

LITIGATION FUNDING, GROUP ACTIONS AND THE GROWING NEED FOR PR STRATEGIES



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Litigation practices are evolving fast in the UK and Europe. Neither group actions nor litigation funding are new, but they have both reached a tipping point and are now generating their own momentum. However, there is an increasing need to ensure that these commercially funded cases also have a clear and effective communication strategy attached to them. Crucially, this applies to defendants as much as claimants.

The speed and scale of change is evidenced by developments such as Stewarts teaming up with a broker to launch its own fast-track insurance facility and Mishcon de Reya's £150 million litigation finance venture with Harbour. RPC has conducted excellent research showing UK litigation funding market doubling in size in just three years.

At the same time, what began as a trickle of UK group actions has become a rapidly growing stream of high profile cases. These include the case involving Post Office submasters, *Merricks v Mastercard*, multiple dieselgate actions

and the FCA's test case that ensured businesses were paid out under their business interruption insurance policies through Covid disruption.

What is notable here is that the general population has a high awareness of these cases because they have attracted so much conventional and social media profile. They are penetrating the national psyche in a way that would have been unthinkable for litigation a decade ago.



The need for PR

These cases are not high-profile by accident. PR is a huge feature of claimant law firms' book building strategies. Tools at their disposal include aggressive media relations strategies to sell David v Goliath stories to mainstream or tabloid media, sophisticated social media campaigns and paid advertising to dangle attractive sums in front of consumers to entice them into signing up to join an action.

Increasingly this advertising means creating a specialist microsite about the claim and paying to it to the top of any Google search about the topic and then making it as easy as possible for consumers to join a claim. Claimant law firms will also seek to get consumer champions on side. All of this helps them build a class – the bigger the better.

All of the above demonstrates that litigation PR must be central to any group action litigation strategy and to any funder's commercial strategy. Returns on investment may depend upon it.



Defendants need to respond more quickly

Most big corporations have not yet been on the receiving end of a consumer redress class action in the UK. An awful lot more of them will be in the next few years. Class actions are still seen by many as something that only really happens in the US. That is no longer the case. Defendants need to get to grips with how quickly and easily they can lose the PR battle in a class action by not understanding, anticipating or responding to what a claimant firm is doing in the early stages of a potential group action.

For example, not engaging with media on the subject simply leaves the field clear for a claimant firm to occupy the space with their own messaging and build their book of consumers. This is a lose-lose for a defendant corporate. They suffer reputational damage while also facing a larger and potentially more expensive legal action than otherwise.

It is important that defendants grasp this. The right PR strategy not only helps protect the corporate reputation but can also impact squarely on the success of a claimant firm's book building activities. General counsel need to work closely with their boards, PR teams and the right external advisers to consider both offensive and defensive PR approaches as part of their litigation strategies.



Practicalities

Taking a reactive stance to litigation PR doesn't work; you need to have a strategy in place. For instance, anticipating when and how you might be attacked by the other side, what your key rebuttals are and how you would respond if allegations were being made about you that were not true.

The better planned in relation to thinking carefully about pre-trial, through-trial and post-trial in litigation PR you are, the better your outcome in terms of media and public perception will be.

This requires bringing in PR specialists early in any funded case or group action. Planning your strategy around the facts and the timetable of the case are both essential, as is thinking about reputational considerations beyond the end of the case itself.



Perceptions of litigation becoming more sophisticated

Litigation funding and group actions are perceived by the public in a variety of ways. At one end of the scale they are seen as offering access to justice to consumers, businesses and sometimes individuals who would not otherwise be able to afford to bring a claim. They can also raise public awareness of corporate wrongdoing in a genuinely impactful way that drives change.

At the other end of the scale they can be perceived to be fuelling the commercialisation of justice, driven by an ambulance-chasing culture more akin to that of the plaintiff bar and litigation culture we have seen develop in the US over many years.

Different cases will fall in different places on this scale and the purpose of both defendant and claimant litigation PR strategies should be to try and determine those places, and then plan adapt their litigation PR strategies accordingly. Clearly, we are going to see more funded cases and more group actions over the coming months and

years. Litigation PR should be a key consideration for all parties involved in those cases.

