

# **5RB talks 5RB talks 5RB talks**

How do you deal with defamation on social media - practically and legally - including take-down requests and the problem of anonymous defamers?

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## Delisting requests

### Benefits:

- Cheap
- Deals with immediate problem

### Drawbacks:

- Wrongdoer is not identified
- Wrongdoer is not stopped
- No public vindication
- No compensation

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## Delisting policies

### Google

- Malware, phishing, disclosure of private data or similar issues
- A blog that is impersonating an individual
- Disclosure of private information or private nude images
- Harassment and bullying content
- Legal issues not mentioned above: includes defamation

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## Google Delisting Requests following the *Google Spain* decision in May 2014

Search engines like Google are required to remove certain results for queries on the basis of a person's name. The search engine must comply if the links in question are "inadequate, irrelevant or no longer relevant, or excessive"

### Delisting requests in UK

May 25 2014:	3,138	
2014:	28,214	
2015:	15,272	56% delisting requests have been successful
2016:	18,985	
2017:	14,740	9.6% of the requests related to URLs for social media sites
2018 (to 18 November 2018):	14,324	

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## Norwich Pharmacal Orders

- Order compelling person who facilitated or become mixed up, innocently or otherwise, in wrongdoing to provide identity of wrongdoer. *Lockton v Persons Unknown and Another* [2009] EWHC 3243 (QB)
- Order must be to provide information to a person in this jurisdiction: *AB Bank v Abu Dhabi Commercial Bank* [2017] 1 WLR 810
- Need to engage with ISSP to seek to agree order before it is made. Will generally insist on order, but may negotiate its terms
- Consider whether and if so how the wrongdoer will be contacted: risk of tipping off
- Consider method of service on wrongdoer
- Discretionary remedy: merits must be assessed
- Where third party not caught up in wrongdoing, use jurisdiction under CPR 31.17: *Kerner v WX* [2015] EWHC 1247: order against DVLA

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## Unmasking order

- *PML v Persons Unknown* [2018] EWHC 838 (QB): Suitable where poster uses a fake name, but there is some means of contacting them, eg phone number or email address. Compels that person to reveal their own identity.
- *JPH v XYZ and Ors* [2015] EWHC 2871 (QB): Order requiring someone who has published or threatened to publish private or confidential information to provide details of any third party to whom the information has been passed and any internet sites on which it has been posted.

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## Claims Against Persons Unknown

- *Bloomsbury Publishing v News Group Newspapers* [2003] 1 WLR 1633
- *Kerner v WX, YZ (Persons Unknown responsible for pursuing and/or taking photographs of the Claimant and her son at their home on 22 January 2015)* [2015] EWHC 178
- *Brett Wilson LLP v Persons Unknown* [2016] 4 WLR 69
- *GYH v Persons Unknown* [2017] EWHC 3360 (QB)
  - What steps had been taken to identify the Defendant?
  - Should hosting websites be notified of the application?
  - Full and frank disclosure
  - Was it a libel claim advanced under a different label?
- *LJY v Persons Unknown* [2018] EMLR 19
  - Blackmail: would have succeeded as a libel injunction

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## Service

- CPR 6.15: order for alternative method of service.
- *Brett Wilson LLP v Persons Unknown* [2016] 4 WLR 69: service by sending documents to the email addresses given on the website where the offending words had been placed.
- *Pirtek v Jackson* [2017] EWHC 2834 (QB): service through a section on a website called 'contact Bob'
- *LJY v Persons Unknown* [2018] EMLR 19: service by 5 text messages

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## Bringing the claim to a conclusion

- Must make best endeavours to trace the wrongdoer: *Kerner v WX* [2015] EWHC 178
- *Master of the Rolls' Practice Guidance* [2012] 1 WLR 100 paragraph 41: after interim order made, court must:
  - dismiss the substantive action
  - proceed to summary judgment
  - enter judgment by consent
  - direct that the claim and trial proceed in the absence of a third party
- *Pirtek v Jackson* [2017] EWHC 2834 (QB):
  - Judgment in default of acknowledgement of service
  - Summary Disposal under s.8 Defamation Act 1996