Neutral Citation Number: [2024] EWHC 3249 (KB)

Case No: QB-2022-001025

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/12/2024

Before :

MR JUSTICE KERR

- -

Between :

ATOLE TIMOTHY ENAHOLO	**Claimant**
- and -	
(1) TOTALLY PLC **(2) IMPERIAL COLLEGE HEALTHCARE NHS TRUST**	**Defendants**

- -
- -

The **Claimant** appeared in person
Jennifer Oborne (instructed by **Capsticks Solicitors LLP**) for the **Defendants**

Hearing dates: 28, 29 and 30 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 11am on 17 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

....

Mr Justice Kerr :

Introduction and Summary

1. The claimant is now 54. He lives in London with his wife and children. He believes that he has "electrosensivitity", which he describes as "a general name for microwave radiation induced health effects". He says he has been subjected to irradiation by the Metropolitan Police Service (**MPS**) or its agent, his former employer, Reed Specialist Recruitment Limited (**Reed**). He claims damages for clinical negligence and breach of his data protection rights and seeks rectification of his medical records.

2. His case is that the defendants negligently misdiagnosed him as suffering from a psychiatric disorder and negligently referred him for assessment under the Mental Health Act 1983. He asserts that they disclosed his medical records to his immediate past employer, Peninsula Business Services Limited (**Peninsula**), causing him to lose his job. He also claims that the first defendant (**Totally**) and the second defendant (**the Trust**) unlawfully disclosed his medical records to his general practitioner (**GP**).

3. His case is that by reason of the defendants' unlawful conduct, he has suffered foreseeable injury and damage: post-traumatic stress disorder; loss of earnings through loss of his employment; and other financial losses and expenses. The trial before me was of liability only. If the claim should succeed, a further trial would need to be held to deal with issues of causation and quantum. He quantified his claim in a schedule of past and future losses at £232,416.19 (excluding interest) as at 30 March 2023.

4. The defendants say that whatever test for liability in negligence is applied, the medical professionals employed by them did not act negligently; that it was reasonable to recommend that the claimant should have a psychiatric assessment; that no such assessment took place because the claimant did not consent to one; that neither defendant disclosed his medical records to his then employer, Peninsula; that the Trust disclosed them to his GP lawfully; and that the claim should be dismissed.

Facts

5. The claimant was at one time a university lecturer in biochemistry. He then worked in the oil industry as a procurement manager. After relocating to the UK, he became a security and health and safety consultant and supervisor. In that capacity he has acted as an adviser to managers and clinicians in NHS hospitals. He worked for a time at Reed, which provides or provided agency services of various kinds to the MPS. Subsequently, in May 2019 he joined Peninsula as a health and safety consultant.

6. Totally operates a care centre at the Central Middlesex Hospital in London. It is called the "Urgent Care Centre" or, sometimes, the "Urgent Treatment Centre". I will call it **the UCC**. The Trust is responsible for patient care at St Mary's Hospital in Paddington, London. Both defendants accept responsibility for the professional work of doctors and other medical staff employed by them in their respective operations which are part of the National Health Service (**NHS**).

7. In 2018 and 2019, the claimant had been complaining to his GP of chest pain, loin pain and palpitations. He is diabetic and had been subject to medical investigations for some time. I do not need to set out the detail. Among other concerns, clinicians who

examined him observed a slightly prominent pancreatic duct in November 2018. It appears that he was at that time working for Reed as a health and safety consultant.

8. In November 2018 the claimant made a formal complaint of misconduct to the MPS's Directorate of Professional Standards. On 21 December 2018, he saw his GP (Dr Galina Geltser), who recorded in her notes that he complained of an "elect[r]omagnetic radiation attack in his office". It was the second such attack, he told Dr Geltser; the first was in October 2018 at his residence. He "believes that someone wants to hurt him", Dr Geltser noted. He told her about his complaint of police misconduct.

9. On 4 January 2019, he again visited his GP, complaining of loin pain. Dr Geltser certified him unfit for work for two months up to 3 March 2019. He attributed the loin pain in his right side to a "radiation attack" and was "very stressed out". He was referred to hospital for further investigations. On 11 January 2019, he was due to attend a diabetic retinopathy clinic. A note from his GP records that he did not attend. An insurance invoice from Reed was received by the GP practice on 30 January 2019.

