Neutral Citation Number: [2020] EWHC 483 (QB)

Case No: QB-2019-001754

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/03/2020

Before :

MR JUSTICE SAINI

- -

Between :

DAVID PAUL SCOTT	**Claimant**
- and -	
LGBT FOUNDATION LIMITED	**Defendant**

- -
- -

The Claimant in person
Robin Hopkins (instructed by **DAC Beachcroft**) for the **Defendant**

Hearing dates: 25 February 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE SAINI

MR JUSTICE SAINI :

This judgment is divided into 7 parts as follows:

I. Overview: the Parties and the Disclosure

1. This claim concerns the legality of an oral disclosure by LGBT Foundation Limited ("LGBT Foundation") of certain personal information concerning the Claimant ("Mr Scott") to his general practitioner (GP) on 25 July 2016.

2. LGBT Foundation is a charity which supports the needs of lesbian, gay, bisexual and transgender communities. It operates in Greater Manchester and provides a wide range of services including counselling, as well as advice in relation to health and wellbeing.

3. The information disclosed by LGBT Foundation ("the Disclosure") to Mr Scott's GP was in due course recorded in his GP's records. The information was, in broad summary, as follows: LGBT Foundation had assessed Mr Scott as being at significant risk of suicide or other substantial self-harm, and that it was at that time unable to provide Mr Scott with the services he sought from the LGBT Foundation because of Mr Scott's ongoing drug use.

4. By Claim Form and Particulars of Claim issued on 15 May 2019, Mr Scott contends that the Disclosure was in violation of the Data Protection Act 1998, that it amounted to a breach of confidence at common law, and that it was contrary to the Human Rights Act 1998. He seeks damages in respect of these claimed wrongs from LGBT Foundation which are presently quantified in Mr Scott's Schedule of Loss as a sum in excess of £1.8 million. Mr Scott originally also sought relief for alleged deceit and misfeasance in public office arising out of the disclosure but he discontinued those claims on 3 September 2019.

5. Mr Scott argues that the non-consensual disclosure of his private and personal information undermined his autonomy and right to self-determination.

6. Mr Scott originally sought to access LGBT Foundation's services following his completion of a self-referral form received by it on 16 June 2016. The facts are addressed in more detail below at **Section III**, but it was in these circumstances that LGBT Foundation and Mr Scott came into contact, and in due course the Disclosure was made to the GP of information provided to it by Mr Scott because of their concerns as to his welfare.

7. Mr Scott brings these claims because he says the Disclosure caused him financial loss (in addition to distress). His evidence is that he was a nuclear safety consultant with high level security clearances and the vetting agency for these clearances would

review his medical records. The vetting agency (UKVS) last reviewed his medical records up to 18 March 2016 (so, he submits, the vetting agency would not have received the medical record entry relating to the Disclosure). He says had a vetting interview on 17 October 2016 where he disclosed his drug use, being unaware at the time of the Disclosure made by the Foundation. Mr Scott says he received his security clearances in January 2017 which expired in January 2018.

8. Following GDPR coming into force in May 2018, Mr Scott requested his medical records, receiving the entry related to the Disclosure from his GP on 7 March 2019. He says the entry directly contradicts statements he made in his vetting interview on 17 October 2016 and he will be seen as having not been frank with UKVS. Mr Scott was intending to return to his line of work (after a long illness) but his career is, he says, "now finished" because of LGBT Foundation's wrongful disclosure to the GP. Hence, his claim for substantial damages.

9. By its Application Notice dated 4 October 2019, LGBT Foundation seeks summary judgment and/or a striking out of the claims. In short, it argues that there is no relevant factual dispute and the court can dispose of the claims on the basis of the evidential material presently at hand, and applying uncontroversial principles of law.

II. Legal Principles

10. I have taken the principles which apply to the summary judgment applications from the judgment of Hamblen LJ in Global Asset Capital Inc v Aabar Block SARL [2017] EWCA Civ 37; [2017] 4 WLR 163, a case in which reference was made to the now well-known judgment of Lewison J in Easyair Limited v Opal Telecom Limited [2009] EWHC 339 Ch at [15], as well as a number of other cases. I drew this case to the attention of the parties and they did not dissent from my suggestion that it contains all the principles relevant in this application.

11. As to these principles, the following are of particular relevance to the application before me. First, the court must consider whether the opposing party (here, Mr Scott) has a realistic, as opposed to a fanciful, prospect of success. Secondly, the court must avoid conducting a "mini-trial" without the benefit of disclosure and oral evidence and should avoid being drawn into an attempt to record conflicts of fact which are normally resolved by a trial process. Thirdly, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment but the evidence that can reasonably be expected to be available at trial. Fourth, some disputes on the law are suitable for summary determination. Generally, if the application gives rise to a point of law and the court is satisfied that it has before it all the evidence necessary for the proper determination of the question, the court can and should determine the point.

