

TWO CELEBRITIES, ONE MISSING MOBILE PHONE, AND MANY MISSING MESSAGES: THE ENGLISH HIGH COURT GIVES JUDGMENT IN THE WAGATHA CHRISTIE CASE

Introduction

It is not often that disclosure of documents and data forensics are the subject of speculation by the tabloid or indeed, the mainstream press, or a process linked to celebrities and the world of footballers' wives. However, that is exactly the scenario which arose as a result of the English High Court case brought by Rebekah Vardy against Coleen Rooney (colloquially known as the 'Wagatha Christie' case), and on which the English High Court has now ruled¹.

The case centred around leaked information about the defendant for which she publicly blamed the claimant and which resulted in the claimant issuing defamation proceedings in the English court. The English High Court has now dismissed the claim and in so doing, expressed some very damning conclusions around a missing device and missing data.

The case shines a light on disclosure in litigation and the inferences the court will draw where full disclosure is not given, and which form the focus of this briefing.

Disclosure

Disclosure (or the mutual exchange of documentary evidence) is an important part of the English litigation evidential process (and of other common law jurisdictions). For more information on disclosure under the Disclosure Pilot (PD 51U), operational in the Business and Property Courts (and due to be permanent as from 1 October 2022), please see our [Disclosure Client Guide](#)².

In this case the documentary evidence or data disclosed was not huge, amounting to some 3,000 pages of mainly Instagram and other social media posts, and newspaper articles. However, it was clear that there were gaps in the data, as noted in the judgment "*all the media files that they sent each other (including any screenshots or other images, videos and voicemail messages) [were] missing.*"

It was the defendant's case that the loss was deliberate, which was denied by the claimant who alleged loss of images and media files occurred when she tried to transfer her WhatsApp messages to her lawyers. This was compounded by her disposing of the relevant laptop, which she informed the court had been "*damaged beyond repair*".

The suggestion here was that the missing data would have been detrimental to the claimant's case, and therefore, in breach of the obligation to disclose '*adverse*' documents (documents which negatively affect one's own case or support that of the counterparty) in the Disclosure Pilot (PD 51U) and under the Civil Procedure Rules (CPR) Part 31, and elsewhere. This obligation is ingrained in the English litigation system and supports the *Overriding Objective*, namely "*enabling the court to deal with cases justly and at proportionate cost*³."

Missing data is not an unknown phenomenon in litigation. It is, however, becoming increasingly more unusual as the technology used to retrieve 'deleted' emails and voicemails etc., and restore data on damaged devices, becomes ever more sophisticated. It cannot, however, assist with recovering locally stored data on missing or disposed of devices, at least, not yet.

In terms of the court's findings and perception, the judgment notes:

- "*The reasons that Ms Vardy and Ms Watt have given for the original WhatsApp chat being unavailable are each improbable.*";
- In relation to the mobile phone the claimant's agent dropped in the North Sea days after an order was made requiring it to be produced for inspection: "*[t]he timing is striking. In my judgment, even taking this evidence on its own, the likelihood that the loss Ms Watt describes was accidental is slim.*"; and ultimately

¹ <https://www.judiciary.uk/wp-content/uploads/2022/07/Vardy-v-Rooney-Trial-Judgment.pdf>

² [003563-HFW-Client-Guide-Disclosure-Pilot.pdf](#)

³ CPR, Part 1.1

- "In my judgment, it is likely that Ms Vardy deliberately deleted her WhatsApp chat with Ms Watt, and that Ms Watt deliberately dropped her phone in the sea."

What inferences will be drawn where data is missing?

Having established that documentary evidence was deliberately withheld, what consequences follow? The court reviewed the authorities on this point including the 300-year-old case of *Armory v Delamirie*⁴, which involved a chimney sweep who found a piece of jewellery whilst cleaning a fireplace. A jeweller, when valuing the jewellery, surreptitiously removed the gems. The court held that if it can be shown that evidence is missing, the assumption should then be that what is missing is of the highest possible value.

This judgment suggests that the authority in *Armory* will apply equally to missing WhatsApp messages allegedly sent by a footballer's wife, as it does to missing gems in a piece of 18th century jewellery.

How do you minimise the risk of data loss in disclosure?

Whether deliberate or not, data loss can happen. In terms of credibility and the court's perception, its consequences can be severe. That is why we work closely with our clients at the outset of a matter - advising on:

- the suspension of document destruction policies and the issue of hold notices;
- ensuring there is clarity and understanding around their and our duties and responsibilities;
- identifying those most likely to be involved in the issue;
- putting in place an effective system of data collection and device retrieval; and
- using the most up to date technology to quickly and efficiently move on to document review to identify the evidence and formulate the advice and strategy.

Conclusion

Whilst this case is far removed from the commercial litigation with which most of us are familiar, it is a general reminder that the court requires the parties to:

- preserve documents in its control (i.e. not just limited to possession) that might be relevant;
- disclose known adverse documents (and any other category as agreed between the parties or ordered by the court);
- carry out searches (if any) in a responsible and conscientious manner; and
- act honestly.

Failure to give full and proper disclosure will have consequences. For commercial litigation, under the Disclosure Pilot, under CPR Part 31, or elsewhere, these consequences can include hearings being adjourned - with the inconvenience and extra costs that this causes; adverse costs orders against the defaulting party; adverse inferences being drawn; and in the most serious of cases, an order of contempt of court (punishable by a fine, imprisonment of up to two years, or both).

Legal advisers are required to advise parties on disclosure, and parties would be well advised to take their disclosure obligations seriously and comply, or risk damaging their own case.

As written, the judgment gives little scope for appeal. However, if there is an appeal which impacts on the issues raised in this briefing, we will publish an update.

For more information, please contact the author(s) of this alert



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