

The fallout from the McAlpine saga threatens the role of Twitter in public life

The fallout from the McAlpine saga has led to increasing fears that legal action will have a 'chilling effect' on the microblogging platform. [Paul Bernal](#) argues that Twitter provides something quite special for the media and that it should be nurtured. It's possible a defence may develop naturally from the legal processes McAlpine's team bring about but, if not, we ought to work to develop it.



One of the many issues to emerge as a result of the McAlpine saga is the question of how vulnerable users of social media like twitter might be under defamation law. Lord McAlpine is reported to be planning to [sue up to 10,000 twitter users](#) – and some famous individuals have already been named as among them: George Monbiot, Sally Bercow and Alan Davies.

This aspect of the story has of course been the subject of some intensive tweeting and blogging. The tweets themselves have been analysed as to whether or not they are really 'defamatory' or not – and whether or not Lord McAlpine's legal team will be successful has been the subject of much speculation. [According to the Independent](#), Lord McAlpine's legal team has suggested that the more ordinary tweeters, those with fewer than 500 followers, will be asked to make a donation to a children's charity (plus an unspecified administration fee), while the higher profile figures are a 'separate' matter. Whether or not this will all be successful has yet to be seen – there are many factors in play, as highlighted [in this blog post](#).

Chilling effect

It's a story that will be played out over the next few weeks (and perhaps months) and one which those who are active on social media will follow with fascination – and more than a little trepidation. There's the potential for a great chilling effect on twitter – many people are afraid that the 'powerful' will use this opportunity to try to squash this new form of media, bringing their big legal guns and deep pockets to bear on something they barely understand, but somehow both fear and dislike.

There's also a general feeling that many of those caught up in this mess are, effectively, innocent. As Alex Andreou [asks in the New Statesman](#): 'Can every Twitter user be expected to factcheck *Newsnight*?' It's hard not to think there's something in this – tweeting is very different from reporting in a conventional way, and shouldn't the law reflect this?

In the eyes of those of us who use (and love) the new form, twitter plays a very important role in allowing people to disseminate information, a role that breaks the old stranglehold of the conventional media, and allows 'little people' to play a more active part in society. Shouldn't that role be protected – and even supported?

As the INFORRM blog noted above and other analyses have suggested, under the current law, it is still unclear whether it will be – and the extent to which the current courts either understand or appreciate how twitter really works is equally unclear.

In terms of the current position, only time will tell. For the future, though, we have a rare opportunity. Right now, not only has the role of twitter come suddenly and dramatically into the public eye, but a [defamation bill](#) is actually making its way through the parliamentary process.

The twitter masses

Might it be possible to take advantage of that opportunity – and use the defamation bill as a chance to protect not only conventional journalists but the ordinary people who make up the twitter masses? At

present, it doesn't look as though it would – partly as a result of the way that the defamation bill has come about, through the concerted work of libel reform campaigners over a number of years. When they began their campaign the social media was of far, far less importance than it is now, so it's hardly surprising.

The result, however, is that what's currently in the draft defamation bill wouldn't really help them. They wouldn't get the protection provided to 'website operators' in section 4 of the bill – though the term 'website operators' isn't even defined in the bill, it couldn't be stretched to cover tweeters. Retweeters wouldn't get the advantage of the single publication rule – it only applies to the same publisher publishing more than once. The modified defence of 'honest opinion' might help some, but few of the tweets in the McAlpine case would really count as clearly 'opinion' – and it would take a tweet of great skill to include a proper indication of the basis of the opinion, another requirement of both the existing and the modified form of the defence.

Reynolds defence

Hope might seem to lie in the new, strengthened, defence of 'responsible publication on matter of public interest' – the replacement for the 'Reynolds Defence' which has been developed over recent years to protect investigative journalists. Even that, however, offers little to tweeters – it is a defence designed to help journalists in their conventional work. The defamation bill broadens the defence – to cover more forms of journalism, but it still requires the defendant to jump through certain hoops that don't fit twitter or 'ordinary' people rather than journalists at all.

It does, however, give a clue as to what might be a way forward – a new defence, specially designed for the social media. It might be called a 'defence of responsible tweeting'. The essence would be that a tweet should have a defence if it is based on what *for twitter* might be considered a reliable source.

As Alex Andreou put it, tweeters shouldn't be expected to factcheck *Newsnight* – or indeed many similar sources, whether they be conventional media sources or the 'big players' of the social media world. Similarly, tweeters should not be expected to be experts in defamation law – they should be able to know that in 'normal' circumstances, they will be protected. I don't believe that twitter should be given some kind of blanket immunity – there's little doubt that twitterstorms can do great harm, and it is responsible tweeting that should be supported, not entirely irresponsible tweeting. The current uncertainty, however, helps no-one.

It may be that this kind of defence is developed naturally from the legal processes that happen as a result of the McAlpine affair – if it does, I would welcome it. However, particularly given the opportunity that the current defamation bill presents, setting it down in a statutory form would be even better. Twitter provides something quite special for the media, perhaps even for society as a whole – we should be nurturing it, not chilling it, squashing it or trying to control it.

This was originally posted on [The Justice Gap](#).

Note: This article gives the views of the author, and not the position of the British Politics and Policy blog, nor of the London School of Economics. Please read our [comments policy](#) before posting.

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2. [Twitter has been important for emergency management in the UK local government, especially](#)

during the 2011 riots (19.7)

3. The LSE Impact Blog's new guide to using Twitter in university research, teaching, and impact activities, is now available. (18.7)
4. A new style public interest defence in libel law ensures that rights and interests of claimants, defendants and the wider public are properly protected (17.3)