12. As to striking out, CPR 3.4 provides as follows:

> "(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.
>
> (2) The court may strike out a statement of case if it appears to the court -

> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order."

13. In the present case, having considered the written materials and oral submissions, there does not seem to me to be any real dispute of fact on points which matter; and the questions which arise, both on summary judgment and in relation to the CPR 3.4 application, are ultimately matters requiring the application of clear legal principles which can be decided now with finality and without the need for a trial.

14. I consider I am in materially the same position as the trial judge would be when it comes to resolution of the issues on liability. That point cuts both ways. If on the facts the Foundation has no answer to Mr Scott's claims he would be entitled in principle to judgment on those claims. Indeed, he has issued his own application for summary judgment to be heard in due course (but which is not presently formally before me).

15. I summarise the facts in **Section III** below. My summary is based principally on the contemporaneous documents supplemented with those parts of the witness statement of Mr Scott and that submitted on behalf of LGBT Foundation (the statement of Ms. Rossella Nicosia, Mental Health and Safeguarding Lead for LGBT Foundation) which seem to me to contain uncontroversial facts (and which have not been challenged in the pleadings or witness statement submitted by Mr Scott).

16. Mr Scott also very helpfully and realistically agreed in his oral submissions that (save in certain relatively minor respects and, potentially, in relation to HRA 1998 limitation) there was not any material factual dispute between the parties. The relevant events are narrow in scope and all took place within a few hours on a single day, 25 July 2016.

17. Certain of the material in the evidence before me goes into other areas of Mr Scott's private life (or details of names/information concerning medical professionals) which are not relevant to the discrete issues before me and I will accordingly set out only those matters which are central to this application and which I must set out in order for my judgment to be understood.

18. This approach will I hope explain why there are certain omissions in the summary below (where I have left out private matters I have used the indicator: "[deletion]").

III. The Facts

19. Mr Scott completed a self-referral form on 30 May 2016 in order to access LGBT Foundation's services. This was received by LGBT Foundation on 16 June 2016. In

the self-referral form, Mr Scott disclosed details of his mental health issues and substance use.

20. By way of relevant details (and excluding extraneous personal matters), Mr Scott stated in the form that although he had no current plans to "actively kill" himself, he was "seriously considering stopping taking my [deletion] meds because I just don't want to be alive anymore". He also detailed a previous suicide attempt in 2015, and explained that he had recently been self-harming and continued to suffer from problems relating to drug use. Mr Scott expressed an interest in LGBT Foundation's Befriending Service and in Men's Events. These matters provided the basis for the more detailed questions which arose during the oral intake assessment which I set out below.

21. The self-referral form invited Mr Scott to provide details of any specific needs LGBT Foundation needed to be aware of, such as "language, accessibility, disability". He provided no information regarding any specific disability that he wished LGBT Foundation to be aware of, or at all. I mention this point because Mr Scott informed me prior to the hearing that he is autistic. It is common ground however that he did not indicate this to the Foundation.

22. The self-referral form included a specific section regarding LGBT Foundation's contact with a service user's GP, and stated that LGBT Foundation will "routinely inform GPs when one of their patients has applied to access our Talking Therapies service".

23. Given the importance of a particular part of the form to the issues argued before me, I will set it out in full. It provided (with my underlined emphasis) as follows:

> "Contact with your GP:
>
> We routinely inform GPs when one of their patients has applied to access our talking therapies. This is to keep them informed of the support their patients are seeking to ensure that we effectively coordinate services and provide you with the best possible care. If you give your consent for us to do so, we will send a standardised letter after the intake and triage meeting telling your GP that you have applied for our talking therapies service and another letter after you have finished therapy.
>
> If you do not wish for us to contact your GP please tick this box
>
> <u>Please note that as part of our confidentiality policy, if there is reason to be seriously concerned about your welfare, we may need to break confidentiality without your consent to help you stay safe. We will try to get your consent first but this may not always be possible</u>.
>
> PLEASE NOTE: we cannot process this referral without GP details
>
> …"

(Immediately below this section, Mr Scott wrote his GP's contact details).

24. On the evidence before me, LGBT Foundation separately received a referral form for Mr Scott from the REACH Clinic, which provides services relating to drug misuse. That referral form stated that Mr Scott had expressed an interest in LGBT Foundation's Talking Therapies service, through which LGBT Foundation offers access to affirmative therapy with an LGBT specialist therapist. It also included the details of Mr Scott's GP and the box in which he could confirm he did not wish his GP to be contacted. That box was not ticked and the form included essentially the same language concerning breaking confidentiality without consent (if circumstances arose of serious concern as to welfare) as set out above in the first referral form I have quoted immediately above.

