Neutral Citation Number: [2024] EWHC 2746 (KB)

Case No: KB-2023-002017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29th October 2024

Before :

Deputy Master Skinner KC

- -

Between :

DR GARY DUKE

Claimant/ Respondent

- and –

(1) MS JACKIE MOORES
(2) MR SAMUEL LANG
(3) MS LUCY COCKER
(4) TAMESIDE COLLEGE

Defendants/ Applicants

Dr Gary Duke in person
Ms Gemma McNeil-Walsh (instructed by **DAC Beachcroft LLP)** for the **Defendants**

Hearing date: 11 June 2024

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JUDGMENT

Deputy Master Skinner KC:

Introduction

1. This judgment is handed down in respect of the Defendants' application, by way of Application Notice dated 17 January 2024, to strike out the entirety of Claimant's claims in these proceedings and/or for summary judgment in respect of the same.

2. By these proceedings the Claimant makes claims for misuse of private information and in data protection arising from the use/processing certain information about him for the purposes of a disciplinary investigation, meetings and hearing conducted by the Fourth Defendant. The Claimant also makes reference to alleged breaches of his human rights under the Human Rights Act 1998 ("the HRA 1998"); specifically Articles 8, 10 and 11 of the European Convention on Human Rights ("the ECHR").

3. The Claimant in these proceedings is a teacher by profession.

4. The Fourth Defendant ("the College") is a further education college in Ashton-Under-Lyne. It provides a range of educational courses to 16 to 18 year-olds, adults, and apprentices.

5. The First to Third Defendants are, respectively, the Principal and Chief Executive Officer of the College, a former teacher and colleague of the Claimant at the College, and a current teacher at the College, also a former colleague of the Claimant.

Relevant background facts

6. From around August 2021 the Claimant was employed by the College as a teacher of sociology, criminology and psychology, and taught A-Level courses to sixth-form students (primarily of 16-18 years of age). One of the conditions of his employment was that "The professional relationship between a student and an employee should not form the basis of any 'friendship' on social networking sites" (Employee Code of Conduct, clause 2.8).

7. On 14 December 2022 the Third Defendant overheard the Claimant, in discussions with colleagues in the staff room, make reference to the fact that he had been dismissed from other educational institutions. This gave rise to a concern that the Claimant had not disclosed the fact of his dismissals during the recruitment process.

8. On 16 January 2023, the Claimant was suspended on full pay with immediate effect. He was notified by letter that he was being suspended "whilst the College conducts an investigation into an allegation of potential gross misconduct"; that being "that during your recruitment you did not disclose that you had been dismissed from previous employment". The letter stated that this could constitute a breach of the implied term of mutual trust and confidence and was the subject of formal investigation. Among other things, the letter also stated that whilst suspended, the Claimant should not contact colleagues or other members of staff by email or otherwise without permission, and that

failure to comply may be regarded as an act of gross misconduct and result in disciplinary action.

9. On 23 and 25 January, reference requests were sent to The City of Liverpool College and the University of Salford for the purposes of ascertaining whether the Claimant had in fact been dismissed from those two institutions. In the event, however, the requests sent were in a "standard" form. As a result, they incorrectly asserted that the Claimant had applied for a post at the College (when in fact he was already in post) and that he had given the name of the referee for a reference (he had not). No reference was made to a disciplinary investigation, and no question was asked about dismissal. Instead, the request sought an opinion on the Claimant's suitability for appointment.

10. Responses were received from each institution on the same date as the request. Each response gave the start and end date of employment. The University of Salford also provided information that the "last position held" was as an "hourly paid academic" and that the "type of contract" was "hourly paid academic". The City of Liverpool College also provided information as to final salary, hours per week, that the Claimant's job title was "Main Grade Lecturer – Government and Politics & Main Grade Lecturer – Sociology", that there were no safeguarding concerns and that the reason for leaving was "dismissal".

11. Whilst the investigation was ongoing, the College became aware of Facebook and WhatsApp communications sent by the Claimant after his suspension.

12. The Facebook private messages sent by the Claimant to a student were in response to a message from the student dated 25 January 2023, asking when he would be coming back to College ("the Facebook messages"). The Facebook messages stated "Good to hear from you. What have you been told?" and "I just got this on my staff email…", thereafter reproducing in full the wording of an email "From Very pissed off Clarendon staff", which, among other things:

    - said that they wanted the Claimant back,
    - encouraged recipients to message him,
    - noted that what usually happens when staff are suspended is that they are told that if they contact staff or students they will be disciplined or dismissed, so that is why he has not been heard from; and
    - encouraged students to start a petition or maybe go on strike in support of the Claimant's return.