10. He had previously attended Central Middlesex and St Mary's Hospitals in connection with those complaints. After the hearing, in response to queries from me during the trial, he produced documents from Peninsula showing that he joined Peninsula as its employee pursuant to an employment contract dated in April 2019, with a start date on 20 May 2019. The written contract and statement of terms was in standard form and also referred to an "Employee Handbook" which, however, was not produced.

11. The claimant has produced a document from the Mayor of London's Office for Policing and Crime (dating from April 2020) showing that (as at May 2019 when the claimant joined Peninsula) the MPS had a history of contracting with Reed for the supply to the MPS of substantial numbers of temporary agency workers. Reed also supplies workers to the NHS. The claimant's belief is that Reed is responsible, on behalf of the MPS, or shares responsibility with the MPS, for subjecting him to microwave radiation.

12. In the late afternoon and evening of 30 May 2019, the claimant was seen by a consultant at the UCC, Dr Gulabagh Kadir. He was complaining of pain in the left breast area and showed symptoms of a "skin problem". There was swelling with a lump and some erythema. He was "speaking in sentences". He was advised to make a routine GP appointment. It is not clear from the evidence whether he had returned to work, or started to work, at Peninsula by this time. What is clear is that the claimant was soon in contact with Peninsula about an occupational health assessment.

13. The claimant accepted in cross-examination that he told Peninsula before 30 June 2019 that he was being subjected to microwave radiation and that as a result, Peninsula fixed an occupational health assessment. The claimant said the purpose was "to check effect of radiation in my body" (my note of his evidence). Ms Nicola Donoghue of Health Assured (I infer, a provider of health assessment services to Peninsula) emailed the claimant on Friday 28 June 2019 about an appointment for an assessment, fixed for Friday 5 July 2019, a week later. I have not seen Ms Donoghue's email. I have seen a reply to it from the claimant dated 5 July 2019, to which I will return.

14. On the morning of Sunday 30 June 2019, the claimant's evidence is that he called a police emergency line to complain of microwave radiation attacks. His evidence, not challenged by the defendants, is that he spoke to a police officer called "Will", who

gave him a crime reference number, CAD6311/21Jun19. The claimant says in court documents for this case that the crime reference was subsequently deleted by police. At 10.03am that morning, the claimant went to the UCC. His purpose was to obtain an electrocardiogram (**ECG**) to see whether there was any problem with his heart.

15. He gave his details on arrival to a member of staff (identified only as "RIOC", now retired), who recorded that he "says the police are firing radiation into his apartment as he has information". She wrote: "think he is mental health" [sic]. She noted that patient notes "are automatically shared with GP". She selected "Yes" against "If patient does not want this, select no." A note to the same effect was made about sharing his notes on the NHS database. The claimant's evidence was that he did not consent to his medical records being shared with his GP or the NHS database and that the document recording his attendance was drawn to his attention by Peninsula. I will return to this.

16. From 10.08 to 10.13, he was seen by a triage nurse, Ms Nutan Prasad. Her notes record that he stated that he was a health and safety consultant; and that he "says the police are firing radiation into his apartment as he has information". She noted no evidence of self-harm; that he was alert, oriented and well dressed, with good eye contact. She added the claimant's account of a "radiation problem with met police x 1 year". The claimant did not dispute the accuracy of Ms Prasad's notes. With his consent, various routine tests were carried out to check his bodily organs were functioning normally.

17. From 12.57 to 13.03, the claimant was seen by a GP at the UCC, Dr Altin Hoxha. The notes made by Dr Hoxha include: "also mental health symptoms, with delusions of prosecutions, thinks the police are radiating him and conspire with previous employers against him regarding the information he has against the police as health and safety officer". Under the heading "Diagnosis", Dr Hoxha wrote "central chest pain, ro [rule out] ACS [Acute Coronary Syndrome]"; and "psychotic symptoms".

18. I interject that the claimant has further alleged that Dr Hoxha's report was wrongfully altered. I am satisfied that it was not. He explained in his evidence that the numbers in the subsequent version, which the claimant says was wrongfully altered, were added because of computer coding. Doctors are asked to "code" the case by using the numbering system whereby numbers represent medical conditions observed by the doctor preparing the notes.

