

2022

Libel, social media, and celebrity journalism in the WAG-gate

Alexandros Antoniou

Introduction

News stories about the dark and deviant aspects of celebrity high-life tend to fascinate audiences as they are often in direct contrast to their own ordinary, law-abiding 'mid-lives'.¹ Fresh from the *Depp v Heard* worldwide headlines,² the public's attention was gripped once again by the high-profile *Vardy v Rooney* defamation trial.³ The article examines the ruling and highlights important issues about the application of the defence of truth, the availability of inferential fact finding, the inherent risks of costly libel litigation as well as the courts' expectations from social media users and the level of online abuse women can experience. The analysis also takes a step back and considers why this defamation dispute became a powerful magnet with distinct appeal to the media; an aspect of this case which has been largely overlooked so far.

When Rooney published her famous revelatory post, which in the form of a 'whodunnit' accused the claimant of leaking her private information to the *Sun*, the media led not only on Brexit moves but also on Rooney's spat with Rebekah Vardy. The subsequent libel dispute managed to re-orient the news agenda. With substantial sums of money at stake in legal costs and the private lives of the rich and famous on full view in court, the gossip-fuelling facets of this feud not only captivated the attention of large sections of the public but also offered an exposé of the silent (or silenced) machinations of celebrity journalism (and the correlating ethical questions). The article observes that *Rooney v Vardy* offers a fresh snapshot of contemporary British celebrity culture and the mutually beneficial trade in orchestrated and sanctioned media exposure for increased sales.

Background

Coleen Rooney and Rebekah Vardy are well-known media personalities who are married to former England footballers. The dispute between them started in October 2019, when Rooney accused Vardy publicly on social media of leaking information from Rooney's private Instagram account to the *Sun* newspaper.⁴ Given her suspicions about the identity of the source of the leaks, Rooney had deliberately blocked all of her followers – except for Vardy's account - from accessing her Instagram stories in an attempt to expose the culprit. She then posted some made-up tales which later appeared as stories in the tabloid newspaper. Rooney's resourcefulness earned her the nickname 'Wagatha Christie', i.e., a portmanteau term which combines the acronym 'WAG' (i.e., Wives and Girlfriends of high-profile footballers) and the name Agatha Christie, comparing Rooney's amateur sleuthing skills to the well-known English mystery writer. Vardy strongly denied the allegation that she was the source of the leaks and issued libel proceedings in June 2020, claiming that she had become the subject of a torrent of distressing abuse and suffered distress.

¹ Gregg Barak, 'Media, society, and criminology' in Gregg Barak (ed), *Media, Process, and the Social Construction of Crime* (Routledge 1995) 23.

² *Depp II v News Group Newspapers Ltd & Anor* [2020] EWHC 2911; [2021] EWCA Civ 423 (application for permission to appeal dismissed). On 1 June 2022, Depp won his defamation case in the Fairfax County Court, Virginia, USA in relation to three statements made in an opinion piece in *The Washington Post* which his ex-wife Amber Heard had written about him; see 'Depp-Heard trial: Jury sides mostly with Depp in defamation case' *BBC News* (2 June 2022) <<https://www.bbc.co.uk/news/world-us-canada-61668780>> accessed 1 September 2022.

³ *Vardy v Rooney* [2022] EWHC 2017.

⁴ The original post can be viewed here: <<https://twitter.com/ColeenRoo/status/1181864136155828224?s=20&t=QRbtSoWoEA3QtV83umn8XA>> accessed 1 September 2022.

A successful claim in defamation has traditionally involved two steps: first, establishing how the publication complained of would strike the hypothetical 'ordinary reasonable reader'; and second, proof that the meaning of the statement is defamatory, namely that the meaning or imputation would tend to have a substantially adverse effect on how 'right thinking members of the society generally'⁵ would think of the person referred to. The Defamation Act 2013 also requires that a publication must have caused, or be likely to cause, 'serious harm' to the claimant's reputation.⁶ It was critical in this case to determine the meaning conveyed by the published words in the 'reveal post' of October 2019 to discern its impact on Vardy's reputation and determine what arguments and evidence Rooney needed to put forward to defend her case.

Defamatory meaning: 'I have been called a leaker, and it's not nice'⁷

Early determinations on the meaning of the statements complained of are routinely used in libel claims to determine the scope of the litigation, encourage early resolution of the claim, or dispose of the action in its entirety.⁸ The court applies the single meaning rule to be attributed to a publication, but this is not necessarily the meaning intended by the author of the publication.⁹ So, Rooney could not claim 'I did not quite mean it this way'. The single, 'right' meaning is decided with reference to established principles of construction modelled around the notion of the hypothetical reasonable reader, who is taken to be representative of those who *would* read the words (not any *actual* reader of the words).¹⁰

It is worth emphasising that the publication complained of in this case was a social media post. This acquires particular relevance when determining meaning. In libel law, allegations on modern forms of communication, like social media platforms, are generally to be taken with a pinch of salt. Such platforms are seen as conversational media, in which less thought will be given to the words shared (both by the user posting and the readers themselves) than in more traditional media. On Twitter, for instance, people tend to scroll through messages relatively quickly before they move on to the next post and their reactions are often impressionistic and fleeting. Readers of social media do not have advocates beside them, making arguments about what a tweet means.¹¹ The same applies to Facebook and Instagram posts.