    (The original email, headed "Missing sociology teacher", dated 31 January 2023, was sent from coriander clown@protonmail.com to six College email addresses, including the Claimant.)

13. A WhatsApp message sent by the Claimant to employees in a group chat named "207" (the WhatsApp message"). The WhatsApp message made reference to the fact that the Claimant found himself "facing the sack" whilst bearing the burden of a considerable

amount of debt. It went on, including: "*All this simply because some staffroom snide (and I know who they are) couldn't keep their fucking mouth shut and decided to drop me in the shit. …"*

14. On 3 February 2023 the College wrote to the Claimant to inform him of new allegations being investigated, namely that he had: "communicated with a student on Facebook"; shared details of the ongoing disciplinary investigation with a student", and "sent a threatening message to a WhatsApp Group chat comprising members of staff". The letter stated that this suggests potential breaches of the terms of suspension, the code of conduct, the College Safeguarding Policy and of confidentiality, and demonstrating threatening behaviour toward staff.

15. Following two disciplinary meetings and the submission of a grievance report, a disciplinary hearing took place on 28 April and 22 May 2023. Following this, the Claimant was dismissed for gross misconduct with effect from 2 June 2023. The decision was upheld on appeal.

16. These proceedings relate to information used and processed in the course of and for the purpose of the disciplinary investigation, and/or meetings and/or hearing ("the disciplinary proceedings").

The Claims

17. By his Claim Form and Particulars of Claim, both dated 4 May 2023, the Claimant makes misuse of private information and data protection claims in relation to four categories of information. These are: (1) the Facebook messages; (2) the WhatsApp message; (3) the references requested and obtained from University of Salford and City of Liverpool College; and (4) alleged unlawful monitoring and surveillance of the Claimant.

18. As to the Facebook messages, the Claimant alleges they were "unlawfully accessed, shared/distributed, processed and stored" and further that this activity was undertaken without his consent. As stated in his Particulars of Claim, and accepted before me, the Claimant's complaint arises from the messages having been obtained by the Third Defendant from the student to whom they were sent (after having heard him discussing it with another student). It is not alleged that the Claimant's Facebook account was accessed.

19. As with the Facebook messages, the Claimant's complaint in relation to the WhatsApp message arises from the sharing of it by a recipient, namely the Second Defendant, who was a member of the "207" WhatsApp group in which it was posted.

20. In relation to the two references, the Claimant complains that these were sought (and thereafter used) without his consent.

21. The alleged unlawful monitoring and surveillance appears to relate to the process of evidence-gathering during the disciplinary investigation, with particular reference to the Claimant having been observed meeting work colleagues in a coffee shop on 24 January 2023, and to investigatory interviews conducted by the College with staff on 15 February 2023.

22. As noted above, all of this information was obtained and utilised for the purposes of the disciplinary proceedings.

The Application – Applicable Rules and Legal Principles

23. By Application Notice dated 17 January 2024 the Defendants seek orders:

    a. Striking out the claim pursuant to r.3.4(2)(a) and/or (b) of the Civil Procedure Rules ("CPR") and/or

    b. Granting summary judgment on it pursuant to CPR 24.2

Application to strike out/for summary judgment

24. The applicable rules and legal principles on an application to strike out and/or for summary judgment, are clear and well-established. They were helpfully summarised by Warby J (as he then was) in *HRH the Duchess of Sussex v Associated Newspapers Ltd* [2021] 4 WLR 35 at [11]-[18], (adopted on appeal [2022] 4 WLR 81) as follows (I have replaced references therein to the defence with references to the claim for obvious reasons):

> [11] CPR r 3.4(2)(a) allows the court to strike out a [claim], or part of one, "if it appears to the court … that the statement of case discloses no reasonable grounds for … [bringing] the claim". This may be the position if the [claim], or part, consists of a bare [assertion], or sets out no coherent statement of facts; or where the facts set out, while coherent, "could not even if true amount in law to a […] claim": Practice Direction 3A 1.6. I summarised the core principles in my first judgment in this case, [2020] EWHC 1058 (Ch); [2020] EMLR 21 at [33(2)]: an application under this sub-rule
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> > "… calls for analysis of the statement of case, without reference to evidence. The primary facts alleged are assumed to be true. The Court should not be deterred from deciding a point of law; if it has all the necessary materials it should 'grasp the nettle'…but it should not strike out under this sub-rule unless it is 'certain' that the statement of case, or the part under attack, discloses no reasonable [case] … Even then, the Court has a discretion; it should consider whether the defect might be cured by amendment; if so, it may

> refrain from striking out and give an opportunity to make such an amendment."

