Neutral Citation Number: [2025] EWHC 57 (KB)

Case No: QB-2020-003210

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/01/2025

**Before** :

**DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC**

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**Between :**

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| **JARMARLEOS DO ZURIUS** | **Claimant** |
| **- and -** | |
| **(1) SECRETARY OF STATE FOR HEALTH & SOCIAL CARE**<br>**(2) SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST** | **Defendants** |

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**The Claimant appeared in person**
**Kirsty McKinlay** (instructed by **DAC Beachcroft LLP**) for the **Defendants**

Hearing dates: 10 - 12 December 2024

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# Approved Judgment

This judgment was handed down remotely at 10.00am on 17 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC

**DHCJ AIDAN EARDLEY KC:**

1. In these proceedings the Claimant alleges that staff at an NHS walk-in centre in Nottingham wrongfully disclosed (or negligently failed to prevent a third party from accessing) his private medical information. This has become known in the proceedings as **the First Claim**. He further alleges that the Second Defendant wrongfully refused to offer him employment on the basis of unfounded rumours about his character (known in the proceedings as **the Second Claim**). This is my judgment following a trial of certain preliminary issues which I identify at paragraph 10 below. At the conclusion of the trial, the Defendants invited me to find that, for the purposes of CPR 44.16, the Claimant's claim is fundamentally dishonest. I also address that issue in this judgment.

2. My judgment is structured as follows:



## A. The parties

3. The Claimant lives in Mauritius. He was born on 22 August 1985. At certain times in his life, in particular in 2005 and 2006 when he was in his early twenties, he sought employment in the healthcare sector in the UK and spent some time in the UK pursuing that goal. Further details about his employment and immigration history are obscure but it appears that he has been unsuccessful in obtaining long-term employment in the UK. His birth name was Tohendra Ashwin Kumar Ramdhany and this is the name used in respect of

many of the documents that are relevant to this case. The Defendants have never formally admitted that Mr Ramdhany is one and the same as the Claimant. However, I accept that this is true. The trial bundle includes a document, the authenticity of which has not been seriously disputed, which records a decision of the Attorney General of Mauritius, dated 24 December 2012, certifying that Tohendra Ashwin Kumar Ramdhany has permission to change his name to Jarmarleos do Zurius.

4. The Claimant has acted in person throughout these proceedings. He is clearly intelligent, articulate, and familiar with the substantive law of England and Wales: his written and oral submissions were cogent and made appropriate reference to relevant principles of law and authorities. However, he evidently lacks knowledge and experience of civil procedure and this gave me some concern as to whether he really appreciated what was required of him as a claimant. I took various steps to address these concerns, which I detail below.

5. The First Defendant accepts that he is the appropriate public authority in respect of the acts/omissions of staff at the walk-in centre given that responsibility for the centre has shifted between various NHS entities over time and that the centre no longer exists as such (it is now an "urgent treatment centre").

6. The Second Defendant is the NHS body that was responsible for any decision to employ, or refuse an offer of employment to, the Claimant at one or other of its hospitals in 2006.

## B. Procedural history

7. This case has had a convoluted procedural history. I do not need to set it out in full. The essential points are these. A claim was issued on 18 August 2020 attaching particulars of claim dated 3 August 2020 (**the Original Particulars of Claim**). The named defendant was "NHS England" and the Original Particulars of Claim advanced not only the First Claim and the Second Claim but also claimed that he had been wrongfully refused employment at a number of other hospitals (including in Norwich, Reading and Leeds) on the basis of the same false and malicious information.

8. The Claimant then produced amended Particulars of Claim dated 21 January 2021 and was given permission to file and serve them (along with an amended Claim Form) by 4 February 2022. These amended particulars (**the Unfiled Amended Particulars of Claim**) named the

present Defendants as well as 5 other NHS Trusts. The Claimant's attempts to file these amended statements of case by 4 February 2022 were unsuccessful but Master Dagnall then gave him permission to file by 25 March 2022. The Claimant did this but the version he filed at this point (**the Amended Particulars of Claim**) was different from the Unfiled Amended Particulars of Claim: the Amended Particulars of Claim contained only the First and Second Claims against the present Defendants and omitted any claims against the 5 other NHS Trusts. There is no dispute that the Amended Particulars of Claim have been validly filed and served.

9. The Claimant provided a response to a Part 18 Request dated 19 March 2021 relating to the Original Particulars of Claim. An Amended Defence was served on or about 6 April 2022 responding to the Amended Particulars of Claim and the Claimant filed a Reply dated 23 May 2022.

10. The Defendants applied for summary judgment but this application was ultimately refused by Master Dagnall following a hearing on 4 December 2023. Instead, the Master gave directions for this trial of preliminary issues, defining the issues as follows in paragraph 3 of his Order:

> *There shall be determined as preliminary issues:*
> *a. all questions of breach of duty and limitation and primary liability other than primary causation;*
> *b. whether the heads of damages sought by the Claimant are such that can be claimed in relation to any established breach of duty as a matter of law (as opposed to of fact); and*
> *c. whether the Claimant has proved (on the balance of probabilities) that (i) but for any established breach of duty, the Claimant would have been offered employment by the Second Defendant or that (ii) but for any established breach of duty, the Claimant had a real or substantial chance of an offer of employment from (a) the Second Defendant or (b) from elsewhere in the NHS.*

11. The Master's Order also set a timetable for disclosure and inspection and required service of witness statements of fact by 24 April 2024 (later extended by consent to 22 May 2024). The Order included the usual provision (reflecting CPR 32.10) that *"Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission from the Court"*.

12. On Monday 2 December 2024 (so, a week before the first day of trial), I held a pre-trial review (**PTR**). At the PTR, the Claimant applied for an adjournment of the trial until late January 2025 on the basis that he had been refused a visa to travel to the UK from Mauritius. He wished to challenge this decision or reapply so that he could attend in person. I refused that application and gave an oral judgment. In brief summary, I was not satisfied that the Claimant would be able to obtain a visa within a reasonable timeframe; I was satisfied that a fair trial of the relevant issues could be held with the Claimant participating remotely; and I considered that the prejudice to the Defendants and the administration of justice that would arise by reason of an adjournment would outweigh any prejudice to the Claimant. I directed that the Defendants should use their best endeavours to courier a hard copy of the trial bundle to the Claimant and the Defendants were able to do this in time for the commencement of the trial.

13. Also at the PTR, I raised with the Claimant the fact that the witness statements he had so far served did not appear to address a number of important matters in dispute. I was concerned that he had not appreciated the effect of the rules (see CPR 32.4, 32.5 & 32.10), namely that he would be unable to give oral evidence on these matters without my permission. I indicated that if he wished to reconsider, he should file and serve a further witness statement, supported by an application for relief from sanctions, which I would consider on the first day of trial. I repeated this in my Order, giving some examples of matters in dispute on which the Claimant might want to address in evidence.

14. The Claimant did not file any further witness statement and did not make any application to give oral evidence other than that contained in the witness statements he had already filed. I confirmed that this was his position at the beginning of the trial.

## C. The parties' pleaded factual cases

15. The Claimant's Amended Particulars of Claim (read, where necessary with his Part 18 Response and Reply) puts forward the following case.

16. The Claimant pleads that he was living in Nottingham between October 2005 and May 2006.

17. In respect of the First Claim, the Claimant pleads that in around February 2006 he felt unwell and was concerned that he may have contracted HIV-AIDS and so attended an NHS walk-in centre in Nottingham (**the Walk-In Centre**). There, he pleads, he was examined by a male nurse who made a diagnosis that he was not suffering from HIV-AIDS but simply a throat infection, for which the nurse prescribed medication and recommended long-term rest. The Claimant pleads that the nurse made a record on a consultation card and that, *"I sought this medical treatment secretly in Nottingham. I did not tell anybody about my HIV-AIDS disease neither in the UK nor in Mauritius. Only this Walk-in-Centre and I knew about this disease and treatments"*. The Claimant contends that the Walk-in-Centre failed to keep this information confidential such that it was leaked to members of the public in the UK and Mauritius.

18. In respect of the Second Claim, the Claimant pleads that in January 2006 he applied for a post as a healthcare assistant with the Second Defendant and was interviewed for this post on 22 February 2006. He contends that the interview was conducted by a Mrs Cheryl Depledge and Ms Mandy Abbey in a store room at the Second Defendant's Sheffield Northern General Hospital. He pleads that Mrs Depledge then telephoned him on 12 March 2006 to say that *"she decided not to recruit me despite I was successful in my interview at 100%"* and that she had decided to refuse to recruit him *"on ground that I had no UK/EEA/EU Nationality"*. The Claimant pleads that the real reason the Second Defendant rejected him was that it had become aware that *"public made complaints with NHS Hospitals that I will rape nurses at work"* without raising with the Claimant that such complaints had been received, thus depriving him of the opportunity to explain that such allegations were false.

19. The Claimant pleads that he was unaware of the Defendants' alleged breaches of duty (or other wrongdoing) until 11 February 2020 when, *"I discovered a copy of a letter which has been sent to Dr A.S. Kanowah (who was my referee for employment references) in Mauritius in year 2006 by my friend Mr Rajen Yetty in Mauritius"*. He pleads that he found this letter (**the Yetty Letter**) *"inserted in my house's entrance door joint"* in an unmarked envelope. He pleads that Mr Yetty died in 2015.

