Libel Reform Campaign
Evidence to the Northern Ireland Assembly's Finance and Personnel Committee
1 July 2013

The Libel Reform Campaign was set up by Index on Censorship, English PEN and Sense about Science to obtain major changes in the libel laws to protect free expression.

Introduction

The Libel Reform Campaign welcomes the opportunity to make the case to the Finance and Personnel Committee that recent changes to the law of defamation in England and Wales should also be embraced by the Northern Ireland Assembly. This document contains a guide as to why the law is inadequate and some case studies on how the law affects freedom of expression.

The Libel Reform Campaign campaigned for over three years for reform of English libel law. The UN Human Rights Committee, the House of Commons Culture, Media and Sport select committee, a specially convened Joint Parliamentary Select Committee and the Ministry of Justice working group on libel all raised significant concerns over the negative impact of libel on free speech. The consensus for reform provided a unique opportunity to overhaul these failing laws which will soon be enacted through the recently passed Defamation Act. The Minister of Finance and Personnel submitted a paper last May on adoption of the then Defamation Bill by the Northern Ireland Executive. This paper was withdrawn in June and without scrutiny by either the Assembly or the Executive, and a decision was made by Mr Wilson that the Defamation Bill would not be adopted by the Assembly. This is a missed opportunity.

This paper outlines our concerns over the impact on freedom of expression of the unreformed libel law of Northern lreland based on our previous policy papers. The substantive law of defamation in Northern Ireland is near identical (except for costs) to the law in England and Wales, prior to the enactment of the Defamation Act. Therefore the same failings that we identified in the law of England and Wales prior to the Defamation Act can be seen in the law in Northern Ireland today.

As Lord Lester of Herne Hill has pointed out, newspapers and academic journals that publish in London often publish in Belfast, so the courts will operate in a situation of legal uncertainty and need to resolve the conflict of law across the UK, the Irish Republic and the duties relating to the European Convention on Human Rights. He also notes that if Northern Ireland fails to reform its law of defamation, in line with its obligations under the Human Rights Act, the Northern Ireland Executive and legislation will be 'vulnerable to legal challenge. It would be highly regrettable if it were necessary to use the power to direct or to resort to expensive and lengthy litigation'. Professor Michael O'Flaherty of the Northern Ireland Human Rights Commission also makes this case noting that the law on defamation, if left unreformed, may breach the Executive's obligations under international human rights law.

There is significant public pressure for this reform. Over 60,000 signatories backed the Libel Reform Campaign's online petition; 60 organisations backed our calls for reform – including the Royal College of General Practitioners, Amnesty International, the Publishers Association, the Royal Statistical Society, the University and College Union, Mumsnet and Christian Aid.

Reform of the libel law in Northern Ireland will require:

- easier 'strike out' of trivial or inappropriate claims
- more effective and clearer defences
- modernisation to accommodate the internet
- rebalancing of the law to protect the ordinary individual or responsible publisher
- a reduction in costs (and therefore more equal access for all parties)

Reform could be achieved through the adoption of the Defamation Act by the Northern Ireland Assembly, or alternatively, through the Private Member's Bill that has been drafted by Mike Nesbitt MLA.

WHAT SHOULD LIBEL REFORM ACHIEVE?

1. Easier 'strike out' of trivial or inappropriate claims

1.1 Higher hurdles for launching a libel action

To avoid the expense (and the associated chill) of a libel action that falls below a reasonable threshhold of likely harm, claimants should be required to show that publication in the jurisdiction is likely to cause serious harm to their reputation in Northern Ireland, given the extent of publication outside the jurisdiction. This will prevent the phenomenon known as 'libel tourism'.

2. Stronger defences

2.1 A statutory public interest defence which is clear and effective

To recognise the public interest in free debate about matters of power and responsibility, to protect the citizen journalist, to hasten resolution and to overcome the current restrictive, common law Reynolds defence, which is geared towards the interests of the national media. It should be a defence that the publication, whether report or opinion, was on a matter of public interest. This defence would be defeated if the publication was malicious or reckless. Any requirement of responsible publication must allow for the nature and context of the publication.