[12] CPR r 24.2 allows the court to give summary judgment against a [claimant] on the whole of a claim, or on a particular issue, if it considers "(a) … that the [claimant] has no real prospect [succeeding on] the claim or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial." In this context there is no assumption that what is asserted in the [Particulars of Claim] is true; evidence to the contrary is admissible, and is commonly adduced by the applicant and by the respondent. But it is possible to seek summary judgment on the footing that the claim is plainly meritorious and the defence contentions, even if true, could not amount to an answer to the claim.

[13] Both parties have referred me to Lewison J's classic exposition of the right approach to summary judgment in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] (approved by the Court of Appeal in *AC Ward & Son Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098; [2010] Lloyd's Rep IR 301). The passage was about applications by defendants, but applies equally to applications such as the present, made by a claimant. Omitting internal citations, the seven key principles are these:

> '(i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success; (ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable … (iii) In reaching its conclusion the court must not conduct a 'mini-trial' … (iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents … (v) However, 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 also the evidence that can reasonably be expected to be available at trial … (vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case … (vii) On the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite

> simple: if the respondent's case is bad in law, he will in truth have no real prospect of … successfully defending the claim against him … Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: …'

[14] *Easyair* principles (vi) and (vii) contain echoes of the law's traditional disapproval of a "a desire to investigate alleged obscurities and a hope that something will turn up …" as a basis for defending a summary judgment application; a case that is "all surmise and Micawberism" will not do: see *The Lady Anne Tennant v Associated Newspapers Ltd* [1979] FSR 298, 303 (Sir Robert Megarry V-C). The focus is not just on whether something more might emerge, but also—and crucially—on whether, if so, it might "affect the outcome of the case"; and the court's task is to assess whether there are "reasonable grounds" for believing that both these things would occur: see *The Bolton Pharmaceutical Co 100 Ltd v Doncaster Pharmaceuticals Group Ltd* [2006] EWCA Civ 661; [2007] FSR 63, para 18 (Mummery LJ).

[15] As Mummery LJ warned in the Doncaster case at [10], on applications for summary judgment the court must be alert to "the [claimant], who seeks to avoid summary judgment by making a case look more complicated and difficult than it really is". But as he also said at [11], the court should beware "the cocky [defendant] who … confidently presents the factual and legal issues as simpler and easier than they really are and urges the court to be 'efficient …'". Efficiency is not a ground for entering summary judgment. Judgment without a trial may sometimes result in huge savings of time and costs; that would have been so in the hugely expensive litigation in *Three Rivers District Council v Bank of England*. But neither Part 24, nor the overriding objective, permits the Court to enter judgment on the basis that the claimant has a strong case, the defence is not likely to succeed, and the time and costs involved in a trial are disproportionate to the potential gains.

[16] The overriding objective of "deciding cases justly and at proportionate cost" does have a role to play if the Court concludes there is no realistic prospect of a successful [claim], and the question arises whether there is "some other compelling reason" for a trial. At that point, the Court would be bound to have regard to considerations such as saving expense, proportionality, and the competing demands on the scarce resources (CPR r 1.1(2)(b), (c) and (e)). It is rare for he Court to find a compelling reason for a trial, when it has concluded there is only

one realistic outcome. The defendant has not suggested that this is such a case. My focus must be on whether it is realistic or fanciful to suppose the claims might fail at trial.

[17] Mr White QC (who argued the defendant's case on misuse of private information) invites me to bear in mind what he says is the rarity of summary judgments in the fields of law with which I am concerned. He and Mr Speck (who argued the case on copyright infringement) point to the need for an "intense focus" on the specifics of the competing rights in play, suggesting that it will usually be impossible to conduct this otherwise than at a trial. Mr Rushbrooke QC counters that summary judgment has been granted in several such cases, of which the most notable and the closest comparator is the decision of Blackburne J, affirmed on appeal in *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch); [2006] EWCA Civ 1776; [2008] Ch 57 (I would add, in the case of copyright, *The Lady Anne Tennant*, decided under the previous and more defendant-friendly procedures of the Rules of the Supreme Court). Mr Rushbrooke suggests, further, that many of these cases are resolved finally at or shortly after the interim injunction stage.