19. As Dr Hoxha explained, the codes represent the nearest match to the relevant condition which the doctor can find. That is the explanation, which I accept, for the presence in the version obtained by the claimant in March 2020 (after several subject access requests) of the numbers and words "69322001 Psychotic disorder" and "394659003 Acute coronary syndrome (ACS)"; which were not present in the original notes made by Dr Hoxha. There is nothing sinister or wrongful about the modifications.

20. I accept the evidence of Dr Hoxha that his notes are an accurate account of what he observed and the opinions he formed. His notes refer to an ECG and the claimant agrees that Dr Hoxha performed an ECG, which tallies with the claimant's purpose in attending the UCC. The claimant accepted that he told Dr Hoxha about the irradiation. I accept the claimant's evidence that he told Dr Hoxha the chest pain had subsided; that is consistent with Dr Hoxha's note: "this am [morning] central chest pain".

21. Dr Hoxha decided the claimant should be taken by ambulance for testing to rule out Acute Coronary Syndrome (**ACS**). He therefore put in his notes: "las trasfer" [sic]. "LAS" stands for London Ambulance Service. Dr Hoxha's printed notes were given to the ambulance crew. I accept Dr Hoxha's evidence that he did not write any further document such as a referral letter. He did not know to which hospital the ambulance would take the claimant. It was to be the nearest available Accident and Emergency Department (**A&E**) which, it turned out, was at St Mary's Hospital, Paddington.

22. The claimant's oral evidence was not very clear about whether he was aware he was going to be taken to an A&E department. The thrust of his evidence was that he did not realise he was going to an A&E department but he was aware from Dr Hoxha that he would be transported by ambulance. He said his understanding was that Dr Hoxha was sending him for further tests on his heart by a consultant cardiologist. I accept that the claimant may have formed that impression, but there is nothing in Dr Hoxha's notes saying that the claimant would necessarily be seeing a consultant cardiologist.

23. A patient report form completed by ambulance service staff records that during the journey, the claimant reported that he "woke this morning at 0200 to police firing radiation into his apartment as he has information, pt [patient] then started experiencing [left] sided chest pain which stopped after police radiation finished … Pt convinced police are following him – even in ambulance". The claimant accepts that he told the ambulance crew he was being followed by "operatives". He said in oral evidence that he had seen them several times over the previous eight months, following his car when he was driving. They were strangers but he had come to know them and knew the registration number of a vehicle in which they regularly followed him.

24. At St Mary's Hospital, the claimant agreed to provide blood and urine samples. Various tests were carried out and did not indicate anything untoward. The claimant was seen by a triage nurse, Ms Samantha Kelly, at about 14.50. Her notes recorded that the "Presenting Mental Health Problem" was "Psychotic features / strange behaviour". After noting his normal appearance and absence of any risk of self-harm, and other features of the case indicating nothing untoward, she entered in the "Freetext" section:

> "placed into room 21 being observed, nic aware, psych informed, requires medical clearance, minimal insight into delusions."

25. Ms Kelly went on to record in her notes:

> "Presented to UCC with chest pain stating that the police are shooting radiation into his house as he has information against them, ECG NSR, nil mental heath issues under nhs no, states he had a radiation problem with the police last year, medical clearanc[e]".

She gave him a mental illness score of 3, with "Marked distress".

26. At around 3pm he was assessed by Dr Philippa Lewis (now Lt Col Dr Lewis), then a specialist trainee doctor. Dr Lewis' notes of her consultation with the claimant made that afternoon included a note that he told her left sided chest pain had started at about 5am and experienced "palpitations overnight for 3 hours" which had "[a]gain settled spontaneously". She also noted the following:

> "Believes he is being targeted by Met Police by radiation for past 18 months

> Started when he was in his previous job - started getting emails saying he should resign or else they would send the police after him
>
> Did resign but still believes he is being persecuted
>
> Believes he is under constant surveillance by the Police - showed me videos on his phone of him filming people on a train who he thinks are watching him
>
> Thinks he is being targeted because the police believe he has incriminating information about them
>
> Believes they are trying to make him appear mentally unwell
>
> Says they are not letting him sleep
>
> Losing weight
>
> Has no insight into his delusions
>
> Denies previous mental health problems or FH [*family history*] of mental health problems
>
> [*Various test results set out*]
>
> Looks well, comfortable, well dressed in shirt and dark blue suit jacket and trousers
>
> ….
>
> Chest clear
>
> ….
>
> Likely new presentation of psychosis
>
> D/W PLN [*discussion with psychiatric liaison nurse*] who will come and review kindly …
>
> Is fit for concurrent assessment whilst we await bloods for full medical clearance."

27. The claimant raised some challenges to the accuracy of the note but, having heard Dr Lewis give evidence, I am satisfied that it is accurate. He accepted that he showed Dr Lewis images on his phone and that he told her about being under surveillance by police agents. The challenges were not fundamental; he agreed with the accuracy of much but not all of what she wrote. I find that Dr Lewis' notes are a reliable record of the interaction between them.

28. At about 3pm, the claimant was seen by a psychiatric liaison nurse (**PLN**), Ms Roni Musambasi. The claimant made it clear he did not wish to undergo any mental health examination. Ms Musambasi's notes stated:

> "Reason for referral/Presenting complaint: presented to UCC with chest pain stating that the police are shooting radiation into his house as he has information against them, stating that he had a problem with the police last year.
>
> On assessment patient refused to engage with psych review saying he does not trust that the outcome will be independent because the people who are after him are very influential

> and he has seen some of them while in A&E hence he knows that this mental health review will be irrelevant.
>
> He said he has a wife and 2 daughter 16&13, is functional- works as a health and safety consultant and a very supportive family network- and that none of these have expressed any concerns about his mental health hence he is does not understand why people who have just met him would decide that he has a mental health problem. He also mentioned that he did not sleep last night because his heart was racing – due to 'the radiation', he said the hat he was wearing is protecting him from the radiation and that he had ordered it from America. He said he has not solution to his problem but just to pray to God to protect him, however, at this point the patient said he has already said much more than he is willing to hence would like to terminate the interview.
>
> 1530 –Telephone call to Spr [*specialist registrar*], requesting a senior review/assessment as patient is not known to mental health services but expressing unusual thoughts/ideas.
>
> Spr advised contacting AMHP [*Approved Mental Health Practitioner*] for MHAA [*Mental Health Act Assessment*], since patient is refusing to engage but await blood and urine results to rule out any organic causes.
>
> 1555 hours- Ed bleeped and reported that patient is not willing to wait and hence leaving the department, Psych team advised circulating to the police if patient at risk to self or others- since patient had been engaging with ED team."

29. I interject that the word "not" may have been mistakenly omitted from the concluding words, which may be intended to say that the claimant had *not* been engaging with the ED team. The claimant agrees that he was seen by the PLN; in fact, he was seen by more than one PLN, he said. His evidence was that he realised at that point that he had been sent to St Mary's Hospital for a different reason to what he had in mind, which was to see a consultant cardiologist. He formed the view that he had been sent there for the purpose of undergoing an assessment under the Mental Health Act.

30. It is common ground that he was unwilling to undergo such an assessment. I find that no such assessment took place. He accepts that he left St Mary's Hospital voluntarily and unimpeded. He does not suggest he was assessed by an approved mental health practitioner. He complains that the medical staff at St Mary's were trying to get him to undergo a mental health assessment without any prior diagnosis of mental illness and without any prior complaint that he had acted in a manner indicating mental illness.

31. I accept the evidence of Dr Lewis that she instructed nursing staff not to inform the police about the claimant because she did not regard him as a risk to himself or others, after he left St Mary's Hospital. That evidence is consistent with a note she made that evening, at around 7pm, noting the claimant's "Discharge Details" (my italics):

> "Presented with chest pain - paranoid delusions for 18 months that he is being targeted by police with radiation because he has incrimiting [sic] evidence against them. Palpitations [sic] last night which he attributes to the rad[i]ation. Normal ECG and bloods. No previous history of mental health problems. No insight. Nil organic cause found for symptoms - refused to engage with psych liason [sic] services in ED due to paranoia. Discussions with on call psychiatry SpR - patient will need formal MHAA. Refused to remain in ED. *Does not appear to be at risk to himself or others*, though is not sleeping well or eating. I am obviously concerned about this patient - and was wondering if you could review ASAP and consider arranging a mental health act assessment in the community. Unfortunately our PLNs have informed me they cannot arrange this."