2.2 Fairer defence of justification (truth)

To resolve ambiguity in meaning, where the defendant claims the words are justified, in favour of permitting publication rather than punishing it. The meaning of the words complained of should be one which the defendant reasonably intended; and which is likely to have been perceived by the reader, rather than any possible meaning asserted by the claimant.

2.3 Strengthened defence of fair comment (honest opinion)

To replace the existing fair comment defence which is not well defined and overly complex. The defendant should merely be required to hold the opinion honestly, based on one or more facts known at the time. The defence should cover all expressions of opinion.

2.4 Extension and updating of statutory qualified privilege

To ensure that the statute is up to date and consistently applies the principle of qualified privilege (which describes privileged communication where there is some protection from libel action — such as the fair and accurate reporting of assembly debates and the provision of timely information about court proceedings) in accordance with the need to protect the public interest in transparency. Qualified privilege should include more international settings and meetings, including the proceedings of NGOs and scholarly research.

3. Bringing the law into the internet age

3.1 Application of a single publication rule

To abolish the multiple publication rule where every download of online material represents a separate publication and to limit liability for archive material to one year from original publication. The law should apply a single publication rule with a limitation period of one year from original publication, except in extraordinary circumstances where the interests of justice so demand.

3.2 Updated provisions for online services
To protect free speech in the context of self-publishing and the internet age, and to overcome the privatisation of censorship whereby service providers and forum hosts remove content published by others in response to a threat of libel action. Claimants should be required to approach the author or primary publisher of the words complained of, where this is known, to seek correction or removal.

4. Preventing bullying by powerful complainants while enabling individual citizens to protect their reputation
Restrict the ability of companies and other non-natural persons to sue in libel
To stop the libel laws offering greater protection to those who already wield greatest influence in society and to prevent cases of libel bullying. Cases should only be allowed to proceed where the claimant shows that the publication of a defamatory false statement has or will cause actual financial harm.

CASE STUDIES

The following case studies are drawn from the *Free Speech Is Not For Sale* report[1] (2009) and the *Case for a new Public Interest Defence* report[2] (2012) and demonstrate the way in which English libel law has been used to stifle free speech and prevent legitimate discussion of matters in the public interest.

DR PETER WILMSHURST'S STORY

Claimant: NMT Medical Inc.
Respondent: Dr Peter Wilmshurst, consultant cardiologist, UK

'I spent almost all my free time for four years and much money defending three defamation claims brought in England by an American medical device corporation, NMT Medical Inc.

At a medical conference in the USA, I expressed concerns about the accuracy and completeness of the presentation of the results of a clinical research trial performed on patients in the UK. I was the principal cardiologist in the trial, which was sponsored by NMT and used its device. I was sued for defamation in England when some of my comments in the US were published on a US website.

My concerns about the device have been vindicated by publication of a large correction and new version of the scientific paper in which false and incomplete data had initially been

[1] http://libelreform.org/our-report

[2] http://www.senseaboutscience.org/data/files/Libel/The_Case_For_A_New_Public_Interest_Defence.pdf

reported and financial conflicts of interest had been concealed. The defamation cases ended in 2011 when NMT went into liquidation.

NMT sued me to silence me and other doctors. We now know that NMT discussed with their lawyers suing two others in the UK and verbal threats were made to another UK doctor. The action against me prevented others with concerns about the safety of devices made by NMT from voicing their concerns including making known life-threatening problems with NMT's devices. After NMT went into liquidation we discovered that other doctors had remained silent about the failures of NMT's devices that have led to patients in this country needing emergency cardiac surgery because of device failures. NMT had used the English defamation laws as part of a strategy to misrepresent the efficacy of their device.

Recently, on a number of occasions doctors have told me in private how their concerns about the English libel laws have prevented them reporting concerns, even when their reports would be privileged. The real cost here was to patients who continued to have NMT devices put into them during the 4 years of my case. Some needed additional corrective procedures and at least one died as a result. Some of these problems may have occurred because doctors continued to use the devices unaware that others with concerns had been successfully silenced. This is why we need a real public interest defence.'