[18] I do not gain much help from these broad propositions. There can be plain and obvious cases in privacy and copyright, as there are in other fields of law. So long as the lens is not obscured by fog or dust, it may be possible to see clearly that a case has only one plausible outcome, and a trial is superfluous. A recent example is the decision of Nicol J in *BVG v LAR* [2020] EWHC 931 (QB), to grant the claimant summary judgment on his claim in misuse of private information. The judge did not find it necessary to resolve all the factual issues before concluding with "no hesitation" that the claimant's privacy rights would "far outweigh" the free speech rights relied on by the defendant: [25(iv)]. The application before me must be decided by the application of the relevant legal principles to the particular facts and circumstances of this case."

Misuse of Private Information

25. The law was summarised by Warby J (as he then was) in HRH the *Duchess of Sussex* (*supra*) at [30]-[31] (cited and undisturbed on appeal) by reference to *ZXC v Bloomberg LP* [2020] EWCA Civ 611; [2021] QB 28 ("*ZXC*") at [40]–[48] and [103]–[109] and *Sicri v Associated Newspapers Ltd* [2020] EWHC 3541 (QB); [2021] 4 WLR 9 ("*Sicri*") at [63]–[74], [111]–[119], and [120]–[122]

"[30] At stage one the question is whether the claimant enjoyed a reasonable expectation of privacy in respect of the information in question. One way the question has been put is to ask whether a reasonable person, placed in the same position as the claimant and faced with the same publicity, would feel substantial

> offence. There must be something of a private nature that is worthy of protection. In some cases, the answer will be obvious; but the methodology is to make a broad objective assessment of all the circumstances of the case. These include (1) the attributes of the claimant, (2) the nature of the activity in which the claimant was engaged, (3) the place at which it was happening, (4) the nature and purpose of the intrusion, (5) the absence of consent and whether it was known or could be inferred, (6) the effect on the claimant and (7) the circumstances in which and the purposes for which the information came into the hands of the publisher ('the Murray factors'). If the information, or similar information about the claimant, is in the public domain, or is about to become available to the public, the court must have regard to that. In such a case it is a matter of fact and degree as to whether the legitimate expectation of privacy has been lost. Privacy rights can survive a degree of publicity for the information or related information.
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> [31] At stage two, the question is whether in all the circumstances the privacy rights of the claimant must yield to the imperatives of the freedom of expression enjoyed by publishers and their audiences [Associated Newspapers would add 'or vice versa']. The competing rights are both qualified, and neither has precedence as such. The conflict is not to be resolved mechanically, on the basis of rival generalities. The court must focus intensely on the comparative importance of the specific rights being claimed in the particular case; assess the justifications for interfering with each right; and balance them, applying a proportionality test. The court must have regard to the extent to which it is or would be in the public interest for the material to be published. The decisive factor at this stage is an assessment of the contribution which the publication of the relevant information would make to a debate of general interest. Other factors to be weighed in the balance are the subject-matter, how well-known the claimant is, the claimant's prior conduct, and editorial latitude. When examining the demands of free speech, the court should be slow to interfere in respect of matters of technique, form and detail; it should defer, to the extent appropriate on the facts, to the professional expertise and judgment of journalists and editors."

Data Protection

26. There is no dispute that the Fourth Defendant was a controller of the Claimant's personal data contained within the four categories of information, or that the data was being processed by it in the ways set out above for the purposes of the disciplinary proceedings.

27. The data protection principles which relate to the processing of personal data are set out at Article 5 of the UK GDPR. The first data protection principle is that personal data shall be processed lawfully, fairly and in a transparent manner: Article 5(1)(a) GDPR.

28. For processing to be lawful under Article 5(1)(a) GDPR, one of the conditions set out in Article 6 GDPR must apply. Those legal bases include: that processing is necessary for the performance of a contract to which the data subject is party (Article 6(1)(b)); and that

processing is necessary for compliance with a legal obligation to which the controller is subject (Article 6(1)(c)).

29. In order for processing of personal data to be regarded as necessary for performance of contract pursuant to Article 6(1)(b) GDPR, it must be objectively indispensable for a purpose integral to the contractual obligation intended for the data subject; the controller must be able to demonstrate how the main subject matter of the contract could not be achieved if processing did not occur: see *Meta Platforms Inc and Others v Bundeskartellamt* [2023] 5 CMLR 22 [H17; AG54].

