

## The ‘McLibel’ litigation: a case study

The ‘McLibel’ trial has the dubious honour of being the longest trial in the history of UK libel law (it lasted 313 days).<sup>1</sup> The case, which ultimately went to the European Court of Human Rights (ECtHR), exposes a number of flaws in the process of bringing (and/or fighting) a case in defamation, which you should think about as you continue your reading. These include issues relating to the lack of public funding for defamation cases, weaknesses in the defence of truth or justification, the strategic importance of a ‘judge-only’ trial and concerns that defamation law in the UK does not adequately protect freedom of speech or expression. In particular, the case epitomises the suggestion that large companies (who would not be able to sue in, for example, the US) are able (and indeed prefer) to issue defamation proceedings that have a ‘chilling effect’ on free speech, as TV companies and newspapers err on the side of caution by not publishing criticism so as to avoid expensive litigation battles.

McDonald’s—a multinational fast food chain—is (opponents of McDonald’s argue) a company in point. Over the years McDonald’s have sued (or threatened to sue) various UK newspapers (including *The Guardian*—over reports of poor working conditions in McDonald’s restaurants in the UK), TV channels (including the BBC, for a BBC2 programme *Nature* commenting on the destruction of the rainforest in Central and South America; and Channel 4), other companies (for example Veggies Ltd, a vegan food cooperative based in Nottingham) and individuals (including the singer Morrissey). And, then in 1990, McDonald’s turned its attention to Helen Steel and Dave Morris—a gardener and former postman from London.

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<sup>1</sup> Much has been written about the ‘McLibel’ trial—one of the best places to start is the official ‘McLibel’ website—[www.mcspotlight.org](http://www.mcspotlight.org)—which includes transcripts of all 313 days of the trial (!).

The McLibel case concerned a factsheet written by ‘London Greenpeace’ (a group which was founded in the 1970s, predating and distinct from the more famous environmental campaign group, Greenpeace) entitled ‘What’s Wrong with McDonald’s? Everything that you don’t want to know.’ It stated that McDonald’s exploited children through advertising, promoted an unhealthy diet, exploited its workforce and was responsible for environmental damage and the ill treatment of animals. The factsheet was widely distributed—often outside McDonald’s restaurants. In the late 1980s, McDonald’s engaged a number of private investigators to infiltrate ‘London Greenpeace’ so that it could find out who was responsible for producing and distributing the factsheets. In 1990, McDonald’s served writs on five people from ‘London Greenpeace’, including Morris and Steel.

The pre-trial process, including drafting the defence to each of the 18 points in the statement of claim, took 18 months. McDonald’s applied for, and won, a trial by judge only. McDonald’s argued that the trial would be too complicated for a jury to follow—though given that the defendants were representing themselves it seems more likely that the company was afraid that a jury may be more sympathetic to the defendants. Steel and Morris refused to settle, as this would have meant agreeing to refrain from criticising McDonald’s in public, and so the case went to trial.

At first instance Mr Justice Bell held that Morris and Steel had not brought sufficient evidence to prove their allegations in relation to their claims that McDonald’s contributed to the destruction of the rainforests or starvation in the developing world, that its food caused heart disease and cancer or that it exploited its workers. Importantly, this does not mean that the judge thought that the allegations were untrue, rather that Morris and Steel had failed to show that they were true (as required by the defence of justification). However, the judge did rule in the defendant’s favour in relation to their claims that McDonald’s advertising exploited children; that it falsely advertised its food as nutritious and so risked the health of

its regular long-term customers; that it was ‘culpably responsible for cruelty to animals’; and that it was strongly ‘antipathetic to unions and pays its workers low wages’. McDonald’s was awarded £60,000, half the money it had claimed. The defendants refused to pay. McDonald’s did not pursue this—presumably wishing to avoid further negative publicity—and the defendants were leafleting outside McDonald’s two days after the judgment.

Morris and Steel appealed. They argued that the oppressive nature of UK defamation law allowed companies to stifle criticism because it could be so expensive and time consuming to fight them and, moreover, that following the decision in *Derbyshire County Council v Times Newspapers* [1993], which prevented county councils from bringing claims for this very reason, companies similarly ought not to be able to sue. The Court of Appeal rejected this on the basis that it was a matter for Parliament to decide; however, it did make further rulings in relation to the negative impact of McDonald’s food on their customers’ nutrition, reducing McDonald’s damages by £20,000.

Morris and Steel then appealed to the ECtHR<sup>2</sup> (leave to appeal to the House of Lords was refused) on the grounds that the defamation proceedings brought against them had breached their Article 6 (right to fair trial) and Article 10 (freedom of expression) rights. They argued that the refusal of legal aid rendered the proceedings unfair—that, had they been granted legal aid, they would have had the resources to prove that at least some of the charges against them were unjustified—and also that the trial process and outcome amounted to a disproportionate interference with their right to freedom of expression.

The ECtHR held that there had been breaches of both Articles 6 and 10 of the Convention. The Court held that whether the provision of legal aid was necessary for a fair hearing depended on the facts and circumstances of each case and in this case it was significant that Steel and Morris had chosen not to commence defamation proceedings but

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<sup>2</sup> *Morris and Steel v UK* [2005].

had acted in defence of their right to freedom of expression. Moreover, the disparity between the respective levels of assistance enjoyed by Morris and Steel (who had had to rely on pro-bono representation alone) and the legal might of McDonald's was such that unfairness was inevitable. The Court agreed with the defendants that, had they had the benefit of proper representation, they would have succeeded on a number of the issues. The Court also held that the restrictions placed on the defendants' freedom of expression were not such as were 'necessary in a democratic society' (Art 10(2)). Although protecting the commercial interests of companies competed with the public interest in open debate, it was essential to provide for procedural fairness and equality of arms. In this case, the UK had failed to strike the right balance.

Responding to the Court's judgment, Keir Starmer QC (who represented Steel and Morris at the ECtHR) hailed it as a 'turning point' in libel law:

Until now, only the rich and famous have been able to defend themselves against libel writs. Now ordinary people can participate much more effectively in public debate without having to fear that they will be bankrupted for doing so. This case is a milestone for free speech.<sup>3</sup>

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<sup>3</sup> Doughty Street Chambers (Press Release) 'McLibel Case Wins in Strasbourg: A Turning Point in English Libel Law' 15 February 2005.