Dr Peter Wilmshurst, cardiologist Royal Shrewsbury Hospital

CITIZENS ADVICE'S STORY

Citizens Advice is a charity that aims to provide advice for the public and improve the policies and practices that affect people's lives. In 2009 and 2010, Citizens Advice were subjected to repeated threats of libel action when it sought to cast a light on a secretive, exploitative and quite possibly illegal practice called 'civil recovery'. This practice involves agents of household-name retailers such as Asda, Boots, Tesco and TK Maxx bombarding those who have been accused of shoplifting with legalistic letters demanding money as 'compensation' for the cost of dealing with the incident, and threatening civil court action if the demands are not paid promptly.

One in four of those receiving these threats are children as young as 11, and others have serious mental health problems. There is no obvious legal basis for such demands – which probably explains why the threatened court action never follows. Most worryingly of all – many of the recipients are guilty of nothing more than an innocent mistake when doing their shopping.

For this practice to remain profitable, its victims have to be ignorant of the relevant law, and of the hollow nature of the threats of court action. Citizens Advice shone a light into this shady world and when they told the civil recovery firms that it was going to publish a report, Citizens Advice was threatened with libel action. Citizens Advice used its entire year's

research and campaign contingency budget on legal advice to publish the report in 2009. The report they did publish was self-censored and not as hard-hitting as it could and should have been.

Citizens Advice is not commenting publically on this subject now. Kate Briscoe of the community legal advice forum www.legalbeagles.info that publicised the threats to Citizens Advice said 'We want to expose the intimidation and threats for what they are. In doing so we hope to inspire and encourage other consumer groups to stand up. We need a public interest defence.'

WHICH?'S STORY

'*Which*? is the largest consumer organisation in Europe with over 1.3 million subscribers. It is independent and not-for-profit and does not take advertising or receive money from government. *Which?'s* mission is to make things better for consumers by empowering them to make informed choices about the products they buy and the services they use.

Which? often receives regular pre- and post- publication libel threats on issues of considerable public interest. For example, when we published our lab testing based child car safety seat report containing a number of 'Don't Buy' recommendations for car seats we thought were unsafe, the manufacturers trade body threatened to sue us for libel and malicious falsehood unless we retracted the claims, published a full apology and paid them damages. We refused and were engaged in costly and time consuming correspondence for more than a year before the claimants changed their position and backed down.

On the pre-publication side, a request to some national double glazing firms for comment on our undercover research exposing potential breaches of consumer law in sales techniques was met with several long letters from a leading national law firm threatening us with a libel claim if the story ever saw the light of day. Again, we refused to back down but only after protracted and time consuming correspondence with lawyers for companies which could have simply given us a comment or denied the allegations.

There are other examples where the legal issues from publication threats are too finely balanced to risk proceeding with publication as we had planned. *Which*? recognises and agrees that a balance needs to be struck between freedom of expression and the emerging right to reputation. However, an unfettered ability for corporates to use libel threats as part of a suite of reputation management tools is very damaging for important public discourse because decisions about whether to publish start to become about the cost benefit analysis of publication. There is a very grave risk that the self-censorship caused by this phenomenon will continue to hamper the development of ideas and restrict the debate of issues of significant public importance. *Which*? agrees there needs to be a balance but strongly believe this balance will be struck in the wrong place if clause 4 is not amended. Now is the time to change this problem.' *David Marshall, in house lawyer, Which?*

MUMSNET'S STORY

'Mumsnet is the UK's most popular site for women, providing advice and support to over three million monthly visitors. It provides some authored editorial content on parenting and non-parenting issues, such as childcare providers, pregnancy and relationships; but the heart of the site is its forums, on which there are around 35,000 posts every day.

On Mumsnet's forums users discuss many aspects of their lives, enabling them to offer significant peer support to each other. We are the single largest talkboard for parents of children with special needs; the single largest talkboard for adoptive parents; and the single largest talkboard offering advice on the establishment of breastfeeding.

Members exchange experiences and talk about products and share practical advice. An example might be: 'The brakes on [x brand] pushchairs are awful. I bought one for my first baby, and the brakes failed within two months.'

Holding websites liable for postings by users on their bulletin boards effectively curtails freedom of speech as we cannot establish the truth of many thousands of contributions occurring every hour. The internet is used for publication by millions of ordinary citizens for whom the current defences to an action of defamation have not been developed.