32. That note was addressed to the claimant's GP and was sent to his GP practice. The defendants accept that his medical notes made that day were sent to that GP practice. That concluded the events of Sunday 30 June 2019. I return to the claimant's email to Ms Nicola Donoghue of Health Assured, sent to her by the claimant on Friday 5 July 2019. In that email, as I have said, he referred to Ms Donoghue's email of Friday 28 June, i.e. a week earlier and before the events of Sunday 30 June.

33. From the claimant's email of 5 July 2019, I discern that on the Thursday, 4 July, the claimant's line manager at Peninsula (copied into the email) had called the claimant and informed him that Health Assured had cancelled the occupational health appointment fixed for the next day, after (in the claimant's words but alluding to what Mr Wagstaff had told him) "a re-evaluation of the issue I complained about". Mr Wagstaff had told him that Health Assured had "directed that I should see my GP".

34. The claimant had then, he continued in his email, called and spoken to Ms Donoghue to seek an explanation and she had, according to the email, told him someone would call him, but no one did. It is evident from a further email from Mr Wagstaff to the claimant sent on 19 July 2019, that the discussions about a health assessment for the claimant continued. Mr Wagstaff stated in that email that following "further liaison with Health Assured", agreement had been reached "to go ahead and organise your psychological assessment". The claimant was asked for his consent.

35. I do not have a clear account of what happened about that assessment. I do not know whether it took place or not. The claimant says he lost his job with Peninsula and he blames the defendants for that because, he says, the defendants disclosed his medical notes – including a wrong diagnosis of psychotic disorder – to Peninsula. There is no direct evidence of that. I have the evidence of Dr Lewis that she instructed staff not to inform the police because the claimant presented no risk to himself or others.

36. As I understand the claimant's reasoning, he believes Peninsula must have learned of a diagnosis that he was mentally ill because Peninsula staff used that as a reason to cancel his occupational health appointment and subsequently terminated his employment on account of it; and the claimant believes Peninsula could only have learned of the diagnosis, if not from the defendants themselves, from a source which, in turn, had it from the defendants.

37. It is clear that there were discussions between the claimant and Peninsula about a psychological assessment and that those discussions were taking place in July 2019; but they may well have started before 30 June 2019. The claimant was not clear in his evidence what was the "issue" he "complained about" to Health Assured, or Peninsula, or both (mentioned in his email of 5 July 2019); nor when he complained about it, nor to whom. He did not produce Ms Donoghue's email of 28 June 2019.

38. In his oral evidence, the claimant said he believed Peninsula had learned from police sources that he had been diagnosed with mental illness. He pointed to Ms Musambasi's concluding words: "patient is not willing to wait and hence leaving the department, Psych team advised circulating to the police if patient at risk to self or others- since patient had [*not?*] been engaging with ED team". He regards that as evidence that the defendants *did* inform the police that he was considered to be mentally unwell. But Dr Lewis' contemporaneous note and her evidence to the court was to the contrary.

39. In cross-examination, the claimant accepted that the occupational health appointment booked on 28 June 2019, before the claimant attended the UCC and St Mary's Hospital on 30 June, was to "check effect of micro-radiation in my body"; and that when the appointment was cancelled Peninsula told the claimant it was because of an adverse diagnosis and that the claimant should visit his GP to obtain an explanation. That does not support the defendants being the direct source of Peninsula's information.

40. Nor does the claimant's acceptance in cross-examination that he himself told Peninsula before 30 June 2019 that he was being irradiated. My note of his evidence towards the end of his cross-examination includes the following:

> "Before the diagnosis, I told Peninsula about the microwave radiation; I didn't mention Reed or the Met Police but said I was being irradiated. As a result, they scheduled an OH [occupational health] appointment to determine the effect of radiation in my body. It was not for psychological assessment."

