

# Victory in the court of public opinion

Litigation PR: **Justin Penrose** reports on a key tool for controlling the narrative of disputes

## IN BRIEF

- ▶ Using PR during litigation is a useful tactical tool for lawyers in many cases.
- ▶ Controlling the narrative can help resolve the case while also protecting a client's reputation.
- ▶ Not all cases are suitable for litigation PR—but when they are, lawyers should seek expert advice.



There's nothing that gets the press excited more than a good litigation battle. From tabloid heaven like the Wagatha Christie libel trial, to legal and financial press delights like *ENRC v Dechert*, high-profile litigation nearly always makes the headlines. As a result, the need to have litigation support in place, both for law firms and clients alike, cannot be overstated and could have long-lasting impact in the court of public perception.

At Black Letter Communications we are seeing more and more firms coming to us for litigation public relations (PR) assistance. Practitioners and their clients are seeing the value of attempting to control the narrative in a dispute and the benefits of having journalists on side, or at least properly informed of the facts.

## A story shared

So, what is litigation PR and how can it be used? Unlike traditional PR, which is used to raise one's profile, litigation PR is the management of communication during a legal dispute to affect the outcome or its impact on the client's reputation. Put simply, it is managing the media during litigation and attempting to control the narrative of the story being told. However, in my experience, it is a lot more than that. Not only do high-profile litigation matters offer great PR opportunities for law firms, potentially driving business through the coverage achieved, but they also allow victims in any dispute to have a voice. Moreover, if used correctly at the right time, I have found litigation PR can force the other side to come to the table and sometimes settle before a court battle ensues.

On the latter point, nobody, whether an individual or organisation, likes bad PR. If there is enough bad press it can focus the minds of the other side. I recall the case of rogue surgeon Ian Paterson who carried out unnecessary operations on women. He

was employed by the NHS, who admitted liability, and worked as a consultant for private healthcare provider Spire. As Paterson wasn't employed directly by Spire there was no vicarious liability, meaning there was no obligation for them to pay compensation. I looked after several victims of Paterson, and the constant negative publicity generated resulted in Spire setting up a multi-million pound compensation fund. The pressure from bad press can work.

## What's news?

Understandably for some lawyers, using PR in litigation can feel unnatural. They rightly worry about compliance with *sub judice* and contempt of court rules, and need the reassurance that their litigation PR consultants can bring the technical expertise to understand witness statements, expert reports and judgments, and create timely and powerful copy for the media. This is one of the reasons why there are only a handful of real specialists that know how to deliver this work.

Moreover, not every case is ripe for litigation PR. If a dispute is on the road to being settled, rocking the boat with a press release isn't a great idea. Some clients don't want media, so doing proactive litigation PR may not be an option for them. Some clients may well and truly be in the wrong, so highlighting their case may not be advisable. In these circumstances, saying nothing is sometimes the best course of action.

Additionally, not every dispute will be of interest to journalists. As a former national newspaper crime correspondent, I was told endless stories that would never threaten the columns of Fleet Street. So, what does make a story and what do journalists look for? A reporter is looking to answer the questions who, what, why, where, when and how. Fundamentally, the devil of any potential story is in the detail. A story is a lot more interesting if it's about David Beckham than the likes of me, and it's more interesting

if it happened at Buckingham Palace than Chatham High Street. I always tell clients that if a case makes them outraged, laugh or cry, then it is probably a news story.

Litigation PR around a court case centres on ensuring the relevant journalists are educated and briefed about the nuances of the case before it goes to court. Working with journalists rather than against them is key, helps control the narrative and makes you a go-to source of information on the case. At Black Letter we have achieved this on many high-profile cases, including the inquests into the deaths of 30 Britons killed in a mass shooting in a Tunisian holiday resort and the Croydon tram crash inquests. In helping shape the narrative through briefings and getting the real story into the press, we also supported the victims' families and helped them tell their story on their terms. This was cathartic for many, helping them draw a line under the trauma they had been through.

A good example of what can happen when there is no litigation support in place was that of Colin Stagg, who was wrongly accused of murdering Rachel Nickell in 1992 (see 'Truth, lies & media mobs', *NLJ*, 29 April 2022, p20). He told how his life was dogged by the false accusations and meant he struggled to work again. If litigation PR had been used in this case, with off the record briefings, then it is likely that the character assassination he suffered may at least have been tempered.

From huge disputes between banks to neighbours fighting over an inch of garden, it is always worth considering if the implementation of litigation PR would help you and your clients get what they need by forcing the other side to the table, controlling the narrative and ultimately protecting their reputation.

NLJ

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