All of these issues are clearly matters of public interest and yet the current defence offers such uncertainty that website editors will err on the side of caution thus having a chilling effect on free speech.'

Justine Roberts CEO and Co-Founder Mumsnet

LETTER TO THE EDITOR (1984-97)

Claimant: Vladimir Telnikoff, journalist, Russia
Respondent: Vladimir Matusevitch, journalist, USA

A spat between two Russians in 1984 sparked a decade-long libel case, which brought into clear focus the differences between English and American libel law. Vladimir Telnikoff, a journalist, complained in an article in the *Daily Telegraph* that the BBC's Russian Service employed too many Russian-speaking minorities, and not enough of those who associated themselves ethnically or religiously with the Russian people. Another journalist, Vladimir Matusevitch, a US citizen, who was working at the time for Radio Free Europe, wrote a letter in response, also published in the *Daily Telegraph*. Telnikoff sued, claiming that Matusevitch had imputed 'racialist views' to him, comments which he said were libellous.

Matusevitch refused to apologise for his letter, claiming he was making 'comment' and not stating fact. Although this argument initially prevailed in the High Court in 1989, the case was eventually decided in Telnikoff's favour in 1991, following an appeal to the House of

Lords. It was found that what had to be considered was Matusevitch's letter *in itself*, rather than in the context of the original article by Telnikoff. It was found that the letter to the editor conveyed the 'fact' that Telnikoff was a racialist. Damages of £240,000 were awarded.

Matusevitch then moved to Maryland, in the United States, where Telnikoff sought to enforce his UK judgment. The Maryland Court of Appeals, in a 6:1 majority judgment, found that recognition of the English judgment would be 'repugnant to the public policy of Maryland'. The court said that 'American and Maryland history reflects a public policy in favor [*sic*] of a much broader and more protective freedom of the press than ever provided for under English law', and that 'the importance of [the] free flow of ideas and opinions on matters of public interest' meant that Maryland could not enforce the English libel judgment.

FREQUENT FLYER (1997-2003)

Claimants: Boris Berezovsky and Nikolai Glouchkov, businessmen, Russia
Respondents: Forbes Magazine, USA

The House of Lords allowed Russians Berezovsky and Glouchkov to sue the American *Forbes Magazine* over an article concerned with their business activities in Russia, which contained accusations of gangsterism and corruption. Around 780,000 copies of the magazine were sold in the United States, while only around 6,000 copies were accessed in print or via the internet in the UK.

It is important to note that English courts do have certain tools available to them to combat libel tourism. These include refusing permission to serve court documents out of the jurisdiction as an abuse of process, if the claimant has only a minimal reputation to defend in this jurisdiction. The second weapon in the armoury is the doctrine of *forum non conveniens*. Under this doctrine, a claim may be dismissed if a defendant can demonstrate that another jurisdiction is more appropriate to hear the case.

Applying the *forum non conveniens* principle, the trial judge initially ruled that Russia or the United States would be a more appropriate jurisdiction in which to hear the case, not least because Berezovsky's reputation was primarily founded in Russia. As a result, proceedings would be stayed. In a landmark 3:2 majority decision, the House of Lords overruled on the grounds that Berezovsky's daughter was in Cambridge and because of the frequent business trips he made to this jurisdiction. A majority of the Lords decreed that, in fact, he did have a reputation to defend in the UK, and that a Russian judgment would not be sufficient to clear his reputation in this jurisdiction.

Forbes and Berezovsky settled in 2003 with a reading of a statement in the High Court, a retraction of the offending article, and the publication of a correction.

RACHEL'S LAW (2004-08)

Claimant: Sheikh Khalid bin Mahfouz, businessman, Saudi Arabia
Respondent: Rachel Ehrenfeld, journalist, USA

Dr Rachel Ehrenfeld is the author of *Funding Evil: How terrorism is financed – and how to stop it*. The book, published in 2003 in New York, argued that money from drug trafficking and wealthy Arab businessmen was funding terrorism. The book made several allegations about the Saudi billionaire Khalid bin Mahfouz, including that he channelled money to Al Qaeda. The book was not only published in hard copy, but the first chapter was also available online at ABCNews.com.

