restrict public participation', or SLAPPS, the protection of public interest speech is obviously paramount, but this always requires a

sensitivity to the facts of the specific case. I am not sure the definition under Head 24 captures this.

In relation to the 'features of concern' under Head 24 and the provision for the early dismissal of claims under Head 26, I think any such provision must make allowance for litigants in person and ineffective legal assistance. Again, this speaks to the complexity of proceedings and the need to strike the balance of rights.

Finally, the early dismissal mechanism should deal adequately with SLAPPs, but it will also likely bar some claims which involve a legitimate attempt at vindication. That may only amount to a small number of cases in practice, but enough to violate the rights to access to justice and reputation which are otherwise held in high regard in this jurisdiction. I think this provision needs a more careful design.

Thanks again to the Committee for the opportunity to speak on this important issue, and I hope the contribution is of some assistance in the necessary reform of this area of law.