Discussion and Conclusions

30. The Defendants contend that, by these proceedings, the Claimant seeks to bring claims in relation both to the information in respect of which the Fourth Defendant was obliged to conduct an investigation (namely prohibited social media communications with staff and students) and in relation to the process adopted in order to conduct the investigation - namely by obtaining information in relation to previous employment as part of its investigation into the veracity of the allegation that the Claimant had failed to disclose past dismissals as part of the recruitment process, as well as conducting interviews with witnesses and holding meetings and a disciplinary hearing.

31. The Defendants maintain that the Claimant has no real prospect of establishing a reasonable expectation of privacy in any of the information in the four categories complained of. With specific reference to the Facebook and WhatsApp messages the Defendants contend that the matter to which the reasonable expectation of privacy attaches is the information in question, rather than the mode of transmission.

32. Further or alternatively, the Defendants contend that any such expectation was outweighed by the need to gather and interrogate that information for the disciplinary proceedings, the proceedings themselves being necessary pursuant to the Claimant's employment contract and for the purposes of fulfilling the rights and obligations of the College more generally. The point is made that each category of information is central to the allegation(s) being investigated.

33. Further, they contend (and the Claimant accepts) that information about the Claimant having been dismissed from City of Liverpool College and the University of Salford was at all material times in the public domain by virtue of an Employment Tribunal judgment dated 15 August 2017.

34. So far as the data protection claims are concerned, the Defendants contend that any claim will only lie against the Fourth Defendant, as controller. The processing was lawful pursuant to Article 6(1)(b) and/or (c) of the UK GDPR. None of the investigations could properly have been undertaken without sight of the information

35. Finally, the Defendants contend that any claim for an alleged breach of human rights can only be brought against the Fourth Defendant because, pursuant to section 6 of the Human Rights Act 1998, a claim will only lie against a public authority. Any claim falls to be struck out in any event as inadequately pleaded and/or self-evidently hopeless.

36. At the hearing, the Claimant's response to the application consisted in large part of challenging aspects of the disciplinary proceedings themselves. For instance: he took me to the note of his recruitment process to demonstrate that there was no reference to his having been asked about reasons for leaving Salford or Liverpool; he contended that it was unfair to seek to ban him from communications with colleagues, that his coffee-shop meeting was held outside work hours, and that the student he communicated with on Facebook was an adult learner.

37. The Claimant also drew my attention to a letter from the Lead Case Officer at the Information Commissioner's Office ("the ICO") dated 5 October 2023 stating a finding in response to the Claimant's complaints about infringement of his data protection rights by the College. The ICO upheld the Claimant's complaints on one point only – namely the processing of data by way of seeking the two references. This was on the basis that, whilst the College could identify a legal basis for that processing, it was unfair because the Claimant was not informed that the College would do this and it was not within his reasonable expectations that they would do this. As a result, the processing was not clear and transparent.

38. I do not accept that an assessment of whether there is a reasonable expectation of privacy in relation to information must be strictly confined to the content of the information itself: the mode of transmission, the tone used, the manner of expression and the identity of the recipient may well form part of the broad objective assessment of all the circumstances of the case, which include (but are not limited to) the *Murray* factors.

39. As to the *Murray* factors:

    (1) The Defendants contend, and I agree, that the relevant attributes of the Claimant are that he was at all material times employed as a teacher at the College and subject to the terms and conditions of his employment.

    (2) As to the nature of the activity in which the Claimant was engaged, the Defendants contend, and I accept, that each of the alleged non-disclosure of past dismissals during the recruitment process, the alleged communications with a student via Facebook, and the alleged communication with staff via WhatsApp was an activity giving rise to grounds to initiate a disciplinary investigation. The obtaining of the references, and the alleged monitoring and surveillance (such as it was) were all a necessary part of the disciplinary process.

    (3) As to the place at which it was happening – see (2) above.

(4) It was not disputed that the information was gathered and used for the purpose of the disciplinary proceedings. I consider that the nature of the intrusion was in each case at or close to the minimum necessary for those purposes.

(5) As to absence of consent – no submissions were made to me by the Defendant about this, and it is right to record that the Claimant was vehement about making his lack of consent clear throughout the process. He did, however, remain an employee throughout- suspended on full pay. In those circumstances, his lack of consent does not affect my assessment.