Mahfouz would have had little prospect of successfully suing Ehrenfeld in the US courts, as a result both of First Amendment protection and of the Supreme Court ruling in *New York Times v Sullivan*. The *Sullivan* case established the principle that those who sue have to demonstrate that the defamatory statements complained of are made with 'actual malice', that is, with knowledge that a statement is false, or with reckless disregard as to its accuracy. What is more, such malice cannot be presumed, but must be demonstrated by the plaintiff with evidence of 'convincing clarity'. As a result, Ehrenfeld's allegations about Mahfouz would plainly not have crossed the high threshold required by American libel standards.

Notwithstanding the above, under US principles of personal jurisdiction, a plaintiff must also demonstrate that a defendant's internet publication is targeted directly at the state in which a case is subsequently brought. That a publication is merely available in the jurisdiction is in no way sufficient in the US to found jurisdiction. The exact opposite is true in the UK. English courts have said that by publishing on the internet, a libel defendant has targeted every jurisdiction in which that publication may be downloaded.

Chillingly, the advent of internet publishing meant that 23 copies of *Funding Evil* had been sold via the web to addresses in Britain, while the ABCNews.com posting meant that it could be downloaded in this jurisdiction. Despite *Funding Evil* having been distributed overwhelmingly in the United States, the few copies sold in this jurisdiction allowed Mahfouz to claim reputational harm in the UK and found a cause of action. As a result, Mahfouz sued in London in 2005, where the *Sullivan* principle does not apply, and where, subsequent to 9/11, Mahfouz had sued or threatened to sue dozens of American writers.

Ehrenfeld refused to acknowledge the jurisdiction of the UK courts in this matter and took no steps to participate in the case. Mr Justice Eady then made a summary ruling that the allegations were unsubstantiated. Judgment in default was granted in favour of Mahfouz and his two sons. Each was awarded £10,000 in damages, the maximum permitted under the summary procedure utilised by Mahfouz, and their legal fees.

There remained the question of whether the judgment was enforceable in the US. Previously, the principle of 'international comity' would have meant that an award of damages in the UK courts could be enforced in the US. Although Mahfouz did not seek to enforce the judgment, Ehrenfeld counter-sued Mahfouz in New York, concerned that a defamation ruling was hanging over her. Citing the *Telnikoff v Matusevitch* case, she sought a declaration that to enforce the UK judgment would be 'repugnant' to her First Amendment rights.

The New York Court of Appeals decided that it could not rule on the matter, because Mahfouz (a Saudi citizen and resident) had not conducted business in the state of New York. This was a significant finding, given Mahfouz's use of the English courts despite Enrenfeld's almost non-existent connection to that jurisdiction. This decision therefore left open the questions of whether the UK judgment could be enforced in the US, and whether writers had adequate protection against foreign libel judgments.

Unsurprisingly, the decision provoked an outcry, and the New York State Assembly acted to remedy the uncertainty. In February 2008, New York State passed the Libel Terrorism Protection Act, nicknamed 'Rachel's Law'. This legislation declares foreign libel judgments unenforceable unless the foreign law grants the defendant the same First Amendment protections as are available in New York State. Subsequent to New York State's actions, anti-libel tourism legislation has been passed in Illinois, Florida and California, while the Free Speech Protection Act 2009 is pending before the US Congress. This bill, which would provide protection from libel tourism at a national level, is supported by the majority of free speech advocates in the United States, as well as by news organisations such as the *Washington Post* and the *Los Angeles Times*.

HUMAN RIGHTS WATCH (2005)

Claimant: Unnamed
Respondent: Human Rights Watch, NGO, USA

In the aftermath of the Rwandan genocide, Human Rights Watch (HRW) produced an investigative report into the massacres, *Leave None to Tell the Story*. The report, written in 1999 by Dr Alison Des Forges, presented eyewitness testimony alongside Rwandan government documents, and named numerous persons who played a role in or facilitated the genocide.

In 2005, one of the men named in the report threatened a defamation suit against HRW in the UK, although only a handful of the reports were in circulation at that time and an extremely small number of people had even accessed the report online from the UK.