25. Mr Scott's case was allocated to Ms Sophie Lambe ("Ms Lambe"), who was at the material time a Sessional Health and Wellbeing Officer at LGBT Foundation. The normal process for all referrals was that service users were offered an intake assessment to ascertain what the best support would be for them. The assessment was also used to assess whether any other external services would be beneficial to service users, and it enabled LGBT Foundation to assess any risks to the service user's safety. Ms Lambe made contact with Mr Scott on 14 July 2016 in order to arrange a time and date for his intake assessment.

26. At around 9am on 25 July 2016, Ms Lambe conducted an oral intake assessment session (in person) with Mr Scott. Ms Lambe informed Mr Scott about LGBT Foundation's policy regarding confidentiality, and explained that any information disclosed by him during the intake assessment would be passed on if LGBT Foundation believed that he or a third party was at risk. It is said that Mr Scott confirmed he understood and agreed to this, and Ms Lambe began the intake assessment. The forms to which I have made reference above establish the same position and I accept this evidence.

27. During the intake assessment, Mr Scott elaborated on the issues raised in both referral forms and in discussion Ms Lambe asked him a number of questions relating to his mental health. I will need to set the responses to these questions out in some detail because they formed the substance of the Disclosure to the GP in due course.

28. I was told that these are standard questions that are asked as part of each intake assessment, as detailed on LGBT Foundation's intake assessment form. It is said that this assessment also acts as the Suicide Intervention Risk Assessment that staff must carry out where service users disclose suicidal ideation. There is no reason to doubt this and I accept that these questions are asked in order to understand a service user's background and current situation, as well as to understand their current state of mind and risk.

29. During the assessment and in answer to her questions (no doubt prompted by what she had read on the self-referral form), Mr Scott informed Ms Lambe that he was currently and regularly taking drugs, including as part of a positive coping strategy, and that he had accidentally overdosed the previous Thursday, 21 July 2016. He told Ms Lambe that he was seeking help from LGBT Foundation in order to try and find a will to live, and to establish some stability in his life.

30. Ms Lambe asked Mr Scott whether he had ever experienced a level of distress that triggered thoughts of self-harm as a way of coping. He confirmed that he had, and explained that he self-harmed in various ways such as cutting his arms and abusing drugs, most recently a couple of weeks previously, and that he had not accessed any support.

31. Ms Lambe also asked Mr Scott whether he had ever experienced suicidal thoughts. He stated that he had, most recently the previous evening, and that he had attempted to cut his wrists the previous September. Ms Lambe asked him whether, in the past two weeks, he had considered taking his own life, and whether he had thought about how he might do so. Mr Scott stated that he had considered taking his own life by cutting his wrists, although he was not sure he could do it. He also stated that he had tried to make his life intolerable in order to push himself to do so.

32. Ms Lambe asked Mr Scott if he was currently experiencing suicidal thoughts. He confirmed that he was, and that he thought these thoughts may be linked to his drug use. Of some importance is the fact that he was asked to rate the intensity of these thoughts on a scale of 0 to 5, 0 being very infrequent and fleeting, and 5 being highly distressing thoughts that he was thinking about acting on. Mr Scott in fact rated his suicidal thoughts on a 1 to 10 scale as an 8/10 (that is, effectively a 4/5 on the scale used by LGBT Foundation).

33. In light of these distressing responses to her questions, Ms Lambe became very concerned about Mr Scott's welfare.

34. Accordingly, Ms Lambe explained that she would need to pause the assessment and seek advice from a colleague. The evidence is that she was concerned with what she had been told, and also needed to discuss the services that could be made available to Mr Scott. Ms Lambe said that she wished to ensure LGBT Foundation could offer the best and most appropriate type of support.

35. It was in these circumstances that Ms Lambe spoke to Ms Nicosia in accordance with LGBT Foundation's Confidentiality Policy. I have before me the Confidentiality Policy which requires staff to speak to a senior colleague where they consider confidentiality needs to be broken. Ms Lambe informed Ms Nicosia that during the assessment Mr Scott had discussed suicidal ideation. Ms Lambe also said that, in her professional judgement, there was a moderate risk of suicide but that there were not enough protective factors in place to lower the risk. As he had considered taking his own life and the means by which he would do so, Mr Scott was assessed as being at intermediate risk under the Safeguarding Policy.

36. Ms Nicosia then advised Ms Lambe on next steps which, for intermediate risk situations, included contacting the service user's GP in order to make them aware of concerns in relation to the service user's wellbeing, and in order to ask the GP to arrange an appointment to offer more support. Ms Nicosia advised Ms Lambe to inform Mr Scott that they would be contacting his GP as they had concerns about his welfare.