(6) For present purposes I am prepared to assume the effects on the Claimant have been as pleaded. However, I repeat my observation at (5) above.

(7) As to the circumstances in which and the purposes for which the information came into the hands of the College:

a. It is not disputed that the Facebook messages came into the hands of the College as a result of the Third Defendant having overheard, on College premises, a sixth-form student talking about the Facebook message, and having obtained a copy from that student. Thereafter it was used for the purposes of the disciplinary proceedings.

b. As to the WhatsApp message, the Second Defendant was a recipient, and concerned about the Claimant's welfare in light of its content, passed it on. It was investigated as part of disciplinary proceedings due to concern about the potentially threatening nature of its content.

c. As to the reference requests – these were requested for the purpose of ascertaining the facts as to whether the Claimant had indeed been dismissed from Salford and Liverpool for purposes of the disciplinary proceedings.

d. As to the alleged unlawful surveillance and monitoring, I consider that it was a necessary part of the disciplinary process to conduct interviews with staff witnesses for the purpose of investigating the allegations; including but not limited to ascertaining the facts of any further/similar allegations (such as the coffee shop meeting).

40. I consider that the Claimant did, in general, have a reasonable expectation of privacy that communications via Facebook private message would remain so as between him and the recipient, and that messages to the '207' WhatsApp group would remain within the group.

41. However, I am also firmly of the view that those expectations were greatly outweighed by the need to investigate those messages for the purposes of the disciplinary process. The circumstances in which the messages were sent, including their timing, content, and

identity/identities of recipient(s) required investigation to determine whether the Claimant had breached his contractual obligations, and in furtherance of the College's obligations to its staff and students. Accordingly, the Claimant has no real prospect of success and his case in this regard is bound to fail.

42. As to the facts that the Claimant had been dismissed from Salford and Liverpool, I have already noted that this information is contained in a public judgment. As Warby J noted in *Duchess of Suffolk* at [31]:

> If the information, or similar information about the claimant, is in the public domain, or is about to become available to the public, the court must have regard to that. In such a case it is a matter of fact and degree as to whether the legitimate expectation of privacy has been lost. Privacy rights can survive a degree of publicity for the information or related information.

43. In circumstances where not only are the facts that the Claimant had been dismissed from these two institutions publicly available and accessible, but are so because they are contained in a judgment of the Court, and in a claim to which the Claimant was a party, the Claimant has no reasonable expectation of privacy and his claim is bound to fail.

44. As to the alleged unlawful monitoring and surveillance, I again conclude that the Claimant has no real prospect of establishing a reasonable expectation of privacy, and that, if I am wrong about that, he has no prospect of establishing that any privacy rights he did have outweigh the Defendants' rights, interests and obligations in the disciplinary proceedings.

45. The Claimant also has no real prospect of succeeding in his data protection claims. The First to Third Defendants were not controllers and the Fourth Defendant's processing in all four categories was lawful under Article 6(1)(b) and (c) of the UK GDPR. I do not agree with the assessment of the ICO in relation to fairness and transparency and the obtaining of references. In my view it is plain that it ought to have been well within the Claimant's reasonable expectation that, in order to investigate whether he had failed to disclose the fact of his dismissal from those two institutions, each would be contacted and asked about it.

46. The processing was necessary for the purposes of the contract of employment between the Fourth Defendant and the Claimant and for the performance of the Fourth Defendant's obligations to its other staff, and to safeguard and promote the welfare of its students. The legal duties and obligations upon the College, including Keeping Children Safe in Education (KCSIE") statutory guidance issued under section 175 of the Education Act 2002 (as amended), the Education (Independent School Standards) Regulations 2014, the Non-Maintained Special Schools (England) Regulations 2015 and the Apprenticeships, Skills, Children and Learning Act 2009 (as amended), as set out in the College's Safeguarding Policy establish a clear legal basis for the processing.

47. I am also satisfied that the Claimant has no real prospect of succeeding on any of his claims under Articles 8, 10 and 11 of the ECHR. The claims against the First to Third Defendants are in any event bound to fail, as such claims can only be brought against a public authority: section 6, HRA 1998.

48. There is no real prospect of establishing a breach of Article 8 for the same reasons that there is no real prospect of establishing misuse of private information. The alleged breaches of Articles 10 and 11 appear to relate to the College's instructions to the Claimant not to communicate with other staff except with permission. The instruction was plainly a reasonable one made for a legitimate purpose.