HRW reviewed the evidence behind its report, going to Rwanda to reconfirm facts and locate sources at great expense. At the time of the research of the report, the complainant, like many in the former government, had fled the country and his whereabouts were

unknown. HRW paid for mediation of the claim, despite the individual being under investigation for genocide by the Rwandan government.

The mediation resulted in HRW clarifying certain details of the report, but not changing its substance as to the main allegations concerning the complainant.

SLAVE (2005-08)

Claimants: Abdel Mahmoud Al Koronky, former diplomat, and his wife, Sudan
Respondent: Little, Brown, publishers, UK

Mende Nazer published an account of her experiences in Khartoum and London, in which she described her life as a modern slave to a Sudanese businessman, Abdel Mahmoud Al Koronky, a former Sudanese diplomat, and his wife. The claimants, both resident in Sudan, but with the benefit of a conditional fee agreement, brought proceedings for libel in London, denying that they had kept Nazer as a slave.

The court ordered the claimant to provide £375,000 security for costs, to be paid into court before the case could continue. The case was stayed pending this payment, but the claimants appealed against the order, first in the Court of Appeal and then to the House of Lords. This process took over two years.

Both appeals were unsuccessful, and the case was dismissed. The Respondents were awarded costs, but these proved impossible to recover from the claimant.

JOHNNY COME HOME (2006)

Claimant: Frederick Gladstone Were, musician, UK
Respondent: Jake Arnott, author, London; Hodder & Stoughton, publishers, UK

Jake Arnott's novel *Johnny Come Home* was published by Hodder & Stoughton in 2006. The book was set in the pop-culture world of 1970s London. Although an entirely fictional piece of work, it was set against a backdrop of real events, and included a made-up character called Tony Rocco. In the book, Rocco was depicted as a sexual predator with a particular predilection for young boys.

Publication came as something of a shock to the real-life musician Tony Rocco, who had had a hit single, *Stalemate*, in the 1960s, and who apparently still performed on the London cabaret and club scene. The real Tony Rocco, in actual fact called Frederick Gladstone Were, sought damages from both Arnott and his publishers. Arnott and Hodder & Stoughton maintained that they were unaware that their fictional character shared a name with a real-life performer. The case did not go to full trial and was settled out of court. Arnott and his publisher apologised to Mr Were and paid significant damages and costs. The original print

run of the book was withdrawn and pulped, and reissued the following year with the name of the character altered.

JAMEEL (2006)

Claimant: Mohammed Yousef Jameel, businessman, Saudi Arabia
Respondent: Dow Jones/Wall Street Journal Europe

The *Wall Street Journal* reported on US and Saudi government surveillance of the bank accounts of prominent Saudi citizens who were suspected of channelling funds to terror groups. On a supplementary, hyper-linked web page, Yousef Jameel was among those named as being monitored. He subsequently brought proceedings against the American publisher in London.

During the case, it transpired that only five people in the UK had downloaded the list of names, three of whom were associated with the claimant. Despite this, jurisdiction was accepted by the English courts, and a jury found that the article was defamatory of Jameel. On final appeal to the House of Lords, it was held that the Court of Appeal had denied the *Wall Street Journal* a Reynolds defence on very narrow grounds. Reynolds was intended to liberalise and protect publication when subject matter is deemed to be in the public interest. Baroness Hale, in her judgment, said that serious journalism is to be encouraged.

Jameel is a significant case, as it demonstrated and codified the liberalising effect of Reynolds when applied correctly. The *Bent Coppers* case, discussed below, also illustrates how the Reynolds principle applies not just to newspapers and magazines, but also to those who write and publish books, and, as Lord Hoffmann said in *Jameel*, 'to anyone who publishes material of public interest in any medium'.

AN ICELANDIC CHILL (2006-2008)

Claimant: Kaupthing, Investment Bank, Iceland
Respondent: Ekstra Bladet, Denmark

The Danish tabloid *Ekstra Bladet* was sued in London by Kaupthing, an investment bank in Iceland, over articles it had published that criticised advice the company had given to wealthy clients about tax shelters.

Kaupthing, through its solicitors Schillings, successfully claimed UK jurisdiction because some of the critical articles had been posted on the paper's website, and had been translated into English. It was also noted that the chairman of the bank, Sigurdur Einarsson, about whom some of the articles were written, was resident in London.