41. On 9 December 2019, Dr Geltser signed a letter "[t]o whom it may concern", stating that the claimant had never presented with psychotic symptoms or any other mental illness during the 12 years she had been his GP. It follows that she cannot have regarded his presentation on 21 December 2018, when he complained of an electromagnetic radiation attack in his office and said he believed someone wanted to hurt him, as presenting with symptoms of psychosis or any other mental illness.

42. In oral evidence, the claimant denied having consented to the medical records of his visit to the UCC and St Mary's Hospital on 30 June 2019 being disclosed to his GP. I think he is mistaken. The triage nurse's note is to the contrary. The claimant would have no reason to wish his account to be withheld form his GP practice. He had himself confided to Dr Geltser back in 2018 and in early 2019 that he was being pursued by police who were subjecting him to radiation. His objection was not to mention of irradiation but, later, to mention of mental illness and indications thereof. He did not know until later that the notes would mention those things.

Issues, Reasoning and Conclusions

43. The claimant strongly believes that the doctors and nurses by whom he was seen negligently diagnosed him with a mental illness, or psychotic disorder. He made many and wide-ranging submissions. Unfortunately, they were unfocussed, repetitious and long. I will concentrate on his main points. He submitted that a diagnosis of mental illness should require the consent of the patient. But diagnosis is different from treatment, for which consent is required. He did not accept that his account of electrosensitivity and subjection to irradiation could indicate mental illness.

44. The claimant submitted that this was a "pure diagnosis" case, so that the well known *Bolam* test did not apply. He cited my own decision in *Muller v. King's College Hospital NHS Foundation Trust* [2017] QB 987, submitting that there was no question here of a respectable body of medical opinion. He denied that electrosensitivity is an unrecognised medical condition, outside mainstream medical discourse and experience. It should have been recognised as a pathological condition, he argued.

45. He cited a January 2017 open letter from Dr Andrew Tresidder, a doctor approved under section 12 of the Mental Health Act 1983, in support of that proposition. Dr Tresidder

contended in his paper that electrosensitivity was an under-recognised condition first encountered in 1932 and that doctors were not sufficiently educated about its nature, characteristics and symptoms. Dr Tresidder compared electrosensitivity to chronic fatigue syndrome or "ME", once not well recognised and often not diagnosed.

46. The claimant called a witness, Ms Grace Udoh-Williams, a retired nurse with many years of experience working in the NHS. She also believes in electrosensivitity and gave evidence to that effect and of her own experience of, as she believes, being targeted and irradiated. She and the claimant are part of a group that shares ideas and understanding about electrosensitivity in a weekly Zoom call, joined by participants in the USA as well as this country.

47. The claimant says he was dealt with negligently by the medical staff at the UCC and subsequently at St Mary's Hospital, who formed the view that he was mentally unwell and in need of a formal assessment under the Mental Health Act 1983. He says this was wrong and negligent. He had never previously been found to be suffering from any disorder of the mind. His GP, Dr Geltser, did not consider he was mentally ill.

48. For the defendants, Ms Oborne's main points were as follows. A diagnosis does not require the consent of the patient. The doctors and nurses who formed the view that the claimant was likely to be suffering from a mental disorder were acting properly. It was reasonable to form that view because of the account the claimant gave of suffering from the effects of irradiation. The notion of electrosensitivity lies outside mainstream medical discourse and is not recognised as a medical condition.

49. Furthermore, Ms Oborne submitted, a diagnosis of mental illness was not outside the expertise and experience of the relevant medical professionals. They had some medical knowledge of mental illness; and their views were provisional and subject to the recommended formal assessment. That the claimant was offended by the suggestion that he was mentally ill does not mean it was wrong to form that provisional view, given his far fetched account and given that electrosensitivity is not medically recognised.

50. I have no doubt that the arguments of the defendants are to be preferred. It is not necessary to revisit the issue that arose in *Muller v. King's College Hospital NHS Foundation Trust* about what test should be applied to ascertain whether a relevant clinician was negligent. I agree with Ms Oborne that, whatever standard is applied, all the doctors and nurses who saw the claimant on 30 June 2019 acted properly; and none, in their dealings with the claimant, fell short of acceptable professional standards.