The defamatory nature of the words complained of in *Vardy v Rooney* was not in dispute. However, Vardy's case was that the words in the post bore the *Chase* Level 1 defamatory meaning,¹² namely the claimant had consistently and repeatedly betrayed the defendant's trust over several years by leaking the defendant's private Instagram posts and stories for publication in the *Sun*. Rooney's case was that the claimant's meaning was artificial because the words in her post did not point the finger directly at the claimant but rather referred to the stories being derived from Vardy's 'account'. Thus, the meaning of the words was *Chase* Level 2, i.e., that there were reasonable grounds to suspect that the claimant was responsible for consistently passing on information about the defendant's private Instagram posts and stories to the *Sun*.

In November 2020, Warby J (as he then was) held in a preliminary hearing that the single, natural and ordinary meaning conveyed by the words complained of to the hypothetical 'ordinary reasonable reader' was:

Over a period of years Ms Vardy had regularly and frequently abused her status as a trusted follower of Ms Rooney's personal Instagram account by secretly informing the *Sun* newspaper of Ms Rooney's

⁵ *Sim v Stretch* [1936] 2 All ER 1237, 1240 (Lord Atkin).

⁶ DA 2013, s 1.

⁷ From Vardy's evidence during the hearing; Isabella Kwai, 'A Legal Whodunit on Instagram Grips Britain' *The New York Times* (New York, 20 May 2022) B3.

⁸ *Sharif v Associated Newspapers Ltd* [2021] EWHC 343, para 43.

⁹ *Slim v Daily Telegraph Ltd* [1968] 2 QB 157, 173D-E (Lord Diplock).

¹⁰ *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48.

¹¹ See *Stocker v Stocker* [2020] UKSC 17, paras 41-46 (Lord Kerr), approving *Monroe v Hopkins* [2017] EWHC 433, para 35 (Warby J); *Monir v Wood* [2018] EWHC 3525, paras 90 and 92 (Nicklin J) and *Smith v ADVFN plc* [2008] EWHC 1797, paras 13-16 (Eady J).

¹² See further *Chase v News Group Newspapers Ltd* [2003] EMLR 11, para 45 (Brooke LJ).

private posts and stories, thereby making public without Ms Rooney's permission a great deal of information about Ms Rooney, her friends and family which she did not want made public.¹³

This was essentially the same as the claimant's meaning (*Chase Level 1*). The 'whole purpose'¹⁴ of the post was to identify publicly that *someone* who Rooney thought was responsible for the serious and consistent breach of trust she alleged. Ordinary readers would not regard the post as merely telling them whom Rooney suspected. In reaching this finding, the principles in previous authorities about the right approach to social media posts were found to be of 'rather less relevance'¹⁵ in this case. Rooney's announcement was described by Warby J as:

[...] a considered post, using wording composed with some care. It would be clear to the ordinary reader from the outset that it was meant seriously and intended to convey a message of some importance. It tells a story. The story is one of careful investigation and builds to a revelation. The reader would pay more attention to this story than they might to a more obviously casual tweet or post. But I do not think it really matters how one approaches this publication. Whether it is read swiftly and casually or at greater leisure, the impression conveyed is the same.¹⁶

So, the first round of the WAG-gate arguably went to Vardy. Warby J's rejection of the defendant's contention that the post bore a less serious meaning essentially meant that Rooney faced a relatively high bar at trial. The case was subsequently stayed until February 2021 to give the parties an opportunity to mediate the dispute. However, it seems that the general (on- and offline) conversation that followed the reveal post mattered hugely to both Vardy and Rooney: the parties were repeatedly encouraged to settle out of court, but neither side backed down.

In March 2021, Vardy filed an application to have various parts of Rooney's defence struck out, as well as for summary judgment, presumably for maximum tactical pressure. The purpose (and consequence) of the former (strike-out) is the deletion of written material from a party's statement of case so that it cannot be relied upon in the proceedings. The purpose of the latter (summary judgment) is to promote a quick determination of the issue, saving time and costs. Steyn J, who heard this application in June 2021, allowed Vardy's application but only in part and dismissed it in greater part.¹⁷ Some parts of Rooney's defence did not survive on the grounds that they were irrelevant to the claim, but Rooney succeeded in maintaining most of what she wanted (e.g., the 'similar facts evidence' where Rooney set out instances of Vardy's behaviour that were, according to her, similar to the leaks of private Instagram stories to the *Sun* that gave rise to the claim itself; and the parts related to Vardy's 'exceptionally close relationship'¹⁸ with journalists at the *Sun* given that it was key contextual information reinforcing the inference that Vardy had leaked the stories). Although the outcome of this strike-out and summary judgment hearing offered only a partial win for both sides, some mainstream and celebrity media reported it as a 'victory' for Vardy at this interlocutory stage.¹⁹

The libel trial eventually began on 10 May 2022 and concluded on 19 May of the same year following a seven-day hearing. As mentioned earlier, there was no dispute that the reveal post was defamatory of Vardy (the common law test was met). Considering the compelling evidence of harm, the inherent tendency of the words and the widespread publication the post recorded, the defendant conceded (though rather late in the process) that the reveal post had caused serious harm to Vardy's reputation. It was common ground that the issue at the heart of this case was whether the meaning of the reveal post was 'substantially true' under s 2 of the Defamation Act 2013. Rooney relied in the alternative on

¹³ *Vardy v Rooney* [2020] EWHC 3156, para 23.