Ekstra Bladet initially refused to retract the articles, but was eventually forced to settle the case before it went to trial. The paper had to pay substantial damages to Kaupthing, cover Kaupthing's reasonable legal expenses, and was forced to carry a formal apology on its

website for a month. It is understood that *Ekstra Bladet's* editors are now reconsidering their policy of providing English translations of their articles online.

ALMS FOR JIHAD (2007)

Claimant: Sheikh Khalid bin Mahfouz, businessman, Saudia Arabia
Respondent: J Millard Burr and Robert O Collins, authors; Cambridge University Press, UK

Khalid bin Mahfouz brought a libel claim in August 2007 against Cambridge University Press over Alms for Jihad, a book written by two Americans, J Millard Burr and Robert O Collins. As in the case of Funding Evil (see above), the book examined how Islamic charities were used to channel money to Al Qaeda operations, and once again tied Mahfouz to terrorism funding.

Although the authors wished to fight the case, and disputed all of Mahfouz's claims, Cambridge University Press decided to withdraw and pulp the book, rather than defend the action. Their Intellectual Property Director, Kevin Taylor, said in the *Bookseller* that 'it would not be a responsible use of our resources, nor in the interests of any of our scholarly authors, to attempt to defend a legal action [in this case]'.

Cambridge University Press acknowledged the falsity of the relevant statements in the book, posted an apology on its website, calling the claims made in the book 'manifestly false', wrote to libraries around the world to request that they remove the book from their shelves, and paid out unspecified damages and legal costs. Tellingly, neither Burr nor Collins agreed to put their names to the apology.

OWLSTALK (2007)

Claimant: Sheffield Wednesday FC, UK
Respondents: Owlstalk, Internet Forum; Owlstalk users, UK

'What an embarrassing, pathetic, laughing stock of a football club we've become.'

Lawyers for the football club and seven of its directors launched legal action against the proprietors of an independent Sheffield Wednesday Football Club supporters website, Owlstalk.co.uk, over 11 messages about the club's board and management, which had been posted on the site's discussion board. The site is freely accessible, but those who post on it have to register their details, and give themselves a pseudonym by which they are then known.

Interestingly, the site's terms and conditions stated that those who post comments on the site must not publish defamatory or false statements or comments. The club considered the posts to be 'false and seriously defamatory messages', and wished to bring a libel claim against whoever had posted them. In the first instance, they brought a legal claim against

Neil Hargreaves, the owner of Owlstalk.co.uk, to force him to reveal the names of those who had posted the allegedly defamatory comment.

Applying the conditions required to be satisfied before such an order is granted, the judge in the case found that seven of the 11 postings bordered on the trivial. To order disclosure of the identities of the authors of these posts would be 'disproportionate and unjustifiably intrusive'. The remaining four identities were to be revealed, although the case was eventually dropped.

In a separate case, supporter Nigel Short received warning letters from the club over comments he made on Owlstalk.co.uk in February 2006. The club rejected Short's offer of an apology, and pursued him for damages. Short was able to recruit George Davies Solicitors to fight his case, and eventually the club backed down, paying his legal costs. However, Short suffered two years of legal wrangling, during which time he lived in fear of bankruptcy.

AL ARABIYA (2007)

Claimant: Sheikh Rashid Ghannouchi, Tunisia
Respondent: Al Arabiya, Satellite News Channel, Dubai

A satellite television network, Al Arabiya, based in Dubai and broadcasting in Arabic, was successfully sued in London by Tunisian Sheikh Rashid Ghannouchi, the leader of the exiled An Nahda party, over a news broadcast that linked him to Al Qaeda and suggested that he was amongst Islamic figures being targeted in Britain in the wake of the July 2005 bombings in London.

The importance of the case is that the programme was broadcast in Arabic, but was available via satellite receivers in this jurisdiction. Ghannouchi was awarded £165,000 in November 2007.

BENT COPPERS (2007)

Claimant: The Police Federation, UK; Michael Charman, former police officer, UK
Respondent: Graeme McLagan, journalist, UK; Orion publishing group limited, UK

In 2003, Orion published Graeme McLagan's book, *Bent Coppers: The Inside Story of Scotland Yard's Battle Against Police Corruption*. The book told the 'inside story' of the 'Ghost Squad' and claimed to reveal police corruption.