20. The Amended Defence makes no admissions in respect of the Claimant's factual case. Thus (among other things), it requires the Claimant to prove his account of attending the Walk-In Centre and discussing there his concerns about possibly having HIV/AIDS; it requires

the Claimant to prove that details of this consultation were then leaked by staff at the Walk-In Centre or that some third party accessed those details and disclosed them. As to the Second Claim, the Second Defendant requires the Claimant to prove that he did indeed apply for a position with the Second Defendant, that he was interviewed and then rejected. (However, as I explain below, the Second Defendant now accepts that the Claimant did in fact apply for a position in early 2006, and was interviewed for it in February 2006, albeit at the Royal Hallamshire Hospital, not the Northern General Hospital). Further, the Second Defendant requires the Claimant to prove that he was told that he had been successful in interview, that he was being rejected only because of immigration/nationality matters, and that this explanation was false, the true reason being that the Second Defendant had become aware of allegations that he posed a risk to nurses.

21. The Defendants require the Claimant to prove that he only discovered the Yetty Letter in February 2020. The Amended Defence questions the authenticity of the Yetty Letter and other documents submitted with the Original Particulars of Claim, along with the honesty of the Claimant's claim generally.

## D. Evidence at trial

22. The Claimant gave evidence and adopted as his evidence in chief 5 documents that were either headed "witness statement" or which the Defendants accepted were in substance witness statements. Taking them chronologically, these were:

    (1) A document dated 12 February 2020 headed "Witness Report Reputation Injury" in which the Claimant explains how believes the NHS's failure to recruit him has harmed his reputation;

    (2) A document dated 3 August 2020 headed "Witness Statement on Reputation Injury on AIDS" in which the Claimant explains that, in his contention, people who knew him had formed the view that he has, or may have, HIV-AIDS;

    (3) A statement dated 21 January 2022 which simply said *"I state that all damages by which I have suffered by the Breach of Confidence act of the Defendant as I explain in my particulars of claim are true"*;

(4) A document dated 21 May 2024 and headed "Claimant Witness Statement regarding evidence of fact and witness to call for the trial of December 2024", in which the Claimant states that he will not call any witnesses but "*I will give all Oral and Documentary evidences myself "*;

(5) Another document dated 21 May 2024, this one headed "Claimant Witness Statement Regarding Original Documents" in which the Claimant states that he no longer has a number of relevant original documents and what has happened to them.

23. The Claimant confirmed that there were no other documents in the trial bundle that he considered to be a witness statement that he wished to adopt. The result therefore was that his evidence in chief was of extremely limited scope. The Claimant said nothing in evidence in chief to support his pleaded case that he did in fact attend the Walk-In Centre and discussed HIV-AIDS there; nor that the nurse he saw made a record on a consultation card; nor that he had told no-one else about this visit. Likewise, his evidence in chief did not deal with his pleaded case that he had had applied for a post with the Second Defendant for which he was interviewed and then rejected. He gave no account of attending an interview and no account of, thereafter, receiving a telephone call in which he was told that he had passed the interview but was being refused employment on immigration grounds. Neither did the Claimant's evidence in chief say anything about what he knew of Mr Yetty or how and when he came to discover Mr Yetty's letter.

24. Ms McKinlay did not open up any of these matters in cross-examination. She was not required to do so – she had no need to question the Claimant about evidence he had not given. Instead, Ms McKinlay's cross-examination focussed on the authenticity of a number of documents upon which the Claimant relies. I deal with this and further points that emerged in cross-examination below where necessary.

25. I gave the Claimant an opportunity to "re-examine" himself, i.e. to add anything that was necessary to clarify or amplify the answers he had given in cross-examination.

26. Rather than giving oral evidence himself in support of his case, the Claimant chose to rely upon three key documents. The first of these was the Yetty Letter, which I need to set out in full, given its potential significance. It is headed with the date, 25 November 2006. It is

addressed to "Dr AS Kanowah" (with an address in Nouvelle France, Mauritius) and is stated to be from "Mr Rajen Yetty" (with an address in Vacouas, Mauritius). It reads as follows:

*Dear Dr Kanowah,*

*You are doing employment references for Mr Tohendra Ashwin Kumar Ramdhany to work in NHS. You have done one for Sheffield Hospital.*

*I tell you that Mr Tohendra Ashwin Kumar Ramdhany has got AIDS infection in Nottingham. Many Mauritians in UK and Mauritius know this.*

*I came to know he has AIDS because I enquired about all his transactions with NHS hospitals with a Mauritian friend who work in a NHS hospital. He accessed his AIDS information from Nottingham walk-in-center. Tohendra Ramdhany has seek medical treatments for AIDS in this hospital. I am following all his activities in U.K.*

*Although you are making good recommendations for him to work in NHS, hospitals will not recruit him because many Mauritians made objections with NHS hospitals to prevent him from getting jobs in hospitals.*

*He is a young man and he cannot work in NHS and earn high salaries. I have worked in nursing homes for almost all time in my life till my retirement and I have earned lesser salaries. I am not happy that NHS recruits him. I do not want that he enjoys comfortable life by earning big salaries. He should work in supermarkets and shops like other students.*

*My Mauritian friend told me over 60 people from Mauritius and UK have contacted many NHS hospitals and have reported many things about Tohendra Ramdhany to make NHS reject his healthcare assistant jobs.*

*Largest numbers of complaints have been sent to Nottingham hospitals because Tohendra was living in Nottingham. I have also contacted Nottingham hospitals to object.*

*Many complaints have also sent to Birmingham, Leicester, Newcastle, Kent, Surry and London, NHS Hospitals because Mauritians have connections in these places.*

*Where no complaints were sent, these hospitals gave Tohendra interview, like Sheffield, Leeds, Norwich, Manchester and Berkshire. But when people came to know he has been interviewed there they sent their objections to these hospitals as well.*

*After interviews these hospitals devised grounds only to reject him.*

*Although it is not right to accept complaints containing false characters against an applicant, NHS hospitals are applying such complaints to reject.*

*Some people reported that Tohendra Ramdhany will rape nurses this is why NHS must not recruit him. This complaints were made by two persons named* [names supplied]

*Tohendra Ramdhany has come back to Mauritius from Suffolk. He is preparing now to go to Newcastle to study in September 2007. He will re apply to work in NHS hospitals in UK. As you are a doctor your recommendation is being respected by NHS. I would ask you to stop doing his work references. This will help to block his entry in NHS. If he come to see you for recommendations please refuse him.*

*Yours faithfully,*

*R. Yetty.*

27. The second document relied upon by the Claimant was a letter purportedly written by Dr Kanowah and dated 4 February 2007 (**the VD Test Letter**). It is addressed "*To the Medical Laboratory*" (without further detail) and, under the heading "*Re: Mr Tohendra Ashwin Kumar Ramdhany*", it states "*Grateful if you can carry out a VD test with the above named person and forward to me the result*s". The Claimant contends that this is evidence that Dr Kanowah had received the Yetty Letter or had otherwise become aware of rumours that he may have HIV-AIDS.

28. The third document relied upon by the Claimant is an extract from his GP notes in the UK. The records (obtained by the Defendants) are incomplete but they do include a "condensed summary" document that records that the Claimant had a consultation with a Dr Sharma on 13 February 2006 in relation to *"Upper respiratory tract infection (& viral)…"* and records that he was prescribed a nasal spray. The same document also records another consultation with Dr Sharma on 28 February 2006 in which it is stated *"… also worried about STD had casual relationship but used condom. Slight rash penile shaft…"*.

29. The Defendants called 6 live witnesses. Thomas Evans, an employee of the Second Defendant, gave evidence about the records that had been located concerning the Claimant's application for employment in early 2006. Cheryl Depledge, an employee of the Second Defendant, gave evidence that she was not, as alleged, the person who had interviewed the Claimant or who telephoned him after his interview. She also gave evidence

about the authenticity of the letter that the Claimant had put forward purporting to be from her and inviting him to interview. Amanda Taylor gave evidence that, so far as could be confirmed from available records, the Claimant had never been employed by Nottingham University Hospital. Luke Wilson gave evidence about record keeping at Leeds Teaching Hospitals NHS Trusts and also gave evidence about the authenticity of the letter that the Claimant had put forward purporting to be from that Trust and stating that he had applied unsuccessfully for employment there. Suzanne Emerson-Dam gave evidence about record keeping at (what is now) the Royal Berkshire NHS Foundation Trust and also gave evidence about the authenticity of the letter that the Claimant had put forward purporting to be from that Trust and stating that he had applied unsuccessfully for employment there. James Quinn was a nurse advisor at the Walk-in Centre in 2006 and gave evidence about how the Centre operated at the time, as well as evidence about efforts made to check the Centre's records. There was also hearsay evidence from Alistair Ridgeway, who had carried out searches of the Claimant's social media accounts and Richard Black, who explained in greater detail the (unsuccessful) efforts made to recover the contemporaneous records from the Walk-In Centre.