49. The Claimant's claims under the HRA 1998 (in respect of all Defendants) and in data protection (against the First to Third Defendants) are struck out and dismissed.

50. In respect of the misuse of private information claims against the Defendants, and the data protection claims against the Fourth Defendant, summary judgment will be entered for the Defendants.

51. I should also record that, in his Part 18 Response the Claimant has made reference to the Fraud Act. In correspondence with the Court, the Claimant has intimated an intention to apply to amend his claims to include a claim for malicious falsehood. There is, however, no application to amend before the Court, despite the Defendants' solicitors having made plain to the Claimant what CPR 17 requires.

52. As the Defendants have succeeded in the entirety of their application, and nothing remains of the Claimant's claims, they are entitled to their costs of the application and the proceedings. As agreed by the parties, I will proceed to summary assessment of the costs of the application. I will also order a payment on account in respect of the costs of the claim. I am not going to try and separate out from that the costs incurred in respect of an application by the Claimant for interim injunctive relief which was adjourned and then withdrawn.

53. The Defendants seek an order for their costs, or part of their costs, to be paid on the indemnity basis. They rely on: (1) two offers made and not accepted – on 17 October 2023 (a drop-hands offer), and a Part 36 offer made on 7 May 2024 (for £1,500); and (2) the Claimant's conduct throughout the proceedings, which they contend has been unreasonable and has caused costs to escalate unnecessarily (summarised in an open letter dated 17 October 2023 and at paragraphs 48 to 49 of the Witness Statement of Calum Janek Doherty served in support of the application). On this occasion I am not persuaded that I should make an order that costs be paid on the indemnity basis. However, if the Claimant is to avoid such an assessment in the future, he would be well-advised to ensure that : (1) whenever a party has instructed solicitors, he should communicate only with them unless agreed otherwise; (2) any correspondence remains focussed on the subject matter of the claims; (3) all communications with the Court are copied to the other parties' solicitors (if they have them); and (4) he follows the requirements of the Civil Procedure Rules, which apply to all litigants in these Courts.

54. I summarily assess the costs of the application on the standard basis in the sum of £27,250. In respect of the costs of the proceedings, which again are to be assessed on the standard basis (if not agreed), pursuant to CPR 36.17 the Defendants are awarded an additional 10% interest on costs incurred from the expiry of the relevant period in respect of the offer made on 7 May 2024. I order a payment on account in respect of the proceedings in the sum of £40,000.

55. Following circulation of the draft of this judgment, I received from the Claimant a document headed "Application to Set Aside Strike-Out Judgment" which appears, in substance, to constitute an application for permission to appeal. In summary, the Claimant:

    a. Takes issue with the fact that, despite my finding at paragraph 40, above, I have nevertheless found against him in respect of his misuse of private information and data protection claims;

    b. Contends that, at paragraph 47, I have misunderstood the meaning of 'public authority' for the purposes of section 6 of the HRA 1998 and that it does apply to the First to Third Defendants;

    c. Contends that I was wrong not to accept the decision of the ICO and further gave no reason for not doing so;

    d. Repeats some of his submissions made before me at the hearing with regard to the alleged unlawfulness of the Defendants' activities; and

    e. Contends that, because he has by my findings been denied the opportunity to examine witnesses, he has not had a fair hearing.

56. The Claimant's application for permission to appeal is refused. I do not consider that any of the grounds have any real prospect of success, and nor is there any other compelling reason for these claims to proceed.

57. As to (a), the finding was about a reasonable expectation "in general", and cannot be considered in isolation of the analysis which follows it, as a result of which I concluded that he did not, in the particular circumstances of the case, have that expectation.

58. As to (b), I consider that the Claimant has misconstrued section 6. Even if I am wrong about that, his claims against the First to Third Defendants would fail for the same reasons as his claim against the Fourth Defendant.

59. As to (c) and (d), I have set out my reasoning in this judgment.

60. As to (e), the Civil Procedure Rules make specific provision for the striking out of claims and for summary judgment precisely in order to avoid putting parties to the time and trouble of a trial where it is apparent that the claims will not succeed.

61. As the Claimant is self-representing, the Defendants' representatives shall prepare and submit to the Court (copied to the Claimant) a draft Order giving effect to the above. Time in respect of any application to appeal and the costs orders will begin to run on the date that judgment is handed down.