Police officer Michael Charman claimed that the book had libelled him by suggesting there were 'cogent grounds' for suspecting him of corruption.

In October 2005, the trial judge, ruling on meaning, decided that the ordinary reasonable reader would conclude that the book meant that there were cogent grounds to suspect that

Charman had abused his position. The defences of qualified privilege raised by the publisher were dismissed. The defendants appealed. By the time the case was heard in the Court of Appeal, the decision in *Jameel* had been handed down in the House of Lords.
Applying *Jameel* to *Bent Coppers*, it was found that McLagan had acted with 'proper professional responsibility' and that the trial judge had not sufficiently considered the issues of public interest and responsible journalism in the context of the work as a whole. Applying the Reynolds criteria as*Jameel* said they should, it was found that *Bent Coppers* was indeed a piece of responsible journalism, and the appeal was allowed.

It is believed, however, that fighting the case cost the publishers £2m in legal fees.

LAND GRAB (2007-08)

Claimant: Rinat Akhmetov, businessman, Ukraine
Respondent: Kyiv Post, Ukraine

Rinat Akhmetov is one of the richest men in Ukraine. He sued the *Kyiv Post* in London over allegations contained in an article published in October 2007, entitled 'Appalling Kyiv City Council Land Grab', which concerned land deals and corruption in Kiev. The article alleged that Akhmetov had acted unlawfully in respect of various real estate transactions.

The article was written in Ukrainian, and the paper has only around 100 subscribers in the UK.

The paper apologised as part of an undisclosed settlement out of court in February 2008.

DEFAULT JUDGMENT (2007-08)

Claimant: Rinat Akhmetov, businessman, Ukraine
Respondent: Obozrevatel, two of its editors, and one of its journalists, Ukraine

Obozrevatel is a Ukraine-based internet news site that publishes in Ukrainian, with only a few dozen readers in Britain. This case was brought by Akhmetov in relation to a series of four articles about Akhmetov's youth, published in January and February of 2007. Default judgment in Akhmetov's favour was obtained, along with damages of £50,000 and costs, in June 2008. There is no doubt that these cases will have had a chilling effect on Ukrainian journalists.

BAD SCIENCE (2007-08)

Claimant: Matthaias Rath, vitamin pill manufacturer, South Africa
Respondent: Ben Goldacre, journalist, UK; and the Guardian, UK

Matthaias Rath, a vitamin pill manufacturer, had taken out full-page advertisements in South African publications denouncing AIDS drugs as ineffective, while simultaneously

promoting his own supplements. Ben Goldacre, a *Guardian* columnist, raised concerns about these aggressive advertising strategies in a series of three articles in January and February 2007. Rath sued for libel.

Although Rath dropped the case a year later, the *Guardian* had by this time racked up legal costs of over £500,000 with no guarantee that these would be recovered. While the *Guardian* was awarded initial costs of over £200,000, there can be little doubt that the case was brought by Rath in an attempt to prevent journalists questioning his business activities.

A SUITABLE CASE FOR TREATMENT (2008-2009)

Claimant: British Chiropractic Association (BCA), UK
Respondent: Simon Singh, journalist and author, UK

Simon Singh, the best-selling author of *Fermat's Last Theorem* and *The Code Book*, published an article in the *Guardian* in April 2008 in which he discussed chiropractic treatment with reference to the British Chiropractic Association. In a passage describing the BCA's claims about the treatment of a number of childhood ailments, Singh wrote that 'even though there is not a jot of evidence' the BCA 'happily promotes bogus treatments'.

Despite the article being published in the *Guardian*, Singh was sued personally. Mr Justice Eady decided on the issue of meaning in May 2009, and found that Singh's comments were statements of fact, rather than expressions of opinion, which implied that the BCA was being deliberately dishonest. It was a meaning that Singh has said he never intended. Eady refused to grant leave to appeal, although permission was granted by the Court of Appeal itself in October 2009. Singh eventually won his case, but remained over £100,000 out of pocket.