30. I alerted the Claimant to aspects of these witnesses' evidence that appeared to contradict his case and explained that he needed to challenge them on these points. For the most part, the Claimant confirmed that he did not wish to do so. Mostly, the Claimant's questioning was limited to establishing with the witnesses that, given the record-keeping practices of the various NHS bodies at the material time, the absence of records did not amount to proof that he did not attend the Walk-In Centre or that he had not applied or been interviewed for positions with the NHS. The Defendants' witnesses accepted that this was correct.

## E. Matters no longer in dispute

31. Except for one minor matter, which I resolve in the Defendants' favour at paragraph 31(9) below, the following facts were not in dispute by the end of the trial. They are largely drawn from the unchallenged evidence of the Defendants' witnesses:

(1) During the relevant period the Walk-In Centre was located in Seaton House, Nottingham. When a patient attended the Centre, the clinician they saw would create an electronic record of their consultation. If, for some reason, the computer system was down, the clinician would make a paper record and this would be transcribed into an

electronic record either the same day or the next day. If any paper records remained untranscribed at the end of the day, they were kept in a safe overnight. As soon as the paper record had been transcribed, it was shredded.

(2) As things worked in 2006, a patient would be asked whether they objected to a record of their attendance at the Walk-in Centre being shared with their GP. Unless they objected, a record (a discharge sheet) would be sent automatically and electronically to their GP if the GP was in the Nottingham area, or by printing out and faxing it if their GP was outside the area.

(3) In 2006 the Walk-in Centre used an IT system called Clinical Assessment Solutions (**CAS**) which stored data securely. CAS was a standalone system which was not integrated with any other patient system used by any other NHS provider. The only way to access patient data held on CAS was for a member of staff physically present in the Walk-In Centre to log in with a user name or password. It was not possible to access the system from off site, e.g. from a hospital or other NHS provider's premises. Each member of staff had their own distinct log-in ID and password.

(4) CAS was replaced a new system (System One IT) in 2014 and staff at the Centre no longer have access to CAS. Attempts have been made to establish whether the raw data once held on CAS might still exist on a server somewhere but none has been located. It is therefore not possible to establish from the Walk-in Centre's records, whether the Claimant attended there in 2006.

(5) In 2006 the Claimant was living in Nottingham and registered with a local GP surgery which has since closed. I have already mentioned that the incomplete records include the "condensed summary" document on which the Claimant relies. The available GP records do not include anything received from the Walk-In Centre. Neither do they include any reference to the Claimant having attended the Walk-In Centre.

(6) Also in early 2006, the Claimant applied for two positions with the Second Defendant. He was shortlisted for one of these: a post of Health Care Assistant in the Acute Medicine department based at the Royal Hallamshire Hospital. Searches of the Second Defendant's electronic systems have retrieved information that substantiates this, as

well as some other details of the process. A standard letter inviting the Claimant to an interview was generated and this was sent out by Mrs Depledge, an HR assistant. At or about the same time, Mrs Depledge also sent out a standard letter to the Claimant's chosen referee, Dr A S Kanowah. A copy of this letter (disclosed by the Claimant) was included in the trial bundle and is accepted by the Defendants to be a copy of an authentic original. Dr Kanowah provided a favourable reference. Dr Kanowah is now dead.

(7) The interviews for the post were held in the Emergency Admissions Unit at the Royal Hallamshire Hospital on 22 February 2006. The interviewers were Mandy Abey (a matron) and Julie Nincovic (a ward manager) and the Claimant attended at 12:30. He was unsuccessful. Mr Evans, who presented the Second Defendant's records of this process, did not state how many other candidates were interviewed, but it can be seen that several others were listed for interview that day.

(8) At the time of the Claimant's applications to the Second Defendant, there was a "*Recruitment & Selection Policy & Procedure*" document in place. Among other things, it provided (a) that all interviewees must be asked if they are able to comply with the Asylum and Immigration Act 1996 and able to provide a passport or other specified document confirming their entitlement to work in the UK, and that failure to provide such a document would lead to any offer of employment being withdrawn; (b) that each interview candidate should be assessed against the selection criteria immediately after or during the interview; (c) that it is the responsibility of the "Appointing Officer" for the relevant department to inform the successful candidate and that this responsibility cannot be delegated to anyone who was not present at the interview; (d) that this should be done by telephone on the day of the interview wherever possible; and (e) that information *"contained in relation to applications for vacancies"* (sic) was to be disposed of after a maximum of 2 years unless it was required to be retained for longer for legal reasons.

(9) Mrs Depledge was not involved in the interview process other than generating the letter inviting the Claimant to interview and the letter seeking a reference from Dr Kanowah. Neither did she speak to the Claimant by telephone following his interview. The Claimant challenged her about this and it may well be that, having seen her name on

the invitation letter, he genuinely believed that it was Mrs Depledge he had been dealing with on these occasions. However, I accept her evidence that it was not her. She told me that she was too junior to be involved in the interview process and was not based at Royal Hallamshire. It would have been a breach of the Second Defendant's policy for her to have telephoned the Claimant to inform him of the outcome of his interview.

(10) At the time, other NHS Trusts that are relevant to this claim had a similar approach to that of the Second Defendant in respect of the retention/destruction of documents associated with applications for vacancies. At the Leeds Teaching Hospital NHS Trust, recruitment was entirely paper-based at the time and paper documents relating to unsuccessful candidates were securely destroyed after 12 months. and at Royal Berkshire NHS Foundation Trust (as it is now called) the standard practice was also to destroy documents relation to unsuccessful candidates after around 12 months.

## F. Relevant rules of evidence and procedure

***Authenticity of documents/forgery***

32. The Court can only take into account documents that are authentic, i.e. documents that are what they purport to be. Often there are no disputes about authenticity. Sometimes a party will be deemed to have admitted the authenticity of a document. CPR 32.19 provides:

> *32.19 – (1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.*
>
> *(2) A notice to prove a document must be served –*
>
> *(a) by the latest date for serving witness statements; or*
>
> *(b) within 7 days of disclosure of the document, whichever is later.*

33. In an appropriate case, the Court can waive the requirements of CPR 32.19 and permit an authenticity challenge to be made out of time, even if the party concerned has not made an application for relief from sanctions: see *McGann v Bisping* [2017] EWHC 2951 at [11]-[26] (where the Judge, Richard Salter QC, considered, as part of his reasoning, whether the test for relief from sanctions set out in *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926 was made out). Important considerations will include whether the

challenge amounts to an unfair ambush of the other party, and the need to avoid, in the interests of justice, a situation arising in which the Court finds itself being asked to allow a potentially fraudulent claim to succeed: see *Lionwalk Ltd v Singh* [2018] EWHC 1513 (QB), Walden-Smith J, at [11].

34. Where a party is required to prove the authenticity of a document, this does not change the overall burden of proof on the issues that fall to be determined at trial: see *Emmanuel v Avison* [2020] EWHC 1696 (Ch) (Birss J) at [54]-[57].

35. In *Redstone Mortgages Ltd v B Legal Ltd* [2014] EWHC 3398 (Ch) at [57]-[58], Norris J explained that:

> *"[57] Requiring a party to "prove" a document means that the party relying upon the document must lead apparently credible evidence of sufficient weight that the document is what it purports to be…*
>
> *[58] The question is therefore whether any evidence as to the provenance of the document has been produced, and if it has then whether (although not countered by any evidence to the contrary) such evidence is on its face so unsatisfactory as to be incapable of belief…"*

36. Of course, if the opposing party *has* introduced evidence that is said to undermine the claim to authenticity, then that too must be taken into account when assessing whether the party seeking to prove the document has succeeded. However. As Norris J continued at [58]:

> "*…It is vital that the process of challenge is fair. Criticism of the evidence about the authenticity of the document cannot amount to a covert and unpleaded case of forgery. If a case of forgery is to be put then the challenge should be set out fairly and squarely on the pleadings (and appropriate directions can be given). If the charge is that a witness has forged a document (or has been party to the forgery of a document) and the grounds of challenge have not been set out in advance, then if the questions are not objected to the response of the witness to the charge must be assessed taking into account the element of ambush and surprise.*"

37. Although it may not always be essential to make the allegation of fraud in a pleading:

> *"…If a party challenging the authenticity of a document wishes to make a positive case as to how the document came to be created, including any allegation that it has been forged, then if it is not appropriate to plead out the allegation, it seems to me to be incumbent on that party to set out the allegation clearly in correspondence, either at the time of serving the notice to prove or at least in sufficiently good time to ensure that the challenged party has a fair opportunity to deal with it." Lemos v Church Bay Trust Company Ltd* [2023] EWHC 2384 (Ch) (Joanne Wicks KC) at [45].

Accordingly, cross-examination in support of an allegation of forgery for which insufficient notice has been given should not be permitted or, if permitted, the Court should bear in mind the lack of notice when evaluating the responses: *ibid* [49].