37. The evidence is to the effect that they also decided, because of Mr Scott's ongoing drug use, it would not be appropriate to offer Talking Therapy services and that he should instead be first referred to LGBT Foundation's drug and alcohol service

therapy. The reason for this was that the use of substances is said to have a significant impact on a service user's engagement with the Talking Therapies service (including a person's ability to explore certain issues with a therapist), as well as their retention of the therapeutic work carried out by counsellors.

38. Following the discussion between Ms Nicosia and Ms Lambe, Ms Lambe returned to see Mr Scott but found him waiting by the lift. He entered the lift and informed Ms Lambe that he had to leave in order to go to work. Ms Lambe followed Mr Scott into the lift and, as they were the only two individuals in the lift, decided to relay to him the outcome of the discussion she had just had with Ms Nicosia.

39. Ms Lambe specifically informed Mr Scott that, due to serious concerns regarding his welfare, she would have to discuss the intake assessment meeting with his GP in order to help get Mr Scott some support. She also said that there was no need for Mr Scott to consent to this given the nature of the concerns the Foundation had about his welfare. At this point, Mr Scott did not raise any objections. No doubt this was because of the earlier discussions in which Ms Lambe had made clear that in certain circumstances LGBT Foundation might find itself compelled to break confidentiality (I refer to paragraph [26] above).

40. Ms Lambe also stated that LGBT Foundation were referring Mr Scott to its drug and alcohol service for assistance. Ms Lambe attempted to explain why these steps were necessary but, when the lift stopped Mr Scott told her “not to bother” and left the building.

41. It was perhaps unfortunate that matters were dealt with in this hurried manner. That ended the verbal discussions but there were some email communications later that day, as identified below. At all events it is clear that at this point in time Mr Scott was aware his GP was to be contacted by LGBT Foundation.

42. Later that day Ms Nicosia asked Ms Lambe to send her an email to summarise and update her on the situation. That is in evidence before me. In accordance with LGBT Foundation practice (now recorded in a Confidentiality and Safeguarding Policy), an Incident Report Form was subsequently completed and it sets out details of the oral disclosures made by Mr Scott, the discussion between Ms Lambe and Ms Nicosia and the safeguarding concerns, as well the fact it was felt necessary to make a disclosure to the GP. The Incident Report Form is a contemporaneous document and provides a summary which reflects what I have recounted above and what is said in the witness statement of Ms Nicosia.

43. During the afternoon of the 25 July 2016, Ms Lambe telephoned Mr Scott’s GP’s practice using the details he had given in the forms. Ms Lambe spoke to the GP’s receptionist, and explained who she was and where she was calling from. Ms Lambe outlined LGBT Foundation's Confidentiality Policy at the start of the call, explaining that Mr Scott had been advised that any information disclosed by him would be passed on if LGBT Foundation believed he or a third party was at risk. Ms Lambe explained that Mr Scott had attended an appointment with LGBT Foundation in order to assess whether LGBT Foundation's services would be the best fit for him and which services would be appropriate. She stated that his disclosure around suicidal ideation, specifically his references to the fact he had considered slitting his wrists, resulted in significant concerns for his welfare.

44. The receptionist asked why LGBT Foundation were unable to offer any therapeutic support for Mr Scott. Ms Lambe explained that Mr Scott had made a number of disclosures regarding his previous and ongoing issues with substance abuse, and that they therefore needed to refer him to LGBT Foundation's drug and alcohol service first, before they could progress him to the Talking Therapies programme. Ms Lambe informed the receptionist that she had called due to concerns that he was at high risk of harm and with the aim of facilitating further support for Mr Scott.

45. Ms Lambe was asked if Mr Scott was happy for the GP to call him and she said that he knew about the circumstances in which LGBT Foundation would share information and the fact that they intended to contact his GP, and that she was passing this information on due to the nature of his disclosures.

46. The substance of the conversation I have referred to above, but not all parts, is summarised by Ms Lambe in her email of 25 July 2016 in the evidence before me.

47. The GP's records of Ms Lambe's call (obtained by Mr Scott) said as follows:

> "25/07/2016 Telephone encounter failed, msg left asking patient to ring or call in re. urgent appt as per LGBT
>
> Dr [deletion]
>
> 25/07/2016 Administration NOS Sophie form LGBT [deletion] David has been in, he was going to engage in talking therapies for his drug use, however the team feel this type of therapy would distort his mental health, he was therefore offered a referral and help from the team but refused it. In discussion David admitted he was using [deletion], he stated he uses them as a coping strategy but also stated it is a way of self-harming. He said he had suicidal thoughts last Thursday but blames the drugs for him feeling this way. I spoke to Dr M- who has advised we contact David and try to get him to come to the surgery today to speak with the Dr. [deletion]"

48. It will be noted from the entry at the top of this extract that on the same day as the notification, a doctor sought (unsuccessfully) to contact Mr Scott. I am confident that this was because that doctor was concerned by what had been passed on to the surgery by LGBT Foundation in relation to Mr Scott's mental state.