51. The claimant's presentation at the UCC was, objectively viewed, a matter that would concern any reasonable doctor or nurse. On the one hand, he was not behaving in an obviously eccentric manner. He was well dressed, calm, well spoken and with good eye contact. The routine tests performed on him revealed no obvious physiological problem. At St Mary's Hospital, he was found not to have ACS. On the other hand, his account of electrosensitivity and irradiation was as sincere as it was unlikely.

52. It was, in my judgment, entirely reasonable to draw the conclusion that Dr Lewis still stands by, as she explained when giving evidence: that the claimant was indeed suffering from delusions and was not correct in his belief that he was being subjected to irradiation by the MPS or its agents. The claimant characterises this as a "diagnosis" of mental illness. That is one way of describing the provisional views of Dr Hoxha, Dr

Lewis, the triage nurses and the PLNs. I do not think it is appropriate to adopt a technical approach when considering what a "diagnosis" is.

53. The common law should not, in my judgment, define the term "diagnosis" in a technical manner. Without the need for technical or dictionary definitions and without tracing the etymology back to the original Greek, we can say that a diagnosis is a word that can be used to describe a medical opinion about a person's condition. It may be formal, i.e. a documented opinion formed after rigorous assessment and testing; or informal, i.e. a provisional view based on an account of the symptoms and a few routine tests.

54. An informal and provisional "diagnosis" may be an opinion formed in consequence of receiving a preliminary account from the patient, without the benefit of formal testing and assessment. It is not correct to say that a diagnosis of a particular medical condition, physical or mental, requires the consent of the patient. A requirement of patient consent would deprive doctors of their objective independent judgment, which is indispensable in enabling them to prescribe the appropriate treatment or recommend further testing.

55. A GP like Dr Hoxha or Dr Geltser, or a specialist trainee doctor, as Dr Lewis was in June 2019, is not acting outside his or her expertise in forming, expressing and passing on appropriately the view that a patient is, or is not, suffering from mental illness. It is normal for GPs to express provisional views about conditions that need further investigation and assessment by specialist practitioners. Hence GPs refer patients to specialists. They know enough about mental illness to form provisional opinions.

56. That is what happened in this case. There were strong objective grounds for supposing that the claimant was mentally unwell when he attended the UCC and, later, St Mary's Hospital on 30 June 2019. The vast majority of doctors would agree with the view that there is no recognisable condition known as electrosensivity. The claimant does not understand that few medical professionals, Dr Tresidder's paper notwithstanding, share his belief in electrosensitivity, i.e. the health effects of induced microwave radiation.

57. The vast majority of ordinary people, including doctors and nurses, would regard as far fetched and unlikely the proposition that the MPS and its agents would follow a person and subject him to irradiation. It was not unreasonable to draw the conclusion that his belief was probably a delusion; particularly as the results of the tests carried out at the two medical centres revealed no organic cause for the claimant's reported symptoms, namely chest pain and palpitations.

58. For those brief reasons, I reject the claimant's allegation of clinical negligence. I turn next to the claim that his data protection rights have been infringed. I consider first the allegation that the defendants, or one of them, disclosed his medical records to Peninsula, the claimant's employer as at 30 June 2019. Ms Oborne accepts that disclosure of his records to his then employer would, if proved, be a breach of his rights under the Data Protection Act 2018.

59. In my judgment, the claimant has not proved on the balance of probabilities that the defendants, or either of them, disclosed his medical records to Peninsula. There is no direct evidence that they did. Dr Lewis' evidence was that she instructed staff not to inform the police because the claimant did not appear to be a danger to himself or others. The claimant has not produced any evidence of a communication to Peninsula attaching the notes made on 30 June 2019 or any other medical records of his.

60. The claimant asks the court to draw an adverse inference from the absence of witnesses such as Ms Samantha Kelly, a triage nurse at the UCC, and Mr James Hughes, who made entries into the note taking system at St Mary's Hospital. He says those potential witnesses have not come to court to deny having disclosed his medical records to Peninsula; and he argues (relying on the well known authority of *Wisniewski v. Central Manchester Health Authority* [1998] PIQR P324, CA) that the court may infer from their silence that someone from the defendants sent his records to Peninsula.