38. On the question of authenticity, Ms McKinlay directed me to section 8 of the Civil Evidence Act 1995, which provides:

> *Proof of statements contained in documents*
> *(1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved:*
> *(a) By the production of that document, or*
> *(b) Whether or not that document is still in existence, by the production of a copy of that document or a material part of it, authenticated in such manner as the court may approve*
>
> *(2) It is immaterial for this purpose how many removes there are between a copy and the original".*

39. It has been held, in relation to the identical phrase in the predecessor statute (Civil Evidence Act 1968 s 6(1)) that "*authenticated in such manner as the court may approve*" refers only to the accuracy of the copy. "*Authentication is concerned only with the issue whether the copy is a true copy of the absent original, and not with what the original was*.": *Ventouris v Mountain (no.2)* [1992] 1 WLR 887 at 899 (Balcombe LJ) & 901 (Staughton LJ).

40. Section 8 is therefore not concerned with the question of whether an original document is authentic. It addresses the subsequent question of how a hearsay statement might be proved (answer: by producing an - *ex hypothesi* authentic - original document that contains the statement or a true copy of that authentic original document). I am therefore not assisted by this section. The approach to determining authenticity, in the event of a challenge, is as set out in *Redstone Mortgages* and the other authorities I have cited above.

***Notice of a case of fundamental dishonesty***

41. CPR 44.16(1) provides that where proceedings include a claim for damages for personal injuries, *"Orders for costs made against the claimant may be enforced to the full extent of such orders with the permission of the court where the claim is found on the balance of probabilities to be fundamental dishonest"*.

42. In *Howlett v Davies* [2018] 1 WLR 948, Newey LJ considered the nature and extent of the notice that a Claimant must be given before it is permissible for a Defendant to invite the Court to make a finding of "fundamental dishonesty" for the purposes of CPR 44.16. He said:

> "[*31] Statements of case are, of course, crucial to the identification of the issues between the parties and what falls to be decided by the court. However, the mere fact that the opposing party has not alleged dishonesty in his pleadings will not necessarily bar a judge from finding a witness to have been lying: in fact, judges must regularly characterise witnesses as having been deliberately untruthful even where there has been no plea of fraud. On top of that, it seems to me that where an insurer in a case such as the present one, following the guidance given in Kearsley v Klarfeld [2006] 2 All ER 303[1] , has denied a claim without putting forward a substantive case of fraud but setting out "the facts from which they would be inviting the judge to draw the inference that the plaintiff had not in fact suffered the injuries he asserted", it must be open to the trial judge, assuming that the relevant points have been adequately explored

[1] In *Kearsley* Brooke LJ, giving the judgment of the court, explained that, in a road traffic case, the defendant "does not have to put forward a substantive case of fraud in order to succeed" and that it suffices if they "set out fully the facts from which they would be inviting the judge to draw the inference that the plaintiff had not in fact suffered the injuries he asserted". He held that it was unnecessary to plead fraud/fabrication so long as facts casting doubt on the veracity of the Claimant's case are pleaded and that, in light of these, the Defence pleads that the Claimant is put to strict proof of the matters he asserts.

*during the oral evidence, to state in his judgment not just that the claimant has not proved his case but that, having regard to matters pleaded in the defence, he has concluded (say) that the alleged accident did not happen or that the claimant was not present. The key question in such a case would be whether the claimant had been given adequate warning of, and a proper opportunity to deal with, the possibility of such a conclusion and the matters leading the judge to it rather than whether the insurer had positively alleged fraud in its defence.*

*[32] Further, I do not think an insurer need necessarily have alleged in its defence that the claim was "fundamentally dishonest" for one-way costs shifting to be displaced on that ground. Where findings properly made in the trial judge's judgment on the substantive claim warrant the conclusion that it was "fundamentally dishonest", an insurer can, I think, invoke CPR r 44.16(1) regardless of whether there was any reference to fundamental dishonesty in its pleadings …*".

43. I discuss at [74]-[75] below how this approach relates to the approach concerning allegations of forgery outlined in *Redstone Mortgages* and *Lemos*.

***Adverse inferences***

44. The modern law on the approach to adverse inferences was set out by the Supreme Court in *Efobi v Royal Mail Group Ltd* [2021] UKSC 33 [2021] 1 WLR 3863 by Lord Leggatt JSC at [41]:

*"The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether*

*the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."*

45. At [43] he continued:

*"Where it is said that an adverse inference ought to have been drawn from a particular matter—here the absence of evidence from the decision-makers—the first step must be to identify the precise inference(s) which allegedly should have been drawn ...."*

46. While *Efobi* was specifically concerned with the failure to call witnesses, the principles apply equally to other matters from which a party invites the Court to draw an inference adverse to their opponent, such as a failure to disclose or permit inspection of documents. See e.g. *Invest Bank P.S.C v El-Husseini* at [115]-[120], a case concerning both the Defendants' failure to give evidence and disclosure failures. At [120] Calver J said: "*The effect of drawing the inference is to strengthen the evidence adduced by the party seeking the inference or weaken the evidence adduced by the party resisting it*".

***Hearsay***

47. Where a statement is contained in a document that is deemed or held to be authentic, it is admissible as hearsay whether or not the notice provisions in CPR 33.2 have been complied with. However, section 4 of the Civil Evidence Act 1995 provides:

***4.— Considerations relevant to weighing of hearsay evidence.***

*(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.*

*(2) Regard may be had, in particular, to the following—*

*(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;*

*(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;*

*(c) whether the evidence involves multiple hearsay;*

*(d) whether any person involved had any motive to conceal or misrepresent matters;*

*(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;*

*(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.*

## G. The authenticity of the Claimant's documents

48. The Defendants dispute the authenticity of 6 documents that the Claimant has supplied at one time or another in the course of these proceedings:

(1) A purported letter from Mrs Depledge on behalf of the Second Defendant dated 9 February 2006 inviting the Claimant to an interview on 22 February 2006 at the Royal Hallamshire Hospital (**the Sheffield Letter**);

(2) A purported letter from Royal Berkshire NHS Foundation Trust dated 29 April 2006 which states that it is sent to "remind" the Claimant that he had been interviewed on 28 April 2006 for the post of maternity assistant and had been informed of the outcome on 29 April 2006 by telephone (**the Reading Letter**);

(3) A purported letter from Norfolk and Norwich University Hospital dated 12 May 2006 confirming at the Claimant's request that he had attended an interview for the post of Auxilliary Nurse and had been unsuccessful (**the Norwich Letter**);

(4) A purported letter from The Leeds Teaching Hospitals NHS Trust dated 14 May 2006 stating that the Claimant had been interviewed for posts in the Neurosciences Centre Gastroenterology Centre at Leeds General Infirmary on 25 April 2006 (**the Leeds Letter**);

(I refer to these 4 letters collectively as **the Hospital Letters**)

(5) The Yetty Letter (25 November 2006);

(6) The VD Test Letter (4 February 2007).

49. In respect of the 2 documents on which the Claimant now places reliance (the Yetty Letter and the VD Test Letter), the Defendants require him to prove their authenticity. However, the Defendants go further and invite me to find that all 6 documents were forged by the Claimant.

***The Defendants' case on authenticity/forgery***

50. In respect of the Sheffield Letter, Mrs Depledge gave unchallenged evidence (foreshadowed in detail in paragraph 8.2 of the Amended Defence) that the body of the letter is misaligned with the addresses and her details at the top and bottom of the page; that the letter does not conform to the template used for such letters at the time (a copy of which was exhibited and which includes standard text about access for candidates with disabilities, specific reference to the requirement so the Asylum and Immigration Act 1996 and a request to return an enclosed occupational health form, none of which appears in the Claimant's document); and that the letter does not specify where he should attend (Royal Hallamshire is a large hospital) or who he should report to whereas these details would usually have been included. Ms McKinlay adds by way of submission that the font of the body of the letter is different from the font of the header and footer, and that the copy included in the bundle gives every impression of having been created through cutting and pasting or photocopying a combination of 2 or more documents to create a single document.

51. In respect of the Reading Letter, Mrs Emerson-Dam gave unchallenged evidence (foreshadowed in detail in paragraph 9.6 of the Amended Defence) that, as at the purported date of the letter (29 April 2006) the relevant administrative body was the "Royal Berkshire and Battle Hospitals NHS Trust" and not, as the letter states, the Royal Berkshire NHS Foundation Trust, which only came into existence in June 2006; that the letter was signed of "The Human Resources Management" whereas typically a named individual would be identified as the writer (she provided a sample genuine letter for comparison); that the letter was purportedly written on a Saturday, whereas Human Resources staff did not work at weekends, and that the Claimant's address on the letter included "UK", which would not usually be included.

52. The Defendants did not have a witness to speak to the Norwich Letter, but Ms McKinlay made the following points: the "our ref" and "date" fields at the top of the letter are blank; there is no signature and the name of the writer is not given (the sign-off is simply "HR Dept."); and the body of the letter is in a different font from the header and footer. She invites comparison with a genuine letter from the same NHS Trust (p.93 in the bundle) dated 29 September 2006 and informing the Claimant that he has been unsuccessful in an application. It includes a reference and date in the header, it is signed and attributed to an identified "Service Manager"; it is in the same font throughout; and it is written in terms that are more in keeping with what is to be expected of a formal rejection letter.