¹⁴ *Ibid*, para 39.

¹⁵ *Ibid*, para 25.

¹⁶ *Ibid*.

¹⁷ *Vardy v Rooney* [2021] EWHC 1888. For a more detailed discussion of this pre-trial application and judgment, see Adham Harker, 'Wagatha Christie: Court rules on strike out and summary judgment application' *Brett Wilson Media and Communications Law Blog* (8 July 2021)

<<https://www.brettwilson.co.uk/blog/wagatha-christie-claim-survives-summary-judgment-application/>> accessed 4 September 2022.

¹⁸ *Ibid*, para 47.

¹⁹ See e.g., 'Rebekah Vardy claims partial victory in latest round of Coleen Rooney libel case' *Sky News* (7 June 2021) <<https://news.sky.com/story/rebekah-vardy-claims-partial-victory-in-latest-round-of-coleen-rooney-libel-case-12350738>> accessed 4 September 2022.

the defence of publication on a matter of public interest under s 4 of the same. Although she succeeded in establishing the defence of truth, the alternative defence failed.

The defence of truth

Rooney's primary defence was based on the claim that a series of news stories resulted from leaks by the claimant (using her agent Caroline Watt as a conduit) of information that Rooney posted on her private Instagram account. The key stories which contained information that were gleaned from Rooney's posts were: (a) The Marriage Article;²⁰ (b) The Pyjamas Article;²¹ (c) The Car Crash Article;²² (d) The Gender Selection Articles;²³ (e) The Difficult Year Article;²⁴ (f) The Soho House Article;²⁵ (g) The Flooded Basement Articles.²⁶ It is also likely that additional information from the defendant's private account was passed on to the press by Vardy and Watt.²⁷

Vardy claimed that Rooney had no basis for making these allegations since she did not know whether it was Watt (her former publicist) or Vardy doing the leaking. However, the clear impression given by considering the evidence as a whole was that Watt had access to Vardy's Instagram account at the relevant time (contrary to Vardy's evidence), provided the core posts about Rooney as well as other posts,²⁸ monitored Rooney's private Instagram account for information of potential media interest, with an evident pattern of both the claimant and her former agent working together to give the press information and maintaining a close relationship with journalists (including those writing for the *Sun*).²⁹

Both parties submitted roughly 3,000 pages of documentary evidence which largely comprised contemporaneous social media posts and messages on different platforms. The WhatsApp conversations between Vardy and Watt during the period in which Vardy had access to Rooney's private Instagram account were of particular significance but were unavailable. In review of the evidence, Steyn J accepted the defendant's contention that Vardy purposefully made a 'targeted deletion'³⁰ of WhatsApp messages during the key period. Moreover, the court heard at trial that, in an unfortunate turn of events,

²⁰ Richard Moriarty and Simon Boyle, 'HE THINKS IT'S ALL OVER: Wayne Rooney fears his marriage is over as pregnant wife Coleen storms out of their £4m mansion – and takes the kids with her' *The Sun* (London, 3 September 2017) <<https://bit.ly/3Dkdwsu>> accessed 1 September 2022.

²¹ Amy Brookbanks and Issy Sampson, 'LOOK ROO'S BACK Wayne Rooney is back at home – and in bed with Coleen – as she shares snaps with pals celebrating Halloween together' *The Sun* (London, 1 November 2017) <<https://www.thesun.co.uk/tvandshowbiz/4818740/wayne-rooney-is-back-at-home-and-in-bed-with-coleen-as-she-shares-snaps-with-pals-celebrating-halloween-together/>> accessed 1 September 2022.

²² Andy Halls, 'ROO-INED MOTOR: Coleen Rooney narrowly avoids injury in car crash and wrecks 4x4 just weeks after Wayne's arrest for "public intoxication" in Washington' *The Sun* (London, 25 January 2019) <<https://www.thesun.co.uk/tvandshowbiz/8282702/coleen-rooney-car-crash-washington-wayne-rooney/>> accessed 1 September 2022.

²³ Andy Halls, 'COL'S BABY GIRL BID: Coleen Rooney travelled to Mexico to look into £8k "gender selection" treatment in desperate bid to have baby girl' *The Sun* (London, 15 August 2019) <<https://www.thesun.co.uk/tvandshowbiz/9732351/coleen-rooney-mexico-gender-selection-baby-girl/>> accessed 1 September 2022. A similar article was published in the print edition of the newspaper.

²⁴ Simon Boyle, 'ROON FOR ONE MORE: Coleen Rooney made wayward Wayne return to England to have baby girl after antics including booze-up with US barmaid' *The Sun* (London, 8 August 2019) <<https://www.thesun.co.uk/tvandshowbiz/9684493/coleen-rooney-wayward-wayne-return-england-fifth-child-despite-barmaid/>> accessed 1 September 2022.

