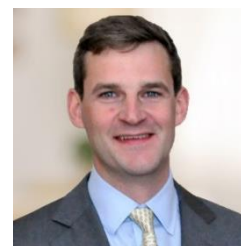


Article by **Dominic Crossley, Partner and Head of Dispute Resolution and privacy and media law specialist and Edward Smith, Associate of Dispute Resolution at Payne Hicks Beach**, first published online in Lexis Nexis psl on 23 November 2020 and reproduced with kind permission  
<https://www.lexisnexis.com/uk/lexispsl/disputeresolution/document/412012/61C2-7WX3-GXFD-82T9-00000-00/>



Dominic Crossley  
Partner, Dispute Resolution  
& Privacy & Media Law



Edward Smith  
Employed Barrister,  
Dispute Resolution

## High Court determines meaning of defamatory Instagram post (Vardy v Rooney)

23/11/2020

TMT analysis: In a claim for libel by Rebekah Vardy, the High Court determined the natural and ordinary meaning of Coleen Rooney's Instagram post as a preliminary issue. Ms Rooney's social media post named Ms Vardy as the source of various stories about her in The Sun newspaper. The two women are both TV personalities and the wives of professional footballers. The court agreed with Ms Vardy's case on the meaning of the words published by Ms Rooney. The judgment provides useful guidance on the court's approach to preliminary issue trials for meaning, which are now commonplace in claims for libel. Written by Dominic Crossley, partner, and Edward Smith, associate, of Payne Hicks Beach.

*Vardy v Rooney* [\[2020\] EWHC 3156 \(QB\)](#)

### What are the practical implications of this case?

The [Defamation Act 2013](#) largely abolished jury trials. Since then it has become the norm for a judge to seek, at an early stage, to determine disputes about the meaning of the words complained of. While it is not always the case, it is not unusual for the claimant's pleading to emphasise the seriousness, whereas the defendant's interest is to establish a lesser meaning.

As Mr Justice Warby states in this judgment:

'It is almost always helpful for the meaning of the alleged libel to be identified at an early stage. Sometimes this will lead to the end of the case, because the words are not defamatory, or because they bear a meaning which the defendant cannot defend, or for some other reason. In any event, a decision on meaning will always have a bearing on at least one of the other issues in the case.'

Having now determined that the words Ms Rooney published carried the meaning that Ms Vardy and her lawyers put forward, it has been reported that the proceedings will be stayed for a period to allow for settlement discussions. Now that the parties know the meaning of the

words the court will apply, they can enter these discussions with far greater clarity on the strength or otherwise of their positions, and a settlement should be far more likely.

## What was the background?

On 9 October 2019, Ms Rooney published an Instagram post (to her 885,000 followers) on her public account and republished the post on her Twitter account (where she has 1.2m followers). The post explained that someone had been leaking Instagram posts and stories from her private account to The Sun newspaper. Ms Rooney decided to follow up on her suspicion as to who the culprit might be, by devising a plan to catch the leaker. She blocked all of her followers on her private Instagram account but one and then started posting a series of fake stories to see if they ended up in The Sun. The stories appeared in the newspaper and concerned gender selection in Mexico, a return to TV, and her basement flooding. Ms Rooney explained the steps she had taken and concluded her post by stating:

‘I have saved and screenshotted all the original stories which clearly show just one person has viewed them.

It’s ..... Rebekah Vardy’s account.’

Ms Rooney’s Twitter post was republished in national newspapers and Ms Rooney was dubbed ‘Wagatha Christie’ for her sleuthing efforts.

On 12 June 2020, Ms Vardy issued a claim for libel in the High Court seeking damages, an injunction and an order that Ms Rooney should publish a summary of the judgment in these proceedings. The court directed that the question of the natural and ordinary meaning of the Instagram post should be tried as a preliminary issue in the claim.

## What did the court decide?

Ms Vardy’s case was that the Instagram post bore the following defamatory meaning about her:

‘the claimant has consistently and repeatedly betrayed the defendant’s trust over several years by leaking the defendant’s private and personal Instagram posts and stories for publication in the Sun Newspaper including a story about gender selection in Mexico; a story about the defendant returning to TV; and a story about the basement flooding in the defendant’s new house.’

In response, Ms Rooney’s case was that the meaning of the Instagram post was:

‘there are 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 newspaper.’

The relevant legal principles are well known to practitioners in this field and have been recently re-stated by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [[2019 EWHC 48 \(QB\)](#)].

Ms Rooney argued that ‘reasonable grounds to suspect’ should be the preferred ‘Chase level’ meaning because the use of the words ‘Rebekah Vardy’s account’ did not directly point the finger at Ms Vardy herself. The same point was used by Ms Rooney to assert that it would be common knowledge that celebrities like Ms Vardy utilised other people who would also have access to her Instagram account.

Warby J disagreed. The judge set out his preferred meaning and concluded that it was substantially the same as Ms Vardy’s:

‘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 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.’

The judge explained that he arrived at this meaning of the post before hearing the oral submissions of the parties and did not alter his position following the trial. While recognising that the nature of publications on social media platforms must be taken into consideration when determining meaning, following the recent Supreme Court case of *Stocker v Stocker* [2019] UKSC 17, the judge concluded that this did not assist Ms Rooney’s case given the categorical nature of the words themselves. Moreover, the judge refused to accept Ms Rooney’s argument that it would be common knowledge that a person akin to Ms Vardy would not be the only one with access to her account.

## Case details

- Court: Media and Communications List (Queen’s Bench Division), High Court of Justice
- Judge: Warby J
- Date of judgment: 20 November 2020

Dominic Crossley is a partner, and Edward Smith an associate, at Payne Hicks Beach.

10 New Square, Lincoln's Inn, London WC2A 3QG

DX 40 London/Chancery Lane

Tel: 020 7465 4300 Fax: 020 7465 4400 [www.phb.co.uk](http://www.phb.co.uk)

This publication is not intended to provide a comprehensive statement of the law and does not constitute legal advice and should not be considered as such. It is intended to highlight some issues current at the date of its preparation. Specific advice should always be taken in order to take account of individual circumstances and no person reading this article is regarded as a client of this firm in respect of any of its contents.

The firm is authorised and regulated by the Solicitors Regulation Authority: SRA Number 00059098  
© 2020 Payne Hicks Beach