53. In respect of the Leeds letter, Mr Wilson gave unchallenged evidence (foreshadowed in detail in paragraph 9.5 of the Amended Defence) that Leeds General Infirmary does not have a "Neurosciences Centre" or a "Gastroenterology Centre"; that, had the Claimant been interviewed by 2 different departments, he would have received separate letters on behalf of each department; that rejection letters would have been signed by an individual and not (as in the Claimant's document) by "The Management"; that the name of the relevant hospital would usually appear on the right hand side of the header (not the left, as here); that the header would not include an "NHS Careers" logo (but that this logo can be found on various documents available on the Trust's website); that correspondence would usually identify the Chair and Chief Executive of the Trust and list all the Trust's hospital sites, whereas none of this appears on the Claimant's document; that the address for the Claimant includes "UK" which would not usually be included; that the interval between the alleged interview (25 April 2006) and the date of the letter (14 May 2006) is unusually long; and that the letter does not provide any contact details should the Claimant have any concerns arising. Mr Wilson exhibited a sample genuine recruitment letter which supports the points he made.

54. In respect of the Yetty Letter, the Defendants point to the fact that it is unsigned (a point made in the Amended Defence). They also rely on correspondence with the Registrar of Civil Status in Mauritius who states that there is no birth/death entry on their records for someone named Mr Rajen Yetty. They refer me to the Mauritius Civil Status Act 1981, which requires the Registrar to keep such registers as he thinks fit for the registration of (among other things) births, marriages and deaths. The Defendants observe that "Mr Yetty"

or his informants appear to have detailed knowledge of the Claimant's history of applications for various NHS posts, which would be difficult to acquire other than from the Claimant himself.

55. In respect of the VD Test Letter, the Defendants point out that it is addressed simply "To The Medical Laboratory" and has a simple handwritten signature. It is in mixed fonts. They say it is to be contrasted with an admittedly genuine letter from Dr Kanowah in the bundle (p.48) dated 31 December 2006, which has printed contact details beneath the signature and is in a single font. The Defendants point out that the Claimant's Witness Statement dated 3 August 2020 refers to Dr Kanowah trying to covertly test him for AIDS in 2012, but makes no reference to anything similar happening in 2007. They say there are no disclosed medical records recording any consultation with Dr Kanowah around February 2007.

56. As well as these points on the individual documents, the Defendants make two overarching points. First, they submit that, when assessing the credibility of the Claimant's evidence about these documents (or indeed his evidence at trial generally), I should take into account the fact that he has admittedly made false representations about himself on social media. In his Linked In profile the Claimant claimed (a) that he had worked in "Nottingham Hospital" as a nurse in the emergency, surgery and maternity department, when he had never had such employment; (b) that he had studied at South Nottingham College between 2005-2008 whereas he left in 2006 without completing his studies; and (c) that he had studied for a Law Diploma at Suffolk College UK, whereas he had not completed his studies there (indeed a letter from the College obtained by the Defendants states that he was only there for about 6 weeks in 2006, and on an AS-Level programme). A Facebook profile created by the Claimant falsely claimed that he had attended Nottingham High School and another Facebook profile he created falsely claimed that he was from Newcastle and had studied at Newcastle College. The Claimant admits all this.

57. Second, the Defendants invite me to find that the Claimant's evidence that he has lost the originals of the six documents is false and dishonest and that I should therefore draw an adverse inference from his failure to give inspection of the originals, the specific adverse inference being that none of these documents are authentic but have in fact been fabricated by the Claimant. They point out that, in response to their solicitors' email of 19 March 2024

stating, "*please confirm that you have the originals in your possession and that they will be sent for inspection*", the Claimant initially responded "*Yes I have the originals. I will send to you*" but then emailed the next day stating "*I am arranging the original papers to send you as we discussed yesterday but unfortunately I can see that there are some which have been lost and are no longer in my possession*". Then, on 25 March 2024, the Claimant emailed *" I had these originals but last week when I am finding them to send you I can see they are missing. I had kept them in an envelope. They have been lost. I think while carrying them after making their copies they fell down. I remember the last time I made copies from them was in year 2020 when I was preparing this case"*.

58. The Defendants submit that there is no obvious reason why the Claimant would keep the documents relevant to his intended claim in two different places or copy them at different times. They suggest it is beyond coincidence that all the documents whose authenticity is challenged were kept in the "lost" envelope, whereas the Claimant managed to preserve the originals of documents whose authenticity is not in doubt (such as genuine correspondence between Mrs Depledge and Dr Kanowah seeking a reference). They submit that it is implausible that the Claimant only remembered that he had "lost" the documents once he came under pressure to permit inspection.

***The Claimant's case on the authenticity of his documents***

59. The Claimant denied fabricating any of these documents but gave only very limited evidence about their provenance. He said, of all of them, "*this is what I have been given… this is what I have received"*.

60. In respect of the Sheffield Letter, the Claimant made the point that he no longer needs to rely on it because the Second Defendant now accepts that he was interviewed for a post and rejected in 2006 as alleged.

61. In respect of the other Hospital Letters, the Claimant made the point that he is not pursuing any claim in respect of lost employment opportunities with these trusts but maintained (in his "re-examination") that he had indeed attended interviews in Reading, Norwich and Leeds. He pointed to photographs in the trial bundle which he said showed him outside two of these hospitals, apparently dressed for interview.

62. In respect of the Yetty Letter, the Claimant did not adduce any evidence in respect of his pleaded case that Mr Yetty is now dead. Neither did he give any evidence that Mr Yetty had been (as pleaded) his "friend". Instead he submitted (without evidence) that "Rajen Yetty" may have been a nickname rather than the writer's formal name that would have been registered with the Mauritian authorities. He further submitted that, even if there are doubts about the existence or identity of Mr Yetty, I should accept the letter as something that the Claimant received and assess its contents as anonymous hearsay.

63. As for the VD Test Letter, the Claimant gave evidence that Dr Kanowah handed this to him personally following a consultation (hence the lack of a specific address for the "Medical Laboratory") and that Dr Kanowah tried to have him tested covertly for his sexual health twice, once in 2007 (to which this letter relates) and again in 2012. He gave no evidence about what had occurred at the alleged consultation in 2007 and he struggled to explain why he had not made reference to the alleged 2007 incident in his 2020 Witness Statement.

64. In respect of his social media posts, the Claimant accepted that these were "fiction" but disputed that they were "lies". In summary, his evidence was that he was psychologically damaged as a result of his failed attempts, over a sustained period of time, to obtain long-term employment in the UK health sector, and that projecting himself via social media as someone who had lived, studied and worked in the UK helped him as some sort of psychological therapy to keep himself in a positive frame of mind. He said that none of these false representations was made for financial gain.

65. In respect of the alleged loss of the documents that the Defendants wished to inspect the Claimant repeated the case that he had made in correspondence, namely that he had kept the documents relevant to his claim in two separate envelopes and that he had lost the set of documents that included those the Defendants wished to inspect sometime in around 2020 when he was getting them copied. His Witness Statement of 21 May 2024 stated that these documents *"have been lost: while carrying them after making their copies they fell down somewhere in public place. The last time I made copy from them was in year 2020 when I was preparing this case"*. He did not materially expand upon this evidence when cross-examined.

***Conclusions on authenticity/forgery***

66. Before I address the individual documents, there are some overarching considerations.

67. First, the Sheffield Letter, the Yetty Letter and the VD Test Letter were all disclosed by the Claimant pursuant to CPR 31 (see his Amended List of Documents dated 13 February 2024 (Bundle, p.724), Item 7). They are therefore deemed to be authentic unless a timely CPR 32.19 Notice was served or I permit an out-of-time authenticity challenge. I was not directed to any CPR 32.19 Notice and I have not been able to locate one in the trial bundle. Neither has any application for relief from sanctions been made.

68. Despite this, I am prepared to follow the procedure adopted in *McGann v Bisping* (see [33] above) and to permit the Defendants to require the Claimant to prove the authenticity of these three documents (though, in reality, it is only the Yetty Letter and the VD Test Letter that the Claimant needs to rely on). In particular, the Amended Defence put the Claimant on notice that the authenticity of the Sheffield Letter and the Yetty Letter was challenged and questioned the honesty of his claim generally. In correspondence following disclosure, the Defendants then made it clear that they wished to inspect the originals of all three documents. Inspection never took place. The Defendants instead made enquiries of the Mauritian authorities about Mr Yetty; they sought the Claimant's Mauritian medical records and they filed detailed evidence from Mrs Depledge about the Sheffield Letter.

69. The Claimant cannot conceivably have imagined that the Defendants had simply chosen to abandon their authenticity challenge. Adopting a *Denton* analysis: assuming I am right that no timely CPR 32.19 notice was given, this was a serious and significant breach in the context of litigation brought by a litigant in person against two public authorities with expert legal representation; no explanation for the default has been proffered; yet, looking at all the circumstances of the case, relief from sanctions would be justified because there is no unfairness to the Claimant in having to meet a challenge which, in all likelihood, he was expecting, and because (similarly to the circumstances that arose in *Lionwalk Ltd v Singh* [2018] EWHC 1513 (QB)), there would be a significant risk that the Court would be lending itself to a potential miscarriage of justice if it were to shut out an authenticity challenge, given the very serious questions about the authenticity of these documents raised by the Defendants' evidence and submissions that I have summarised above.