²⁵ Andy Halls, 'SIP SIP HOORAY: Coleen Rooney stunned guests at Beckhams' favourite hangout by chugging wine from a bottle to celebrate Wayne's return' *The Sun* (London, 13 August 2019) <<https://www.thesun.co.uk/tvandshowbiz/9716557/coleen-rooney-bike-wine-wayne-return-celebration/>> accessed 1 September 2022.

²⁶ From Simon Boyle's Bizarre Column, 'IN ROO-INS: Wayne and Coleen Rooney's £20million "Morrisons mansion" flooded during Storm Lorenzo' *The Sun* (London, 8 October 2019) <<https://www.thesun.co.uk/tvandshowbiz/10094317/rooney-morrisons-cheshire-mansion-flood/>> accessed 1 September 2022. A similar article appeared on the day after under the headline '£20m pad in Roo-ins'.

²⁷ *Vardy v Rooney* [2022] EWHC 2017, para 286.

²⁸ *Ibid*, para 159.

²⁹ *Ibid*, paras 92, 114, 234, 242, 245.

³⁰ *Ibid*, paras 73-74.

Watt's smartphone had fallen into the sea, shortly after a legal request was made to inspect its WhatsApp exchanges.³¹ Steyn J was highly critical of the loss of key communication evidence in the case. She held that the likelihood that the loss of the phone was accidental was 'slim'³² and found that Vardy and Watt 'deliberately deleted or destroyed evidence'³³ to conceal relevant information that would undermine Vardy's case. This is an assessment that no judge makes lightly. It is notable that Rooney's defence argued in favour of the application of a 1722 legal precedent, to the effect that where the evidence pointed to a range of possible outcomes, the court should take the outcome which is the least favourable to the claimant. This is known as the 'the *Armorie* principle'. The judge was thus entitled to draw adverse inferences in the absence of potentially illuminating material or where evidential gaps were created.³⁴

Steyn J found on the evidence (or what was left of it) that it was likely Vardy's former publicist undertook the direct act of passing information to the *Sun*, but the evidence 'clearly'³⁵ showed that:

Mrs Vardy knew of and condoned this behaviour, actively engaging in it by directing her publicist to the private Instagram account, sending her screenshots of Mrs Rooney's posts, drawing attention to items of potential interest to the press, and answering additional queries raised by the press via Ms Watt.³⁶

The fact that certain posts were fabricated stories (e.g., the Gender Selection and the Flooded Basement Articles) that Rooney wanted to see published in her attempt to identify the person responsible for the leaks did not detract from the conclusion that the essential sting of the libel was shown to be true.

Steyn J was unequivocal in her decision that Vardy's evidence should be treated 'with very considerable caution'.³⁷ There were many occasions where her evidence was 'manifestly inconsistent'³⁸ with the contemporaneous documentary evidence and others where she appeared 'evasive'.³⁹ However, she acknowledged that Vardy's role in disclosing information to the newspaper was 'unthinking rather than part of a considered and concerted business practice'.⁴⁰ Steyn J also inferred from the claimant's decision not to seek to call Watt as a witness that Vardy knew that her agent's evidence would be shown in cross-examination to be untrue and that it would have most likely undermined her case that she was not involved in disclosing information from the private Instagram account.⁴¹ By contrast, the judge found Rooney an 'honest and reliable'⁴² witness (as were the other witnesses for the defendant) who gave 'clear and compelling'⁴³ evidence. Finally, Vardy's attempts to bring *Sun* journalists to testify that she was not the source failed and apparently backfired, as the judge drew conclusions from the 'neither confirm nor deny' positions adopted by many.⁴⁴

³¹ Ibid, para 67.

³² Ibid, para 69.

³³ Ibid, paras 226 and 281.

³⁴ *Armorie v Delamirie* [1722] EWHC KB J94, also relied upon in other recent libel cases, such as *Dudley v Phillips* [2022] EWHC 930 in which the High Court ordered an injunction and damages against the defendant for defamation and breach of data protection and made an order under s 13 of the DA 2013 ordering a US website operator to remove defamatory reviews. Cf *Wright v McCormack* [2022] EWHC 2068, which concerned tweets and a YouTube video published by the defendant, a blogger in the cryptocurrency community, alleging that the claimant fraudulently claimed to be Satoshi Nakamoto, the Bitcoin creator.

³⁵ *Vardy v Rooney* (n 27), para 285.

³⁶ Ibid.

³⁷ Ibid, para 39.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid, para 41.

⁴¹ Ibid, para 48.

⁴² Ibid, para 50.

⁴³ Ibid.

⁴⁴ Ibid, paras 24, 109, 225. Journalists had applied to have witness summons and disclosure orders set aside based on source protection under s 10 of the Contempt of Court Act 1981.