49. The evidence does not show any documents or written records were shared with the GP by LGBT Foundation, and communications with the GP practice were entirely verbal.

50. To complete the picture, I should record that the following email (with my underlined emphasis) was sent to Mr Scott after the Disclosure (25 July 2016, timed at 13.06):

> "Dear David,

> I am writing this email to tell you about the outcome of your intake assessment. Our mental health lead has decided that you would not fit our service at the minute due to the weekly use of drugs as this can affect your mental health in many ways.
>
> We would be happy to offer these services if you are able to engage with our drug and alcohol services first. I am going to refer to our drug and alcohol service and they will try to contact you, however it is up to you whether you would like to engage with this service or not, but I would recommend this for you.
>
> As stated before within the confidentiality before we started our intake assessment, I have had to pass this information on as I have concerns for your safety. I have contacted your GP surgery to make them aware of the suicidal thoughts you disclosed to myself. I do hope that our services can help you. If you need any support in the meantime while you decide on whether to use our services please contact us on [deletion] or pop in to our building to speak to a member of the health and wellbeing team. Also if you find yourself having more suicidal thoughts please refer to the numbers I provided you with before."

51. I now turn to the first of Mr Scott's pleaded claims.

IV. The DPA Claim

52. The Data Protection Act 1998 was in force at the time of the Disclosure. It was repealed with effect from 25 May 2018 and replaced by the General Data Protection Regulation 2016/679 and the Data Protection Act 2018. References in this judgment to "the DPA" are to the 1998 Act. Although the DPA is no longer in force, it is common ground that Mr Scott may bring proceedings under that Act in respect of the Disclosure on 25 July 2016.

53. Mr Scott's pleaded complaint is that the Disclosure involved unlawful disclosure of "sensitive personal data" within the meaning of the section 2 of the DPA, concerning his sexual life and mental health (as well as alleged commission of an offence, relating to drug use).

54. I do not understand it to be in issue that the Disclosure was made purely verbally (over the telephone) and that the material thus communicated was itself orally provided to Ms Lambe during the intake assessment process which I have set out in some detail in **Section III** above.

55. It was argued by Counsel for LGBT Foundation that the claim under the DPA should be struck out because the DPA does not apply to purely verbal communications such

as the Disclosure. In my judgment, this submission is well-founded, for the reasons I set out below.

56. The DPA imposes rights and duties as regards the "processing" by a "data controller" of "personal data". Accordingly, a claim under the DPA can only arise where there has been processing of "personal data".

57. In order to be qualify as "personal data", the information in issue first needs to satisfy the definition of "data" under section 1 of the DPA, which is in the following terms:

> ""data" means information which—
>
> (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
>
> (b) is recorded with the intention that it should be processed by means of such equipment,
>
> (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
>
> (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;"

58. It will be seen that the DPA considers the nature of the processing/recording of the information in order to determine whether the information in question is "data" within that Act.

59. The need for personal data to be recorded, in either electronic or manual form, is further clear from the Court of Appeal's discussion in Durant v Financial Services Authority [2003] EWCA Civ 1746, [2004] FSR 28: see in particular §§3-6 and §§33-34 per Auld LJ.

60. That basic point is also clear from Article 2(1) of Directive 95/46/EC, which the DPA implemented:

> "This Directive shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system."

61. I agree with LGBT Foundation's submission that a verbal disclosure does not constitute the processing of personal data, and thus cannot give rise to a claim under the DPA.

62. In response to LGBT Foundation's submissions and, as I understood his argument, Mr Scott sought to argue that the material was in effect "stored" in Ms Lambe's mind

with a view or intention to it being put into an automated record/filing system in due course, and therefore it was "data" as defined in the DPA. I reject that submission. It does not fit within the DPA scheme.

63. I should also add that I can quite see the force of Mr Scott's point (made in his written arguments and orally) that it may seem unfair that oral onward disclosure of the private information which he first orally provided to LGBT Foundation is not prohibited. But that is not what the DPA is concerned with: it is a very specific scheme based around records and processing. There are other areas of law (in particular, the law of confidentiality) which are the appropriate vehicle for making such complaints if they are well-founded.

64. For these reasons, Mr Scott's claim under the DPA fails at the first hurdle.

65. In the alternative, LGBT Foundation submitted that even if the DPA applied to the Disclosure, the Disclosure was itself lawful under the DPA. It argues that the Disclosure satisfied condition 4 within Schedule 2 to the DPA which provides as follows:

> "The processing is necessary in order to protect the vital interests of the data subject."