70. Second, insofar as the Defendants go beyond merely requiring the Claimant to prove the authenticity of documents on which he relies and invite me to make a positive finding that he has forged any of the six documents, I need to consider whether he has been given sufficient notice of that case and, if not, what I should do about it.

71. In my judgement, the Defendants have given sufficient notice of their case that the four Hospital Letters are forgeries, It is fair to say that, so far as I am aware, the Defendants never alleged in terms, before trial, that these were forged documents. However, specific criticisms of the Sheffield Letter, the Reading Letter and the Leeds Letter were included in the Amended Defence and then supported by the detailed evidence of Mrs Depledge, Mrs Emerson-Dam, and Mr Wilson. Once he had read those statements, it must have been crystal clear to the Claimant that he was being accused of forgery and not merely being put to proof as to authenticity. The Defendant's case on the Norwich Letter was not spelt out in the Amended Defence or supporting witness evidence but it was essentially of a piece with their case on the other Hospital Letters and can have come as no surprise to the Claimant.

72. By contrast, I am not satisfied that the Claimant was put on sufficient notice that the Defendant was alleging that the Yetty Letter and the VD Test Letter were forgeries (as opposed to putting him to proof that they are authentic).

73. The Amended Defence plainly disputes the authenticity of the Yetty Letter (referring to the lack of signature) but I am not aware of any notice having been given to the Claimant of a positive case of forgery, and there is nothing equivalent to the witness evidence served in respect of the Hospital Letters that would have notified him of such a case. The VD Test Letter is not even specifically mentioned in the Amended Defence and, again, I am not aware of any notice having been given to the Claimant of the Defendants' case that it was a forgery. It was put to the Claimant in cross-examination that he had created both documents. He did not object to these questions, but I have to bear in mind that he is a litigant in person, unfamiliar with English rules of evidence and procedure. Had he objected, I would have upheld his objection. As it is, I must consider his answers (which did not include any admissions) in light of the lack of notice.

74. I do not consider that there is any tension between the approach I have taken here (which is based on *Redstone Mortgages Ltd* and *Lemon* (see [35]-[37] above) and the judgment in *Howlett* (see [42] above). Both lines of authority are concerned with the nature and extent of the notice that is required before a Court can fairly make serious findings of dishonesty against a party. *Howlett* is concerned with a typical road traffic accident case. In such cases, a claimant may well prepare for trial in exactly the same way whether they are being put to proof that the accident occurred and caused injury as they allege or whether they are being expressly accused of having invented their account of the accident or their injuries. In both scenarios, they will give their own evidence and adduce the evidence of any available eye witness or an expert who opines on the basis of their factual account.

75. By contrast, where a claimant is expressly accused of having forged a document, there are steps that they may wish to take in advance of trial, such as calling handwriting specialists or other experts or factual evidence about the provenance of the document: steps they may not have felt the need to take if they were simply being put to proof as to the authenticity of the document, which, as explained in *Redstone* at [57], will often be quite a low bar. I do not consider that it can make any material difference to the degree of notice required that the allegation of forgery is being advanced to support a case of fundamental dishonesty rather than for some other reason.

76. Given the Claimant's laconic approach to evidence generally, I do of course wonder whether he would have prepared for trial any differently had he been on express notice that the Defendants were alleging that the Yetty Letter and the VD Test Letter were forgeries. But that would be speculation. The reality is that, in my judgement, the Claimant was given insufficient notice that he was being accused of forging these two documents and that I must interpret such answers as he gave in respect of them in light of that fact.

77. Thirdly, insofar as the Claimant gave any evidence about these documents (or generally) I need to consider whether his credibility is undermined by his admitted false statements on social media. I accept that this undermines his credibility generally. It shows that he has a propensity to make false statements about himself when it suits him to do so. His assertion that this was some sort of self-prescribed therapy rather than false representation for financial gain is nothing to the point.

78. Fourthly, I accept the Defendants' submission that the Claimant's account about the loss of the documents they wished to inspect was false and dishonest. He put forward this account belatedly and in the vaguest of terms. There is no logic to his assertion that he kept the documents in two separate envelopes and had them copied separately, losing one envelope "in a public place" in 2020. When he first issued his claim in 2020 he appended the Yetty Letter and the Hospital Letters alongside the admittedly genuine letters from Norfolk and Norwich University Hospital NHS Trust and from Sheffield Teaching Hospitals NHS Foundation Trust, strongly suggesting that he copied all of them together at the same time. The VD Test Letter first came to light when it was appended to the Unissued Amended Particulars of Claim in 2022, which undermines the Claimant's account that it was lost in 2020.

79. There is no innocent explanation for this, in my view. The Claimant must have destroyed these documents at some later date or has retained them but has refused to give inspection of them. The inference I draw from this is that the Claimant has obstructed inspection of the original documents because he wished to prevent proper scrutiny of the authenticity of these documents.

80. In light of these overarching points, my conclusions on the disputed documents are as follows:

(1) I am satisfied that each of the Hospital Letters was a forgery, fabricated by the Claimant. The evidence and submissions of the Defendants on these documents is compelling. The adverse inference I draw from the Claimant's failure to give inspection of the originals supports the Defendants' case as does my finding (going to credibility) about the Claimant's dishonest social media posts. The Claimant made no real attempt to counter the Defendants' evidence. His main point is that he does not need to rely on any of these documents to prove his case;

(2) The Claimant bears the burden of proving the authenticity of the Yetty Letter and he has failed to discharge it. Despite being on notice of the authenticity challenge in all its detail, the only evidence he gave was a bare assertion that he had "received" the Yetty Letter. He gave no evidence as to Mr Yetty's existence, or his knowledge of him, or of the circumstances in which he came to discover the Yetty Letter. The adverse

inference I have drawn from the Claimant's failure to give inspection of the original undermines his case, as does my finding that, for the purposes of assessing his credibility, the Claimant has a propensity to be dishonest.

(3) By contrast, I am not prepared to find that the Yetty Letter was a forgery by the Claimant. In my judgement, the Defendants did not give the Claimant adequate notice of their case in this regard.

(4) I would not in any event have concluded that the Yetty letter is a forgery. The evidence is inconclusive. In contrast to the compelling case on the Hospital Letters, there were no comparator documents or independent evidence of what genuine correspondence from "Mr Yetty" looked like. The Mauritian authorities pointedly did not respond to the Defendants' question (Bundle p.608), *"…if Mr Rajen Yetty exists would you expect there to be a record of him?"*. The Defendants did not put to the Claimant in cross-examination their suggestion that certain details within the Yetty Letter could only have originated from the Claimant. They simply alleged forgery in bare terms, which the Claimant denied.

(5) The Claimant bears the burden of proving the VD Test Letter and has failed to discharge it. His perfunctory evidence that this was something that Dr Kanowah handed to him in 2007 is insufficient given the doubts about the document raised by the Defendants and noted above. The adverse inference I have drawn from the Claimant's failure to give inspection of the original undermines his case as does my finding on credibility that he has a propensity to be dishonest.

(6) However, as with the Yetty Letter, I am not prepared to find that the VD Test Letter was a forgery. This was never alleged or implied prior to trial and it would be unfair to require him to meet this case.

(7) In any event, I would not have found that the VD Letter is a forgery. The evidence is inconclusive. The contrast between the VD Letter and the admittedly genuine letter from Dr Kanowah in the bundle is not so striking as to drive me to that conclusion. I am not in a position to say that the Claimant's Mauritian medical records that have

been obtained are complete, so the absence of a record of a consultation with Dr Kanowah in February 2007 is inconclusive.

81. So, in summary, I find that :

(1) The Claimant forged the 4 Hospital Letters;

(2) The Claimant has failed to discharge the burden of proving the authenticity of the Yetty Letter but he was given insufficient notice of the allegation that he forged it and I would not in any event have made a finding of forgery;

(3) The Claimant has failed to discharge the burden of proving the authenticity of the VD Test Letter but he was given insufficient notice of the allegation that he forged it and I would not in any event have made a finding of forgery.

**H. "Breach of duty"**

82. The parties are agreed that paragraph 3(a) of Master Dagnall's order requires me, in substance, to determine (a) whether the Defendants or either of them have acted in breach of any private law duty owed to the Claimant or, insofar as the Claimant relies on some tort that is not classifiable as a "breach of duty," whether the relevant Defendant is responsible for the constituent elements of that tort (other than - if applicable - proof of damage) and (b), if so, whether the relevant Defendant has a good limitation defence.