The defence of public interest

The second question for determination was whether the reveal post was defensible as a publication on a matter of public interest. Rooney made a brave attempt to make use of the defence under s 4 of the Defamation Act 2013, but this was ultimately defeated. Section 4 seeks to offer protection to a publication of defamatory material in reports covering matters of public interest, even if the publisher cannot prove the material to be true. It is based on - though it also abolishes by virtue of s 4(6) - the so-called *Reynolds* defence, which was a development of qualified privilege.⁴⁵ Subsections 4(1)(a) and 4(1)(b) indicate that, in determining whether the defence applies, the court is required to consider three questions:⁴⁶

- 1) was the statement/ post complained of (or did it form part of) a statement on a matter of public interest?
- 2) if so, did the defendant believe that publishing the statement/ post complained of served the public interest?
- 3) if so, was that belief reasonable?

The court must also 'have regard to all the circumstances of the case' when determining these issues.⁴⁷ As the recent case of *Banks v Cadwalladr* demonstrates, relying on this defence is hard, given that it requires proof of extensive and thorough research to show a reasonable belief in the public interest.⁴⁸ In her original post, Rooney appeared convinced of her statement's truth and clearly identified (with the drama-enhancing and suspense-sustaining 10 dots) Vardy as responsible for a repeated and consistent breach of trust. However, incorporating distancing wording could have significantly lessened the sting of the words complained of. Rooney's position would have probably been different had she made use of the language of opinion. Peppering the announcement with evaluative language and words like 'it seems' or 'I reckon' could have opened the door to the defence of honest opinion under s 3 of the Defamation Act 2013 (which protects published opinion, but not any statement put forward as factual).

It will be recalled that the defendant operated a two-pronged social media strategy. On the one hand, Rooney's private Instagram account was a means of controlling her visibility, as it was accessible to only a few close acquaintances, including Vardy, who were trusted to catch a glimpse of her unvarnished family life. On the other hand, a distinct public account allowed the public to see a more beautified and sanitised version of her life. In the defendant's thoughts, it was unacceptable that the line between her private and public accounts had been washed away, when stories from her private account found their way to the *Sun* pages.

The court accepted that Rooney's revelatory post highlighted the 'undesirable practice'⁴⁹ of betraying trust and disclosing information about one's personal life to the press. Although the information disclosed might fairly be described as being of trivial nature, negative or uncontrolled gossip can still threaten or tarnish an individual's reputation and cause dysfunctional consequences (sometimes similar to victimisation).⁵⁰ Having given several warnings on her public and private accounts,⁵¹ Rooney also believed that it was in the public interest to publish the revelatory announcement. However, Steyn J took the view that, in circumstances where Rooney had not given Vardy an opportunity to respond to the allegation before posting, her belief was not reasonable; and for that reason, this alternative defence failed.

This is an interesting finding, as the court seems to suggest here that Rooney was expected to follow standard journalistic practice. In the leading case on s 4 of *Economou v De Freitas*,⁵² in which the

⁴⁵ *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127.

⁴⁶ *Economou v De Freitas* [2018] EWCA Civ 2591.

⁴⁷ DA 2013, s 4(2).

⁴⁸ [2022] EWHC 1417 (QB).

⁴⁹ *Vardy v Rooney* (n 27), para 288.

⁵⁰ Roy Baumeister and Mark Leary, 'The need to belong: Desire for interpersonal attachments as a fundamental human motivation' (1995) 117(3) *Psychological Bulletin* 497. Note that for the purposes of the defence of truth, the information does not need to be confidential or important to meet the sting of the libel; see *Vardy v Rooney* (n 27), para 287.

⁵¹ *Vardy v Rooney* (n 27), paras 117, 123, 177.

⁵² *Economou* (n 46).

claimant complained that the defendant had falsely accused him of raping his deceased daughter, Warby J concluded at first instance that:

Among the circumstances relevant to the question of what enquiries and checks are needed, the subject-matter needs consideration, as do the particular words used, the range of meanings the defendant ought reasonably to have considered they might convey, and the particular role of the defendant in question.⁵³

Mr De Freitas had given interviews and press releases to newspapers about the factors he felt had contributed to the tragic loss of his daughter. His role was found to be 'closer to that of a source or contributor than that of a journalist'⁵⁴ and as such, it would be 'wrong in principle' to require him to undertake all the inquiries which would be expected of a journalist.⁵⁵ The Court of Appeal later rejected the claimant's argument that Warby J had effectively conferred 'contributor immunity'⁵⁶ on the defendant. However, in *Doyle v Smith*, which concerned publications about a proposed property deal involving a rugby club and was the first libel case where a blogger relied on the public interest defence, the High Court held that amateur journalists/ bloggers ('citizen journalists') who do more than contribute and seek to rely on the public interest defence are likely to be held to the same objective standards of pre-publication conduct as professional journalists, before they could claim the benefit of s 4.⁵⁷

In *Vardy v Rooney*, the court's conclusion on the public interest defence would have obvious force if Rooney had acted as a professional journalist. But what was the defendant's role in this fact-sensitive case? Rooney could hardly be described as a mere contributor, as she actually wrote and published material. Was her status as the architect of the revelatory post enough for Rooney to be held to the same standard as a 'citizen journalist' who composed and published an item purported to be investigative journalism? As her interest was predominantly personal, it might be thought that the court's finding, i.e., that Rooney failed to seek proper comment from Vardy, was not a pragmatic aspect of the decision. In the more recent Supreme Court case of *Serafin*, which added some more clarity on when a defamatory statement is defensible because it was published in the public interest, Lord Wilson rather pointedly observed:

A failure to invite comment from the claimant prior to publication will no doubt always at least be the subject of consideration under ss (1)(b) and may contribute to, perhaps even form the basis of, a conclusion that the defendant has not established that element of the defence. But it is, with respect, too strong to describe the prior invitation to comment as a 'requirement'. It was never a 'requirement' of the common law defence [...] and so to describe it would be to put a gloss on ss (1)(b) and (2) of the section.⁵⁸

So, it may not be entirely realistic to put most lay members of the public who post material on social media on the same par with news publishers or journalists writing for mainstream news websites. Considering that the finding on the defence of truth was dispositive of the case, the court's views on the public interest defence were expressed very briefly. But it would have been helpful to see how the circumstances of this celebrity feud would influence the court when exercising its flexibility in its assessment of the 'reasonable belief' requirement.

The price of fame

As a result of her loss, Vardy did not receive any damages and was left with the bill for the legal fees. In addition to her own court costs, she is expected to make payments up to a maximum of £1.5 million towards Rooney's costs.⁵⁹ The winning party often recovers only about 70% of their costs, but in this

⁵³ *Economou v David De Freitas (Rev 1)* [2016] EWHC 1853, para 241.

⁵⁴ *Ibid*, para 242.

⁵⁵ *Ibid*, para 246.

⁵⁶ *Economou* (n 46), para 107.

⁵⁷ *Doyle v Smith* [2018] EWHC 2935, para 81.

⁵⁸ *Serafin v Malkiewicz and Ors* [2020] UKSC 23, para 76. This was also a highly unusual case, in that the Supreme Court Justices agreed with the Court of Appeal's criticism that the trial judge had 'harassed and intimidated' the claimant, so the case should be sent for a retrial (see para 48 of the SC judgment).

⁵⁹ Jim Waterson, "'Wagatha Christie' trial: Vardy ordered to pay up to £1.5m of Rooney's legal fees" *The Guardian* (London, 4 October 2022) 4. It is estimated that the total bill for both sides will be roughly in the region of £2-3 million; see Elizabeth Wiggin, 'Vardy v Rooney' *The Law Society Gazette* (London, 4 August 2022) <<https://www.lawgazette.co.uk/legal-updates/wagatha-christie-vardy-v-rooney-/5113361.article>> accessed 4 September 2022; Dominic Casciani, 'Wagatha Christie: Rebekah Vardy loses libel case against

instance, Vardy was ordered to pay a larger proportion (90%) than in other equivalent cases, partly because she destroyed evidence relevant to the trial and her conduct fell outside what is ordinarily expected from a party in legal proceedings. Considering the money at stake, some further negotiations are expected before the court decides what is reasonable and proportionate for Vardy to pay. Even Rooney suffered some losses. The financial implications of a defamation action can sometimes be so punitive that even the winner can end up with some losses.

But apart from the tangible aspects of financial loss, we cannot ignore the impact of the outcome on the intangible value of Vardy's reputation capital. Vardy's decision to sue spectacularly backfired. As in the *Depp* litigation,⁶⁰ days of cross-examination put aspects of her private life under the microscope and painted a far from favourable picture of her. More damaging were perhaps the judge's scathing observations on Vardy's conduct in a painstaking analysis of the evidence in a 290-paragraph-long ruling. Some of Steyn J's remarks about Vardy's evidence were damning, ultimately questioning its credibility. She found that the claimant wilfully destroyed critical evidence and engaged in a 'publicity-seeking behaviour'.⁶¹ Lengthy exchanges of correspondence revealed how Vardy was keen to become the subject of positive media coverage and sought to leak information to newspapers (e.g., a story about the drink-driving arrest of a professional footballer),⁶² occasionally for monetary benefit (e.g., a message to her agent was accompanied by the note 'i want paying for this x').⁶³ This is reputational damage which is difficult to recover from.

Vardy's case arguably serves as a cautionary warning of the unpredictable nature of libel litigation, having regard to the issues at stake, and the risks involved in pursuing the path to vindication, particularly for future litigants who might feel pressure to clear their reputations in fear of a 'cancel culture'⁶⁴ climate in the age of social media activism. Litigants in high-profile cases may also expect a period of overheated media coverage and any damages awarded will usually be dwarfed by the legal costs. Neither of the parties in *Vardy v Rooney* is on the breadline, but it can reasonably be maintained that both have lost some of their 'market value'.

Importantly, the judge recognised that Vardy had faced appalling online treatment and 'vile abuse'⁶⁵ from social media trolls, following the publication of the revelatory post. Steyn J emphasised that nothing Vardy had been accused of could justify subjecting her and her family to 'such vitriol'.⁶⁶ The disproportionate impact of online abuse on women is well documented⁶⁷ and Vardy's experience in the context of this trial is another stark reminder that tech companies need to do more to respond to the breadth of gender-based violence in the digital sphere.⁶⁸

Coleen Rooney *BBC News* (London, 29 July 2022) <<https://www.bbc.co.uk/news/entertainment-arts-61719250>> accessed 3 September 2022.