66. It was argued that if the Disclosure constituted the processing of personal data, it would also have constituted the processing of "sensitive personal data", as it was information as to Mr Scott's physical or mental health and/or sexual life.

67. The Disclosure would therefore have needed to satisfy a condition from Schedule 3 to the DPA. It was said by LGBT Foundation that condition 3 would have been satisfied. This provides:

> "3. The processing is necessary—
>
> (a) in order to protect the vital interests of the data subject or another person, in a case where—
>
> (i) consent cannot be given by or on behalf of the data subject, or
>
> (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
>
> (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld."

68. In my judgment, there is sufficient material for Part 24 purposes before me to establish that the Disclosure was necessary to protect Mr Scott's vital interests.

69. On the facts facing LGBT Foundation, as recited in more detail above, in Section III, I do not consider it could reasonably have been expected that the Foundation obtain Mr Scott's consent. In particular, those facts demonstrate to my mind that Mr Scott was considered to be at a material risk of suicide or other substantial self-harm, and he had already been informed that such disclosure could be made without his consent in such circumstances (and he had gone ahead with the intake assessment with such knowledge).

70. In his well-presented written and oral submissions, Mr Scott sought to challenge this approach by arguing that he was not at "imminent" risk. He pleaded in his Reply that, if he had been at imminent risk, he would have had no complaint about the Disclosure. He also argued orally that if matters were so pressing why did the LGBT Foundation not alert the police?

71. I reject those submissions. There is no basis in my view for reading a qualifier as to "imminent" risk into the "vital interests" processing conditions under the DPA. However, putting that point to one side, I do consider a reasonable professional faced with the facts disclosed to Ms Lambe would find the risk to be imminent enough to at least make a limited notification to a healthcare professional.

72. I consider that certain parts of Mr Scott's submissions to me underplayed the alarm which his comments during the intake assessment would have caused to a person in Ms. Lambe's position who understandably felt compelled to make the limited disclosure that she undertook. His disclosures were, to say the least, deeply concerning as to his welfare.

73. I accordingly grant LGBT Foundation's summary judgment and striking out applications in respect of the DPA claim on both of these grounds.

V. The Breach of Confidence Claim

74. It was rightly not in issue before me that the information imparted via the Disclosure had the requisite quality of confidence. It was clearly highly sensitive medical and health-related information concerning Mr Scott which has typically been protected at common law and in equity.

75. LGBT Foundation argues however that a necessary element of this cause of action is that the information must have been imparted (to it) in circumstances importing an obligation of confidence. It is common ground that is a well-established ingredient of the cause of action: see, for example, Coco v AN Clark (Engineers) Ltd [1968] FSR 415 at 420. LGBT Foundation says that Mr Scott cannot establish this requirement.

76. In my judgment, although I would put matters differently to the way the point was argued, Mr Scott's claim for breach of confidence does indeed fail. As I explain below, I consider the reason the claim fails is that the duty of confidence which was undoubtedly owed to Mr Scott had a qualifier to confidentiality, or "carve out", which permitted the very limited Disclosure to his GP.

77. I begin by recalling that the referral forms (which I have set out above) made it clear that the LGBT Foundation would disclose confidential information to an individual's GP if it had serious concerns about that individual's welfare. Mr Scott completed the forms and provided his GP's details. I refer here to the clear wording "we may need to break confidentiality without your consent to help you stay safe".

78. I also accept that at the outset of their consultation, Ms Lambe made this specific fact clear to Mr Scott. He then proceeded to discuss his personal circumstances with her. I consider the evidence establishes that after consulting Ms Nicosia, Ms Lambe told Mr Scott in terms that she would be contacting his GP, and he did nothing to prevent her from doing so.

79. These facts are not in dispute: they are set out in the Defence and expressly admitted in the Reply of Mr Scott. They are also set out in Ms Nicosia's witness statement and were not challenged in responsive evidence.

80. At the risk of repetition I should emphasise that one of the facts which is particularly relevant is the uncontradicted and unchallenged evidence that Ms. Lambe specifically informed Mr Scott *before* the intake assessment began at 9am on 25 July 2016 that information disclosed by him during the intake assessment would be passed on if LGBT Foundation believed that he or a third party was at risk. That is the exact situation which arose.

81. In my judgment, on the basis of these facts, it will not be possible for Mr Scott to make out at a trial a necessary element of this cause of action, namely that it was a breach of confidence for LGBT Foundation to convey (in a limited way and only to his GP) the information in the Disclosure. The general duty of confidence owed to Mr Scott was qualified by a permissive rider in the circumstances.