83. The precise nature of the claims advanced in the Amended Particulars of Claim is somewhat obscure but, in his skeleton argument and oral submissions at trial, the Claimant articulated his case as follows. In respect of the First Claim, the Claimant contends that staff at the Walk-In Centre acted in breach of an equitable duty of confidence by leaking the details of his consultation, alternatively that those responsible for the Walk-In Centre owed him a common law duty of care to safeguard his medical information and breached that duty by negligently permitting a third party to access his records. The Claimant further alleges that by disclosing or failing to keep secure his medical information, staff at the Walk-In Centre breached his ECHR Article 8 rights, although he was not specific as to whether it is his case that this was a breach by the First Defendant of his duty to act compatibly with the Claimant's convention rights (Human Rights Act 1998, s.6, mentioned in the Amended

Particulars of Claim) or a claim in the private law tort of misuse of private information. In respect of the Second Claim, the Claimant contends that the Second Defendant was under a duty to make a "*lawful, rational and reasonable (in the Wednesbury sense)*" decision about his application for employment and breached that duty. Although this is the language of public law, the Claimant clarified that he was asserting a common law duty of care owed to him as a prospective employee.

84. In respect of the First Claim, the First Defendant accepts in principle that those for whom he is responsible would have been under an equitable duty to treat the Claimant's medical information as confidential and that the Claimant will have had a reasonable expectation of privacy in respect of that information, engaging his ECHR Article 8 rights. The First Defendant admits that those for whom he was responsible owed the Claimant a common law duty of care to prevent inadvertent disclosure of his medical information but denies that this extended to a positive duty to guard the information against unlawful abstraction by wrongdoers. In respect of the Second Claim, the Amended Defence admits that the Second Defendant was under a duty, when recruiting staff, to act fairly, not to discriminate, to take into account all relevant matters and to ignore all irrelevant matters. However, in a subsequent Part 18 document, filed at the direction of Master Dagnall, the Second Defendant clarifies that this is not an admission that it owed the Claimant any common law duty of care in relation to the consideration of his application for employment (no "duty to recruit" as Ms McKinlay put it).

85. The parties are therefore not entirely agreed as to the relevant legal duties/causes of action. However, I do not need to resolve these disputes because it is common ground that, in order to establish liability, the Claimant needs to prove some essential factual propositions which, as I explain below, he has failed to do. Thus, to have any prospect of succeeding on the First Claim, the Claimant needs to establish that he did indeed attend the Walk-In Centre and discuss the possibility that he might have HIV-AIDS, and further that this information was then leaked by staff or accessed by a third party. And in order to have any prospect of succeeding on the Second Claim, the Claimant needs to establish that the Second Defendant did indeed receive and take into account reports that he was likely to pose a threat to nurses.

86. The Claimant has not satisfied me that he attended the Walk-In Centre and had a consultation in which he discussed the possibility that he might have HIV-AIDS. It would

have been straightforward for the Claimant to provide a witness statement to this effect and adopt it as his oral evidence yet, despite my alerting him to this serious lacuna in his evidence, he chose not to do so. Instead he relied on his three key documents. Only the Yetty Letter provides any direct support for his case that he attended the Walk-In Centre and I have determined that I must ignore that document because I am not satisfied that it is authentic. If I am wrong about that, and the Yetty Letter is admissible, then I would nevertheless attach no weight to its contents, having regard to the factors listed in CEA 1995, s.4(2). The Claimant has not substantiated in evidence his pleaded assertion that Mr Yetty is dead and therefore unavailable to give evidence; the Yetty Letter (assuming it is correctly dated) post-dates the alleged attendance at the Walk-In Centre by several months; it is double hearsay ("Mr Yetty" attributes the information to an unnamed "Mauritian friend"); the letter wreaks of malice ("Mr Yetty" expresses himself to be resentful at the fact that the Claimant is seeking highly paid NHS posts while Mr Yetty has only achieved less well-paid employment); and the Claimant's reliance on a copy of the document without giving any contextual evidence about his dealings with Mr Yetty suggests an attempt to prevent proper evaluation of the weight of its contents.

87. The medical records of Dr Sharma are consistent with the possibility that the Claimant attended the Walk-In Centre and discussed HIV-AIDS there, but they do not record that fact and provide no positive support for the Claimant's case.

88. Meanwhile, the First Defendant's unchallenged evidence was that there were strong protocols in place to prevent unauthorised access to electronic records and to ensure the swift destruction of any written records.

89. If, contrary to my finding, the Claimant did indeed attend the Walk-In Centre and discuss HIV-AIDS there, he has in any event failed to establish that this information was then leaked by staff at the Centre or accessed and disclosed by a third party. He has chosen to give no evidence in support of his pleaded case that he did not discuss his attendance at the Walk-In Centre, or his concern about a possible HIV-AIDS diagnosis, with anyone else. And indeed the GP notes show that he did at least discuss the possibility that he might have a sexually transmitted disease with Dr Sharma. In those circumstances, the VD Test Letter (which in any event is inadmissible because I am not satisfied that it is authentic) would give no support to the Claimant's contention that his possible HIV+ status had become the

subject of speculation as a result of a leak from the Walk-In Centre, and neither does his (extremely vague) evidence that people who he knew were spreading rumours to this effect.

90. The First Claim, however it is articulated as a matter of law, therefore fails at the first hurdle.

91. The Second Claim similarly fails for lack of evidence. It could only succeed if the Claimant could establish that the Second Defendant did indeed receive reports to the effect that the Claimant, if employed, would pose a threat to nurses. The Claimant gave no evidence himself that such allegations were communicated to the Second Defendant. His only source for this allegation is the Yetty Letter which, I have explained, I regard as inadmissible because the Claimant has failed to satisfy me that it is an authentic document. If I am wrong about that and the Yetty Letter is authentic, then it carries no real weight as hearsay evidence in support of this aspect of the Claimant's case. Although the writer names two individuals as the source of the "raping nurses" allegation, no detail is given as to how he knows that these allegations have been communicated to the Second Defendant (indeed the Yetty Letter is not even explicit as to whether these allegations *have* been made to the Second Defendant).

92. The Claimant chose to give no evidence himself in support of his pleaded case that he was telephoned and told that despite having passed the interview he could not be employed for immigration reasons. Neither did he give any evidence that this reason for rejecting him was unfounded. The records that the Second Defendant has been able to recover simply record that the Claimant was not appointed following his interview.

93. These findings are sufficient to dispose of both the First Claim and the Second Claim. However, since I have heard evidence and argument concerning some of the other preliminary issues, I shall record my findings on those insofar as it is appropriate and proportionate to do so.

## I. Limitation

94. In respect of both the First Claim and the Second Claim, the Claimant contends that he has suffered personal injury in the form of recognised psychiatric harm. It follows that, insofar as these claims are advanced in negligence, s.11(4) of the Limitation Act 1980 applies. In

*"any action for damages for negligence, nuisance or breach of duty"*, s.11(4) provides for a limitation period of 3 years from the accrual of the cause of action or, if later, the date of knowledge of the person injured. Section 14 provides further definition of the "date of knowledge".

95. The Claimant's pleaded case is that he only became aware of the relevant breaches of duty in 2020 when he discovered the Yetty Letter. However, despite my drawing his attention to the lack of evidence on this point, the Claimant chose to give no evidence about how and when he came to find the Letter.

96. The Claimant also contended that, in respect of the Second Claim, s.32(1)(b) of the 1980 Act is in play ("any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant"), the pleaded contention being that the Second Defendant, by informing the Claimant that he had been turned down on immigration grounds, was deliberately concealing the fact that it had unlawfully taken into account the third party reports about the threat he posed to nurses. Again, the Claimant chose to give no evidence at all in support of his case that he was informed by telephone that he could not be employed because of his immigration status.

97. Accordingly, even assuming (contrary to my findings) that the Defendants acted negligently in failing to safeguard the Claimant's medical information and/or by taking into account malicious reports about his character, the Claimant has failed to establish that he obtained the relevant knowledge of this only in 2020 or (in respect of the Second Claim) that the Second Defendant deliberately concealed relevant matters from him. Any claims in negligence are therefore time-barred.

98. Insofar as the Claimant might be understood as advancing a claim under s.6 of the Human Rights Act 1998 in relation to the First Claim, the relevant limitation period is one year beginning with the with the date on which the act complained of took place or such longer period as the court or tribunal considers equitable having regard to all the circumstances (HRA 1998, s. 7(5)). The proceedings have obviously been brought long after the alleged interference with the Claimant's ECHR Art 8 rights and, in the absence of any evidence in support of the Claimant's pleaded case that he only became aware of the alleged interference in 2020, it is not equitable to extend the limitation period.

99. Insofar as the Claimant might be understood as advancing a claim in misuse of private information in relation to the First Claim, that would be a claim in tort, to which the six-year limitation period in s.2 of the 1980 Act applies, unless it could be argued that such a claim concerns a "breach of duty", such as to engage s.11 (see *The Law of Privacy and the Media*, 4th edn, at 11.210-11.212 & 11.221-11.222). I do not need to resolve that point because I have already found that s.11 cannot assist the Claimant.

100. The Claimant's principal case in respect of the First Claim is that it involves an equitable breach of confidence. He argues, relying on *Corrigan v Timol* [2023] EWHC 649 (Ch), that there is no applicable limitation period for such a claim. The Defendants contend that *Corrigan* is distinguishable and that, pursuant to s.36 of the 1980 Act, the 6-year limitation period provided for by s.2 of the Act should apply by analogy. They say that it would be anomalous for a claim in breach of confidence to escape a limitation defence when it is essentially founded on the same facts as the Claimant's case in misuse of private information and/or negligence. They further suggest that, where the claim for breach of confidence includes a claim for personal injury, s.4 could then become applicable in place of s.2.