⁶⁰ Alexandros Antoniou, 'The Johnny Depp libel trial explained' *The Conversation* (London, 3 November 2020) <<https://theconversation.com/the-johnny-depp-libel-trial-explained-149217>> accessed 1 September 2022.

⁶¹ *Vardy v Rooney* (n 27), para 86 (Steyn J). For example, Steyn J found that it was highly likely that Vardy had chosen to sit behind Rooney during a Euro 2016 football match to allow a photo agency to capture the pair in the same shot; see paras 86-91.

⁶² *Ibid*, paras 227-234.

⁶³ *Ibid*, paras 227, 233.

⁶⁴ Rebecca Lewis and Angèle Christin, 'Platform drama: "Cancel culture," celebrity, and the struggle for accountability on YouTube' (2022) 24(7) *New Media and Society* 1632.

⁶⁵ *Vardy v Rooney* (n 27), para 8; see also Jim Waterson, 'Rebekah Vardy subjected to ridicule on a massive scale, libel trial told' *The Guardian* (London, 19 May 2022) 9.

⁶⁶ *Ibid*.

⁶⁷ Amnesty International, 'Troll Patrol Findings: Using Crowdsourcing, Data Science & Machine Learning to Measure Violence and Abuse against Women on Twitter' <https://decoders.amnesty.org/projects/troll-patrol/findings#what_did_we_find_container> accessed 28 August 2022; Ruth Lewis, Michael Rowe and Clare Wiper, 'Online Abuse of Feminists as An Emerging form of Violence Against Women and Girls' (2017) 57(6) *The British Journal of Criminology* 1462; see also the Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences on Online Violence Against Women and Girls from a Human Rights Perspective (A/HRC/38/47) <https://digitallibrary.un.org/record/1641160/files/A_HRC_38_47-EN.pdf> accessed 28 August 2022.

⁶⁸ Ofcom, *Online Nation 2022 Report* (Ofcom 2022) 70; see further The End Violence Against Women Coalition, Glitch, Refuge, Carnegie UK, NSPCC, 5Rights, Clare McGlynn and Lorna Woods, *Violence Against*

An intriguing peek into celebrity culture

On the whole, Rooney successfully established her defence of truth, meaning that the court was persuaded that the sting operation she had engineered and her detective work proved solid. She was however unable, according to the court, to satisfy the three limbs of the public interest defence. It may be fair to say that the libel dispute in the WAG-gate did not raise any complex legal issues. The outcome largely depended on the evidence and findings of fact in this particular case. Nevertheless, its gossip-fuelling facets created a candid window into celebrity culture and moneymaking in the tabloid industry.

Rooney's revelatory post was liked more than 280,000 times and became a Twitter sensation along with the #WagathaChristie. What followed was a process of relentless 'intermediatization'⁶⁹ with Rooney's post overflowing onto other social media platforms and being quickly picked up by traditional media outlets (as diverse as the BBC and *The Daily Mail*), feeding radio shows, news bulletins across TV broadcasts and phone-in discussions. It is noteworthy that Rooney's reveal post was published in the midst of a turbulent news cycle on 9-10 October 2019. With its uncomfortable combination of celebrity conflict and dramatic emotion, the social media post managed to disrupt the news agenda. Although this was at the time dominated by stories such as Turkey's air strikes against Kurdish targets in Syria,⁷⁰ the then PM Boris Johnson being called a 'traitor' by a senior EU negotiator for rejecting a potential counteroffer to his Brexit proposals⁷¹ and Downing Street's battle to contain growing Tory fragmentation over deteriorating Brexit negotiations,⁷² many newspapers led on Rooney's spat with Vardy. The WAG-gate perhaps offered a welcome escapism from a heavy news season.

The subsequent trial in 2022 also became a newsworthy item which relied heavily on the visualisation of the unfolding legal battle between the two women. Several moments in the court hearing - like a memorable exchange between Vardy and Rooney's defence lawyer in cross-examination that prompted sniggering in the courtroom,⁷³ Rooney's arrival with her leg in a cast and Vardy's designer (yet understated) fashion choices - were paraded on social media⁷⁴ and turned serious legal arguments into a pop-culture event which dovetailed with intense tabloid coverage. *Vardy v Rooney* has also transcended the confines of the courtroom. In a multi-mediated era where the boundaries between fact and fiction are increasingly fluid, the high-profile row between the two footballers' wives is likely to be adapted into television series by one of Britain's foremost screenwriters.⁷⁵ Rooney has already secured a multimillion-pound deal with streaming service Disney+ to make a documentary chronicling her 'sting operation' following a bidding war with leading streaming service providers Amazon Prime and Netflix.⁷⁶

Notwithstanding its entertainment value, the case shed some light on how the dynamics of celebrity culture, self-celebrification and the media work collaboratively - often behind the scenes - to construct potential, raising at the same time important questions about contemporary media practices and

Women and Girls Code of Practice (2022) <<https://www.carnegieuktrust.org.uk/publications/violence-against-women-and-girls-vawg-code-of-practice/>> accessed 3 September 2022.

