



Neutral Citation Number: [2004] EWHC 2699 (Ch)

Case No: CH/2004/PTA/0545

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19/11/2004

Before :

**THE HONOURABLE MR JUSTICE LIGHTMAN**

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**Between :**

**MATTHEW YEBOAH MENSAH**

**Claimant**

**- and -**

**DR ROBERT H JONES**

**Defendant**

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**Mr Mensah appeared in person**  
**The Defendant did not appear and was not represented**

Hearing date: 18<sup>th</sup> November 2004  
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**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.

.....  
The Honourable Mr Justice Lightman

**Mr Justice Lightman:**

1. This is a renewed application by the Claimant Mr Mensah for permission to appeal from a judgment of Deputy Master Lloyd (“the Master”) given on the 20<sup>th</sup> August 2004. By that judgment the Master gave summary judgment in favour of the Defendant Dr Jones and refused summary judgment in favour of Mr Mensah. Lawrence Collins J on the 20<sup>th</sup> August 2004 on paper refused permission to appeal. On this renewed application Mr Mensah has acted in person and Dr Jones has not appeared or been represented.
2. Mr Mensah was the patient of Dr Jones. An incident occurred at Dr Jones’ surgery on the 6<sup>th</sup> June 2003 when Mr Mensah attended to enquire about the results of a recent cholesterol test. In the course of that visit Dr Jones ordered Mr Mensah out of his surgery. The incident had two results. The first was that Dr Jones on the 11<sup>th</sup> June 2003 requested the Primary Care Trust to remove Mr Mensah from his patient list and Mr Mensah was in consequence transferred to another practice shortly thereafter. Dr Jones sent the paper records to the new practice and a computer print out of the computer records, but he retained at the surgery the computer records. The second was that Mr Mensah commenced proceedings (“the first action”) in the Bow County Court alleging physical and verbal assault. This action was listed for the 6<sup>th</sup> and 7<sup>th</sup> September 2004.
3. In the first action Dr Jones was represented by the Medical Defence Union. In those proceedings both Mr Mensah and Dr Jones were both obliged to give disclosure. In order to ensure due compliance with that obligation, on the 7<sup>th</sup> May 2004 Dr Jones printed off the medical records of Mr Mensah to send the print to the solicitor at the Medical Defence Union having the conduct of the case on his behalf for advice whether they ought to be disclosed. On the 14<sup>th</sup> May 2004 the solicitor notified Mr Mensah that the print had been sent to him. This disclosure prompted Mr Mensah to commence an action (“the second action”) presently before me in which he complains about the conduct of Dr Jones in sending the print to his solicitor.
4. The complaint by Mr Mensah is that his medical records are confidential and that in acting as he did Dr Jones breached the statutory and common law rights of Mr Mensah to respect for that confidence. I shall consider in turn each of the grounds of complaint.

**THE DATA PROTECTION ACT 1998 (“the 1998 Act”)**

5. First Mr Mensah invokes the provisions of the 1998 Act. It is clear that Mr Mensah’s medical records are “sensitive personal data” within the meaning of section 2 of the 1998 Act and entitled to the protection afforded by the 1998 Act to such data and that Dr Jones was the data controller.
6. The obligations of confidentiality imposed by the 1998 Act in respect of medical records is subject to the provisions of section 35(2) of the 1998 Act. Section 35(2) provides that personal data are exempt from the non-disclosure provisions where the disclosure is necessary for the purpose of or in any connection with any legal proceedings. Plainly the disclosure was made in this case for the purpose and in connection with legal proceedings. Mr Mensah however challenges that the disclosure was necessary for this purpose since the issue in the proceedings related only to the alleged assault. In my view however the disclosure was indeed necessary,

for it was indeed necessary to enable Dr Jones to have legal advice as to the extent of his obligation to make disclosure in a case where the full surrounding circumstances relating to the incident may be relevant.

7. Mr Mensah places reliance on section 7(1) of the 1998 Act. Section 7(1) entitles an individual to be informed by any data controller whether personal data, of which that person is a data subject, are being processed by or on the behalf of the data controller. Section 7(2) however provides that a data controller is not obliged to supply any information under section 7(1) unless he has received a request in writing.
8. I cannot see how Mr Mensah can maintain any claim under this section. There is no evidence of any request triggering section 7(1) as required by section 7(2). In any event it is to be borne in mind that the solicitor did promptly inform Mr Mensah of his receipt of the print. Section 7 (if otherwise applicable) in nowise precludes a doctor such as Dr Jones sending the relevant data to his solicitor to obtain relevant legal advice and this will include advice as to any duties under section 7. It is plainly sufficient to discharge any obligation under that section that the solicitor makes any notification required under section 7 regarding the transmission of information to him. The position is not changed by the fact that by a letter dated the 4<sup>th</sup> October 2003 Mr Mensah wrote refusing to allow the solicitor access to his medical records.
9. By his claim under the 1998 Act Mr Mensah claims damages. Mr Mensah told me that the claim is for distress. No damage is alleged. The claim for damages (or compensation) for contravention of requirements of the Act is on any basis unmaintainable, for section 13 provides that compensation for distress is only recoverable if damage is also suffered or the contravention relates to the processing of personal data for special purposes (as defined in section 3). Neither of these requirements is satisfied.

### **ACCESS TO HEALTH RECORDS ACT 1990**

10. Mr Mensah in addition or in the alternative invokes section 20 of the Access to Health Records Act 1990. This section provides that an application may be made to the High Court or County Court for an order requiring the holder of a health record to comply with any requirement of the Health Record Act 1990 with which he has failed to comply. I cannot see how this section has any application or can impose on Dr Jones any obligation before sending the print to his solicitor to seek and obtain a court order authorising this to be done.

### **LAW OF CONFIDENTIALITY**

11. Finally Mr Mensah invokes the general law of confidentiality in respect of his medical records. But that obligation cannot preclude Dr Jones seeking and obtaining legal advice in respect of his obligation of disclosure in the first action. Section 35(2) of the 1998 Act reflects the common law. The obligation of disclosure may override the obligation of confidentiality and the law and common sense require that a doctor discloses any confidential material which may be relevant to his solicitor for advice as to the proper course to be taken.

### **CROSS-EXAMINATION**

12. Mr Mensah repeatedly complained in the course of his speech that the solicitor took the deliberately wrongful step of keeping Dr Jones away from the hearing before the

Master to avoid his being cross-examined. This complaint again has no substance. There could have been no question of any such cross-examination at the hearing. There was no occasion for Dr Jones to attend the hearing or be cross-examined.

### **CONCLUSION**

13. In my judgment the full and careful judgment of the Master was clearly correct, and I agree with Lawrence Collins J that permission to appeal should be refused, for an appeal has no real prospect of success and there is no other reason why it should proceed. An appeal would serve no useful purpose.