101. Neither party developed their cases on this point in much detail and it is not entirely straightforward. Given that it is not essential for my decision, I would prefer to leave open the question of when it is appropriate to apply by analogy a statutory limitation period to a claim in breach of confidence and whether the specific rules relating to claims for personal injury might then be invoked by one party or the other. The point deserves further attention in a case where it matters and has been fully argued.

**J. Loss of employment/loss of a chance**

102. Paragraph 3(c) of Master Dagnall's Order requires me to consider whether, but for any breach of duty by the Second Defendant, the Claimant would have been offered employment or, alternatively, that he would have had a real and substantial chance of obtaining such employment.

103. I have found that there was no breach of duty by the Second Defendant, so everything that follows in this section of my judgment is based on the counterfactual assumption that

the Claimant has managed to establish that the Second Defendant wrongly took into account false and malicious reports about the threats he posed to nurses.

104. The Claimant has not adduced any evidence as to his qualifications for the role with the Second Defendant or for work in the NHS generally, neither has he given any evidence about how the interview went, neither has he adduced any evidence to support his pleaded case that he was telephoned and told that he had been successful at interview. In those circumstances, I cannot find on the balance of probabilities that the Claimant would have been appointed.

105. It might be argued that the very fact that the Claimant was called for interview demonstrates that he had a real and substantial chance of securing the position. However, in my judgement, the appropriate point in time to consider the question is after the Claimant's interview. The question is whether, at that point, he still had a real and substantial chance of employment, based on his performance at interview and ignoring the effect of the unfounded rumours which (it is to be assumed, for present purposes) the Second Defendant had become aware of or was about to become aware of.

106. There is no evidence from the Claimant on this. He could have given evidence of how his interview went, but he has not done so. He could have given evidence to support his pleaded case that he was told in a telephone call that he had passed the interview, but he did not do so. The only evidence is that, following his interview, he was rejected. I cannot find, on the basis of this evidence, that, but for the (assumed) receipt of the unfounded rumours, the Claimant still had a real and substantial chance of being appointed.

**K. Heads of damage**

107. Paragraph 3(b) of Master Dagnall's Order requires me to decide "whether the heads of damages sought by the Claimant are such that can be claimed in relation to any established breach of duty as a matter of law (as opposed to of fact)".

108. In respect of the First Claim, the Claimant claims damages for injury to reputation, injury to his feelings, and psychiatric illnesses (anxiety and depression). In respect of the Second Claim, the Claimant claims damages for psychiatric/psychological illnesses, injury to

reputation and financial losses (arising from his failure to secure employment). In addition to general damages he seeks aggravated and exemplary damages.

109. Although the preliminary issue is framed as a pure question of law, it is not at all straightforward. There is a strong body of authority to the effect that damages for injury to reputation should only be recoverable in a claim for defamation or an equivalent claim for the processing of inaccurate personal data, but the question of whether damages for harm to reputation might be recoverable in claims based on infringements of ECHR Art 8 rights is regarded as open: see e.g. *The Law of Privacy and the Media*, 4th edn, at 12.135-12.138. Whether damages for personal injury and/or financial loss might be recoverable in negligence depends very much on how the relevant duty of care falls to be defined, a matter which I have not needed to address in order to dispose of this claim and on which I received limited submissions.

110. In all the circumstances, I consider that it is inappropriate and unnecessary to determine which heads of damage might be available as a matter of law. That is something that can be argued in due course if, contrary to my findings, it is held that the claim should proceed.

**L. Fundamental dishonesty**

111. The Defendants invite me to make a finding that, for the purposes of CPR 44.16, the claim is "fundamentally dishonest". The effect of such a finding is that, with the permission of the Court, any order I make for costs against the Claimant would be enforceable against him, notwithstanding the general rule (CPR 44.13 & 44.14) that costs orders are not enforceable against an unsuccessful claimant whose claim includes a claim for personal injuries.

112. A claim is fundamentally dishonest, for the purposes of CPR 44.16, where the dishonesty goes to the root of either the whole claim or a substantial part of the claim: see *Howlett* at [16]-[17].

113. I have found that the Claimant has been dishonest in the following respects:

(1) He forged each of the Hospital Letters;

(2) He lied in his social media accounts;

(3) He lied about having lost the original documents that the Defendants wished to inspect.

114. I have rejected the Defendants' case that the Yetty Letter and the VD Test Letter were forgeries. The Claimant was given insufficient notice that this was the Defendants' case and, in any event, although I am not satisfied that they are authentic documents, the evidence falls short of establishing that they were forged by the Claimant.

115. Ms McKinlay stresses that it is the honesty of the claim as a whole that must he considered. She draws my attention to *Roberts v Kesson* [2020] EWHC 521 (QB) where Jay J found fundamental dishonesty in respect of a claimant who had put forward a false account in his first witness statement, notwithstanding that he had then somewhat resiled from that account in a later statement. That case however concerned s.57 of the Criminal Justice and Courts Act 2015, which has no application here and which uses different statutory language ("*the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest*" – see the judgment at [54]), so it needs to be treated with caution in the context of CPR 44.16 which, as set out above, provides that costs orders may be enforced against a claimant "*where the claim is found on the balance of probabilities to be fundamentally dishonest*").

116. As to the Hospital Letters, the Claimant relied upon all of them at the outset to support his case that he had been interviewed at all four hospitals, appending the Letters to the Original Particulars of Claim. He relied only on the Sheffield Letter when he amended his claim, and he did not need to rely on it at trial because the Defendants' own witnesses had by then provided documents showing that he had indeed attended for interview in Sheffield.

117. Despite the difference in statutory language between s.57 and CPR 44.16, I would not necessarily hold that a claimant must persist in their dishonesty to the bitter end before the claim can be described as fundamentally dishonest for the purposes of CPR 44.16. However, in the case of the Hospital Letters, there is a greater obstacle that stands in the way of such a finding. The Sheffield Letter was a dishonest fabrication but was deployed by the Claimant in support of an aspect of his case that turned out to be essentially true – he did indeed attend an interview with the Second Defendant in February 2006, as the

Second Defendant now acknowledges. Quite why he felt the need to support his case with a forged document rather than simply giving evidence that he had attended an interview is unclear. Likewise, although it has not been necessary for me to determine whether the Claimant attended interviews with the three other NHS Trusts whose documents he fabricated, it may well be that he did and that he has, again, produced dishonest documents to prove an essentially honest case: he gave evidence that he did attend interviews in Leeds, Reading and Norwich and, given the Trusts' document retention policies at the time, the absence of records showing his attendance does not disprove that contention.

118. In these very unusual circumstances, it is not possible, in my judgement, to categorise the claim as "fundamentally" dishonest by reason of the Claimant's reliance on the forged Hospital Letters.

119. The Claimant's false and dishonest statements on his social media accounts were brought up by the Defendants in order to attack the Claimant's credibility. He did not rely on any of those statements as part of his case and his dishonesty in this regard is therefore insufficient, in my judgement, to render the claim itself "fundamentally" dishonest.

120. The Claimant's false and dishonest account of having lost the six original documents was put forward reactively in response to the Defendants' requests to inspect them. It was not advanced as part of the Claimant's positive case. It justifies the adverse inferences that I have drawn but it is not sufficiently central to the case to render the whole claim "fundamentally" dishonest, in my judgement.

121. It follows that I decline to make a finding that, on the balance of probabilities, the claim was fundamentally dishonest. My decision on this issue would have been different if I were satisfied that the Yetty Letter (the key document in the Claimant's case) was forged by the Claimant. However, I have not felt able to go that far. I have simply found that the Claimant has failed to discharge the burden of establishing that the Yetty Letter was authentic.

## M. Conclusion

122. I can state my findings as follows:

(1) The First Claim fails because the Claimant has not established that he attended the Walk-In Centre and has not established that any medical information about him was leaked by staff at the Walk-In Centre or a third party who accessed the Walk-In Centre's records;

(2) The Second Claim fails because the Claimant has not established that the Second Defendant received and considered any reports from third parties that he would pose a threat to nurses;

(3) In any event, the Defendants would have good limitation defences to any claims in negligence, misuse of private information or under the Human Rights Act 1998. It is unnecessary and inappropriate to decide whether there would also be a good limitation defence to a claim for breach of confidence;

(4) If, contrary to my findings, the Claimant were to establish that the Second Defendant acted in breach of duty towards him by taking into account third party reports about his character, he would nevertheless be unable to establish that, but for that breach of duty, he would have secured employment with Second Defendant or that he would have had a real and substantial chance of securing employment with the Second Defendant or elsewhere in the NHS.

(5) It is unnecessary and inappropriate to determine which heads of damage would be available to the Claimant in the event that his claims had succeeded.

(6) The claim was not fundamentally dishonest.

123. I have invited the parties to agree an Order reflecting my judgment.