⁶⁹ Chris Greer and Eugene McLaughlin, 'Media justice: Madeleine McCann, intermediatization and "trial by media" in the British press' (2012) 16(4) *Theoretical Criminology* 395.

⁷⁰ Martin Chulov and Mohammed Rasool, "'On the edge of a humanitarian catastrophe": Turkish offensive begins' *The Guardian* (London, 9 October 2019) 5.

⁷¹ Bruno Waterfield and Francis Elliott, 'EU diplomat calls Johnson a traitor after offer rejected' *The Times* (London, 10 October 2019) 1.

⁷² Richard Vaughan, 'Tories risk being torn apart by no-deal manifesto' *I News* (London, 9 October 2019) 1.

⁷³ When put to Vardy by Rooney's barrister David Sherborne that Watt's missing mobile was 'lying at the bottom of the North Sea in Davy Jones' locker', Vardy reportedly asked: 'Who is Davy Jones?' At this point, the judge intervened to explain the figure of speech; see Jim Waterson, "'Wagatha Christie" trial: Rebekah Vardy accused of throwing friend "under a bus"' *The Guardian* (London, 12 May 2022) 15.

⁷⁴ See e.g., the Twitter thread by Jim Waterson (media editor at *The Guardian*) <https://twitter.com/jimwaterson/status/1524718485548539904?s=20&t=f2d_rYdKv77zLyeQHELnww> accessed 2 September 2022.

⁷⁵ Vanessa Thorpe, 'Wagatha Christie: big-budget drama joins race to bring libel trial to screen' *The Observer* (London, 31 July 2022) <<https://www.theguardian.com/tv-and-radio/2022/jul/31/wagatha-christie-big-budget-drama-joins-race-to-bring-libel-trial-to-screen>> accessed 1 September 2022.

⁷⁶ Gemma McSherry, 'Coleen Rooney secures Disney+ "Wagatha Christie" documentary' *The Guardian* (London, 26 August 2022) 15.

journalistic standards. Cited in para. 93 of the judgment, Rooney exposes how some celebrity journalism operates:

I know from my experience in the media that a common tactic of those who want to be famous is that they will stage paparazzi shots with agencies. Those shots will then be sold to the tabloid press and the individual in question will split the monies earned from the tabloid press with the paparazzi agent or they will get other benefits such as being able to help control their image in the press.

The WAG-gate lifted the curtain on secret set-ups (e.g., staged paparazzi photographs)⁷⁷ and the symbiotic – albeit occasionally combative - relationship between celebrities and the news media.⁷⁸ Rooney offered an unflattering mirror image of celebrity journalism, comprised of an unscrupulous interest in trivial details of the lifestyles of society belles and beaux, the invasive methods in gathering information about celebrities' private lives (either purely out of monetary interest or with the hope of favourable coverage to enhance public profile) and the unattractive ways (e.g., breaches of trust) from which showbiz stories can emerge. Interestingly, in covering the outcome of the trial, the *Sun* failed to refer to its own role in the case, even though its name was explicitly identified in the single, right meaning that Rooney needed to show as true.⁷⁹ Instead, its coverage made general references to 'the press,' without mentioning once that the libel which was the subject-matter of this dispute involved leaks to it.⁸⁰

Finally, Vardy's efforts to gain media clout through a close and strong relationship with tabloid journalists may also appear to some as dated. The practice of modern influencer-celebrities shows that collaboration with external media outlets is becoming redundant, as it is increasingly easier for them in the social media era to nurture their own image and present themselves directly to fans (or followers) without losing editorial oversight.⁸¹ Rooney, for example, effectively controlled her public persona through social media and chose to plant false stories. Although these were unwittingly published by the *Sun*, she ultimately left both the informant claimant and the news brand look out-of-touch, inane and mercenary.

Acknowledgement

I would like to express my gratitude to Dr. Dimitris Akrivos (University of Surrey) for sharing his pearls of wisdom with me in the course of this research.

⁷⁷ See e.g., *Vardy v Rooney* (n 27), paras 94, 147-151 and 273.

⁷⁸ See e.g., *ibid*, paras 155 and 193.

⁷⁹ *Vardy v Rooney* (n 13), para 23; see also p 2 earlier.

⁸⁰ Holly Christodoulou and Paul Sims, 'LAST WAG STANDING: Becky Vardy says judge "got it wrong & I can't accept it" after Wagatha defeat as Coleen says "I bear her no ill will"' *The Sun* (London, 29 July 2022) <<https://www.thesun.co.uk/tvandshowbiz/19360714/coleen-rooney-right-wagatha-christie-rebekah-vardy/>> accessed 2 September 2022; see also Dr. Evan Harris' comments in this Twitter thread: <<https://twitter.com/DrEvanHarris/status/1553158144855085063>> accessed 2 September 2021.

⁸¹ Anne Jerslev and Mette Mortensen, 'Celebrity in the social media age: renegotiating the public and the private' in Anthony Elliott (ed), *Routledge Handbook of Celebrity Studies* (Routledge 2018).