61. In my judgment, this is not a case where it would be right to draw an inference that one or more of those absent witnesses made an unlawful disclosure to Peninsula, or knows who did. There are other ways in which Peninsula could have formed the view that the claimant may be mentally ill, should see his GP and needed to undergo a psychological assessment. The claimant himself had told Peninsula about his belief that he was being irradiated. That may be why Ms Donoghue emailed him on 28 June 2019, two days before he visited the UCC and was taken by ambulance to St Mary's Hospital.

62. Peninsula may also have been aware that the claimant had recently been signed off sick for two months, from January to March 2019, while employed by Reed. It would not be unusual for a new employer taking on an employee to have some awareness of any past or present medical or psychological issues that could be relevant to the new employee's ability to perform his duties. The claimant has not given a full and complete account of his dealings with and communications with Reed, Peninsula and Health Assured. He has not disclosed Ms Donoghue's email of 28 June 2019.

63. Furthermore, in his written closing submissions (at paragraph 116), the claimant accepts that he is "not certain how his confidential information was disclosed to Peninsula" and speculates that it could have been through staff employed by the defendants, or through the London Ambulance Service, or through "Met Police Service Hackers" or through his GP, though the claimant doubts that the latter would have done so.

64. Next, the claimant complains that his medical records were disclosed to his GP. The defendants did disclose to his GP the records of his visits on 30 June 2019 to the two medical centres. Dr Lewis addressed the GP practice directly. Her recommendation (written up by her at about 7pm on 30 June) was that the GP should "review ASAP and consider arranging a mental health act assessment in the community". Earlier in the note, she explained that he had "[n]il insight"; there was "[n]il organic cause found for symptoms" and he "refused to engage with psych lia[i]son services … due to paranoia."

65. I do not accept that the claimant positively objected to disclosure of his medical records to his GP practice. It would be highly unusual for that consent to be withheld. The triage nurse at the UCC noted that he had consented. It is likely that the claimant expressed no objection to information about him being shared with his GP and placed on the NHS database. He had a history of treatment for diabetes and there had been previous visits to the two medical centres arising from his symptoms of chest pain, loin pain and other symptoms. There is no suggestion anywhere in that history that he objected to the normal practices of information sharing within the NHS.

66. In my judgment, that disclosure was, as Ms Oborne submits, lawful. Indeed, she demonstrated by reference to section 251B of the Health and Social Care Act 2012 that a duty to disclose arises where a health service provider such as the Trust in this case holds information about a patient such as the claimant and "considers that the disclosure

is … likely to facilitate the provision to the individual of health services or adult social care in England, and … in the individual's best interests" (section 251B(3)(a) and (b)).

67. Dr Lewis clearly considered it was in the claimant's best interests, and likely to facilitate beneficial health care provision to him, that she should disclose to his GP her recommendation that a Mental Health Act assessment in the community should be arranged for him, if that were possible. She emphasised her concern for this patient and explained why, in her opinion, he needed such an assessment. I accept that the duty to disclose therefore arose and that Dr Lewis faithfully complied with it.

68. It follows that the claim for wrongful disclosure of the claimant's medical records fails. So does the claim for rectification of his medical records to eliminate the words "[p]ychotic disorder" to which the claimant takes objection. Dr Hoxha was justified in selecting the code that corresponded to those words. There was no untoward tampering with his medical records. The claimant should be reassured that the doctors who attended to him all did their professional best to achieve the best outcome for him in the light of his symptoms and demeanour when he presented himself to them.

69. For all those reasons, I dismiss the claim. There will be judgment for the defendant on liability. Although the trial was of liability issues only, the claim is now at an end because there are no issues of causation or quantum that remain to be decided. I invite the defendant's legal representatives to send a draft order to the court office, with a copy to the claimant. If the terms of the order are not agreed, I will determine them.

70. I will deal separately with any consequential matters such as costs. The draft order should include draft directions for dealing with costs and any other outstanding issues without a further oral hearing. I remind the parties that they must not, apart from to the extent I have just indicated and other than in accordance with the court's directions, send emails or other communications to the court office or my clerk, or to each other copied to the court office or my clerk.