

## **The sun wins hollow victory in Rooney “prostitute” libel case**

As with many maxims, the one that states that ‘the only certain thing about libel litigation is its cost’ can be both glib and simplistic. Yet its intrinsic truth was once again demonstrated by the dramatic conclusion to the so-called ‘Wayne Rooney prostitute’ libel case at the end of January.

The case was brought by Patricia Tierney, a 52 year-old grandmother, over *The Sun’s* claims that she had had sex with Rooney while working as a prostitute at a Liverpool massage parlour. Her case, however, was fatally undermined by the last-minute disclosure of a statement she made to police in 2002 in which she admitted providing ‘sexual services’ to clients.

Agreeing to *The Sun’s* application to dismiss the action, Mr Justice Clarke remarked that Tierney’s failure to disclose this statement beforehand was ‘not merely as an abuse of the court’s process, but an attempt to pervert the course of justice.’

Apart from providing the press with an irresistible opportunity to mention the iconic *Sun* headline which accompanied the original article (‘Don’t Fancy Yours Much Wayne’), the collapse of the case was also notable for again highlighting the difficulties which media defendants presently face.

Speaking afterwards, *The Sun’s* managing editor, Graham Dudman, justifiably proclaimed that ‘*The Sun* story was 100% accurate and we are glad justice has been done.’ While his sentiments are easy to understand, the issue of whether justice was really done in this case is perhaps more questionable.

Despite its comprehensive victory, *The Sun* will almost certainly be substantially out of pocket as a result of defending the action. Tierney is not thought to have any meaningful financial assets and apparently lives off benefits. As a result, the Judge’s order that she pay *The Sun’s* legal costs (in all probability a six-figure sum) is unlikely to represent anything more than a symbolic gesture. From a strictly commercial perspective, therefore, *The Sun’s* victory has a distinctly hollow ring to it.

This unfortunate outcome will doubtless bring renewed scrutiny on to one of the most contentious aspects of modern-day libel litigation. Until the unexpected disclosure of the fateful police statement, Tierney was legally represented despite her lack of money as a result of her lawyers agreeing to act under Conditional Fee Agreements.

Such agreements work on the premise that the claimant’s lawyer will waive his fees if the claim is lost, but will be compensated for taking this risk if the claim is successful. The defendant accordingly becomes liable to pay both the claimant’s legal fees and also an additional ‘uplift’ on those fees. In a libel action which goes to trial, this ‘uplift’ will usually be 100%, thus potentially doubling the costs payable by the defendant. In the Tierney case, it has been reported that *The Sun* was facing a potential liability of £500,000 in legal costs alone.

The media have long argued that simple economic logic dictates that such increased liabilities act as a significant deterrent against defending libel actions brought on a CFA basis. Faced with this potential burden and often with little or no possibility of recovering its own legal costs from the claimant even if successful, commercial pressures may force a newspaper to make an early offer of settlement, irrespective of the actual merits of the complaint.

On the other hand, the decision to allow libel litigants to be represented on a CFA basis was designed to address another fundamental injustice: the former situation where the libel courts were only accessible to the very rich. It should also be remembered that the vast majority of claims brought under CFAs are honestly advanced and that no sensible lawyer will agree to act on a ‘no win, no fee’ basis unless convinced of the merits of a claim.

The House of Lords recently stated that the dilemma posed by CFAs may mean that Parliament has to reconsider the way in which the regime works. Until then, however, the only certain thing for the media is that libel litigation is likely to remain an expensive business.

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