82. The thrust of Mr Scott's response on this issue was to argue that as a matter of construction of other language in the referral forms (in particular, the words "We will try to get your consent first, but this may not always be possible"), that LGBT Foundation had to seek to get his consent unless it was, for example, practically impossible, and that they in fact made no effort.

83. Although this submission does not address the evidence of what Mr Scott was told orally at the start of the assessment (which is a complete answer), I would in any event reject the argument based on construction. In my view the referral forms are not to be read as contractual instruments and as a matter of practical commonsense they are indicating to the user that there might, in extreme circumstances, be a breaking of confidentiality if that is needed to help the individual "stay safe" (the words used in the referral forms, as I have cited above). The individual seeking the Foundation's assistance would know that a limited disclosure (that is, *only* to a GP in this context) might take place in such pressing circumstances, even if he or she did not agree or indeed was not even asked for consent.

84. Putting matters at their highest for Mr Scott (and accepting his construction of the referral documents) even if he had in fact formally been asked for consent and had declined, LGBT Foundation would have been acting lawfully in making the Disclosure.

85. For these reasons, the claim for breach of confidence can be dismissed summarily or struck out.

86. I do not need to address LGBT Foundation's further submission that the Disclosure was in any event justified in the public interest and the interests of Mr Scott, as it was made with a view to Mr Scott's GP helping to reduce his risk of suicide or other substantial self-harm. There is however substantial force in that submission. There were counter-arguments forcefully made by Mr Scott as to the aspect of the public interest which concerns his rights to autonomy and self-determination but given my other conclusions as to why this claim fails, I will not address those submissions. It is not necessary to do so to deal with the application before me.

VI. The HRA 1998 Claim

87. Mr Scott argued that he was a victim of disclosure of information protected by his Article 8 ECHR privacy rights and that LGBT Foundation is a body carrying out a public function for the purposes of the Human Rights Act 1998 (HRA).

88. In this latter regard, he relies upon the fact that as a charity LGBT Foundation is, he argues, funded primarily by government grants and contracts to provide advice and support to lesbian, gay, bisexual and trans communities.

89. LGBT Foundation's first argument in response is that this claim is out of time. The logically prior matter however is whether the HRA 1998 applies to LGBT Foundation at all.

90. In my judgment, Mr Scott has no claim under the HRA 1998, because LGBT Foundation is not a "public authority" within the meaning of section 6 HRA. It is common ground that it is not a "core" public authority, i.e. a body falling within section 6 otherwise than via section 6(3). Therefore, if LGBT Foundation is a public authority, this can only be on the "hybrid" basis pursuant to section 6(3)(b), i.e. as a person "certain of whose functions are functions of a public nature". I will first describe the nature of LGBT Foundation's funding (given the reliance placed upon this factor by Mr Scott).

91. LGBT Foundation is a charity (registered charity number 1070904). Currently, approximately 40% of LGBT Foundation's income is funded by public bodies, such as the NHS Clinical Commissioning Groups or local authorities. Around 45% derives from grants from bodies such as the National Lottery, and Macmillan. The remainder of LGBT Foundation's income is from other sources such as individual donations, event fundraising, earned income or corporate donations.

92. Although LGBT Foundation does receive public funding to deliver some of its services, Mr Scott did not in fact access any of LGBT Foundation's services. As explained above, he only attended an intake assessment, the purpose of which is to ascertain what the best support for the service user will be and which services are appropriate. Intake assessments are a service devised and implemented internally. Intake assessments are not directly funded by any specific provider nor is LGBT Foundation otherwise required to provide them on behalf of, or at the request of, any

public body or funder. They have no statutory basis, underpinning or other form of connection with statute.

93. The principal authorities on the question of hybrid public authorities were summarised by Mann J in Fearn v Tate Gallery Board of Trustees [2019] EWHC 246 (Ch), [2019] 2 WLR 1335 at §§108-120. Mann J's thorough discussion includes consideration of the leading authorities of Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Walbank and Another [2003] UKHL 37, [2003] 3 WLR 283 and YL v Birmingham City Council [2007] UKHL 27, [2007] 3 WLR 112.

94. Applying the multi-factorial approach required by the case law, in my judgment LGBT Foundation is not a hybrid public authority. The evidence establishes that it seeks to deliver services of public benefit and it receives some public funding, but such factors are insufficient to make an entity a public authority. Of importance is that LGBT Foundation has no statutory powers, duties or functions (not even matters being delegated to it by true public authorities), and is not in any way "governmental". It is simply a charity which, like many such bodies, attracts public funding in addition to funds from other sources. The fact that it helps members of the public on health issues takes matters no further.

95. For completeness, and in deference to his well-structured submissions, I should identify that Mr Scott relied upon five main points in support of his submissions under this head:

a) LGBT Foundation is a charity authorised by statute and have a duty to act in the public interest in accordance with Sections 1-4 Charities Act 2011;

b) LGBT Foundation is democratically and locally accountable in that charity proceedings can be brought against the charity by the Attorney General or any person interested in the charity or by 2 or more people in the local area of the charity for mismanagement or otherwise in accordance with Section 115 of the Charities Act 2011;

c) LGBT Foundation derives power (and significant funding) from the NHS and Local Government, falling under Section 12 of Health and Social Care Act 2012, Section 2B National Health Service Act 2006 and Section 111 of Local Government Act 1972;

d) LGBT Foundation's objective is to preserve and promote good health of LGBT people, supporting the NHS and Local Authorities health-related functions and Mr Scott attempted to access these services. These functions are public health-related and publicly funded healthcare; hence have the necessary public 'flavour' to be 'public functions';

e) LGBT Foundation's Safeguarding Policy states it complies with HRA 1998 demonstrating that it believes their services are 'public functions'.

96. In my judgment, although these points were persuasively argued, they do not establish that LGBT Foundation is a public authority for HRA 1998 purposes. As regards point (c), the legislation cited by Mr Scott does not in fact cede any powers to the Foundation and, as regards point (e), the fact that as a matter of good practice a body seeks to adhere to the HRA 1998 does not mean as a matter of law and fact it is a public authority. A private body cannot, by publishing aims, turn itself into an entity governed by the HRA 1998.

97. As to points (a) (b) and (d), in my judgment they simply reflect the reality of the regulation and day to day activities of many private charitable and other organisations. They do not take the Foundation into the realm of public law for HRA purposes. The fact that a body provides services for public benefit does not establish that it has functions of a public nature: see paragraph 117 of the Fearn case where Mann J referred to the position of charities (citing the judgment of Lord Neuberger in YL).

98. I have not overlooked Mr Scott's strong reliance upon R (on the application of A) v Partnerships in Care Limited [2002] EWHC 529 (Admin). The fundamental point in that case was that the private hospital was the subject of specific statutory duties which underpinned its activities: see paragraph 24 of Keith J's judgment. That is not a feature of the present case.

99. What I have said above is sufficient to dispose of the Article 8 ECHR claim. There was argument before me on the merits of this claim and I will briefly indicate my views on that matter.

100. Mr Scott alleges a contravention of Article 8 ECHR, which provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

101. The Disclosure was not an interference with Mr Scott's rights under Article 8(1) ECHR. Mr Scott had no reasonable expectation of privacy that precluded LGBT Foundation from making the limited Disclosure. This is for the same reasons that I have set out above in relation to the claim for breach of confidence. The Disclosure was in accordance with the law (it involved no civil wrong).

102. Further, had I been required to decide the point, I would have been inclined to determine that the Disclosure was justified under Article 8(2) ECHR in the interests of Mr Scott, as it was made with a view to Mr Scott's GP helping to reduce his risk of

suicide or other substantial self-harm. I stress again that the Disclosure was very limited in scope and proportionate.

103. Returning to the issue of limitation, LGBT Foundation says that the HRA 1998 claim has been brought outside the one-year limitation period set by section 7(5) HRA. Mr Scott was, it argues, made aware of the Disclosure on 25 July 2016 and he issued his Claim Form on 15 May 2019.

104. In response Mr Scott submitted to me that he only learnt that information about his drug use formed part of the Disclosure when he received the response to the subject access request he made to his GP on 7 March 2019. However, that does not address the Disclosure concerning his risk of suicide or self-harm. Even on his own case, he learnt of that aspect of the Disclosure on 25 July 2016, and was immediately upset. Yet he commenced legal action nearly three years later. He has submitted evidence (which he says he would supplement at trial) as to his poor medical health, which he argued would justify an extension on equitable grounds of the period of limitation.

105. Ultimately, I do not need to resolve this limitation issue because the HRA 1998 claim falls to be dismissed on other grounds, as I have addressed above. The issue of limitation may well however have raised issues requiring further factual investigation.

VII. Conclusion

106. I have considered Mr Scott's additional submissions as to why a trial is necessary but they concern claims as to what might appear on disclosure (in relation to the HRA 1998 issues and the claimed "public" nature of the Foundation's activities), or arguments as to whether parts of the evidence of Ms Nicosia's "hearsay" evidence are accurate (in relation to aspects which ultimately are not in my view determinative).

107. I do not find those matters justify a trial or provide a compelling reason for a trial. As indicated at the start of this judgment, I am as well-placed as a judge at trial to determine the claims.

108. For the reasons set out above, I will grant the summary judgment application and also strike out all of the causes of action. The claim is accordingly dismissed.

109. Mr Scott's own outstanding application for summary judgment dated 18 October 2019, due to be heard on 20 March 2020, falls away.