

7. At the same time Police received information that a fellow nurse was suspicious of X's behaviour towards patients. Suspicions were raised that he could have interfered with drugs administered to seriously ill patients and thereby caused their death; that sinister comments had been made to relatives predicting the death of a patient and that he had made dangerous comments to a young, suicidal patient. There had been an increase in the number of deaths on the ward when X had been on duty. Police noted that the quantity of drugs stolen was equivalent to several lethal doses which would have been all but untraceable in a body. In addition there were allegations of very serious sexual assault and violence from a former girlfriend. Further information showed X to be overconfident in his professional abilities and unwilling to take advice.
8. Y is said to have failed to reveal important information; failed to respond appropriately to allegations against X and not taken the allegations seriously.
9. In his blog entry the defendant identified X and Y by name and included descriptions of other witnesses.
10. Comments from the defendant accompanied the disclosure of The Report. He unequivocally described X as a mass murderer; Jersey's Harold Shipman (a doctor convicted of murdering many of his patients); in an e-mail to the Police sent shortly afterwards the defendant states that X was plainly and unambiguously an extremely dangerous psychopath who, having now been exposed, could go on a rampage, could kill other people including his ('X's) wife and child and even the defendant himself. This is clearly the picture he paints in the blog.
11. The defendant also alleges that there was no police investigation following The Report. He states that the AG, Michael Birt, swept the matter under the carpet to avoid political embarrassment. The defendant presents to his readers a man guilty of the most serious crimes who will not be stopped or brought to justice because the Jersey authorities want to avoid a scandal.

Charge 1

12. To prove an offence under Article 55 the prosecution must prove not only that the defendant disclosed personal data but that when he did so it was without the consent of the relevant data controller under DPL and that the defendant knew, or was reckless as to whether he had consent. Recklessness means he foresaw the risk but went on to take it anyway. I agree with Mr Baker that it is for the prosecution to prove beyond reasonable doubt that none of the exceptions to Article 55 DPL apply. If there is any ambiguity in Article 55 this interpretation is the one most favourable to the defendant. For convenience I shall refer to the Articles 55 (a) to (d) as 'the defences'.

Charge 2

13. The Prosecution must prove that the publication of the names of X and Y and description of any witnesses sufficient to identify them was in this context a processing of personal data and that the defendant was not registered with the Data Protection Commissioner (DPC) when he processed (disclosed) it. This is an offence of strict liability by which I mean it is a question of fact. Whether the defendant knew or (as he said in interview) he believed he was registered is not relevant as to whether the offence was committed. Genuine belief would, however, be relevant to sentence.

14. In determining these charges I heard and considered extensive submissions from both prosecution and defence. I have also heard evidence from Mrs Emma Martins (DPC), Mr Barry Faudemer, Mr Graham Jennings (CEO Health and Social Services 1996-2002), Mr John Michael Pollard (Chief Executive H&SS 2002-2009), Mr Barry Taylor (Acting Deputy Chief Police Officer, SoJP), Detective Inspector Christopher Beechy (SoJP), Mr Kevin McKerrell (SoJP) and Chief Inspector Andre Bonjour (SoJP). I have considered a number of documents listed by the Greffier being both the prosecution exhibits and a number of items disclosed to the defendant as unused material and admitted under Articles 65 and 68 Police Procedures and Criminal Evidence (Jersey) (Law) 2003. These include the extract from the blog (above); minutes of a meeting of Police and Law Officers on 7th July 1999 and the defendant's e-mails to the Police in November 2007 and March 2009

I shall deal with Charge 2 first as it is the most straightforward.

Charge 2

15. It is not apparently disputed that the naming of X and Y on the blog was a processing (which includes disclosing) of personal data, however for the avoidance of doubt I find that it was so in accordance with Article 1(1) DPL . Other witnesses have not been referred to in evidence and as I do not have sufficient evidence to say how they would be identifiable to X or to others I cannot include them in the finding that personal data about them has been processed.

16. I would also add that as far as X is concerned the data contains allegations of criminal offences and so under Article 2 DPL amounts to sensitive personal data.

17. Mrs Emma Martins gave clear evidence that the defendant is not and was not at the material time, entered in the register. I have no reason to doubt her word and indeed the defendant did not challenge her on this point.

I have therefore no doubt that the defendant is guilty of Charge 2

Charge 1

18. As established in respect of Charge 2, the material in question was disclosed and did contain personal data.

19. The offence under Article 55 is *knowingly or recklessly* disclosing such data without the consent of the relevant data controller.

Consent and Knowledge

20. The defendant accepts in his own evidence, and did not contest prosecution evidence from data controllers Mr Pollard and Mr Taylor, that not only he did not have consent to disclose the report, he knew permission would never have been granted had he asked. He also stated he considered his position carefully but that naming was the main object of publication and he went ahead specifically to name X. He omitted the names of patients but left in that of Y to expose the failings of staff in H&SS.

21. I therefore conclude that the defendant did not have consent of the relevant data controllers when he published the contents of the report in March 2009; he knew that he did not have consent and that such consent would never have been given.

‘Defences’

22. Article 55 provides inter alia that a person does not commit an offence if he can show one of the following:

- a) That the disclosure was necessary for the prevention or detection of crime;
- b) That the person acted in the reasonable belief that the person had in law the right to obtain or disclose the data or information;
- c) The person acted in the reasonable belief that the person would have had the consent of the data controller if the data controller had known of the disclosure and circumstances of it; or
- d) In the circumstances of the case the disclosing was justified in the public interest.

I shall deal with (b) and (c) first as those appear to be the most straightforward.

23. (b) It is not apparent that the defendant has argued that he had a reasonable belief that he had in law a right to disclose the data. He has not pointed to a potential right and neither am I aware of any such right.

However, for the avoidance of doubt I find that the defendant had had no reasonable belief in any right in law to disclose.

24. (c) It follows from my findings on consent and knowledge (above) that the defendant knew he would not have had consent of the data controller.

I shall now turn to the main arguments in the case that the disclosures of personal data on the blog were:

Necessary for the prevention or detection of crime and or justified in the public interest (Articles 55 (a) and (d))

25. In order for the prosecution to prove its case, I must be sure that disclosure was not *necessary* to prevent or detect crime; nor was it *justified* in the public interest. These are objective tests. It is not a question of whether the defendant reasonably believed the disclosure to be necessary or justified in this way. However, if convicted, his genuine beliefs would be relevant for sentencing.

To a certain extent these arguments overlap: no one would argue that it is not in the public interest to prevent and detect crime.

I have heard extensively from both parties and will not repeat the arguments in full but essentially they are these:

Prosecution

26. The prosecution say that it was not necessary to name X or Y in the context of the blog in order to prevent crime. Crime is not prevented by hysterical public declamations listing the suspicions of the Police 10 years ago and before an extensive investigation had failed to uncover any evidence that X was the murderer and rapist he alleges.
27. Neither was it necessary to name X in order to detect crime. The Police are the organisation charged with detection of crime. No material produced in connection with X or Y provided the Police with any information beyond that which they had already investigated.
28. If the defendant had new information, the proper course would have been to provide that information to the Police; they would have known the case referred to without having named him to them.
29. Furthermore it was not *necessary* in order to prevent crime: X was working chiefly as a hairdresser. 10 years had passed since the Report was written and there had been no reports of further crimes.
30. The public interest is not served by inaccurate information being put into the public domain which was designed to mislead and to raise alarm.
31. The defendant published the Report with accompanying inflammatory and inaccurate comments. He falsely stated that firstly there had been no investigation and secondly that the AG covered the matter up to avoid political embarrassment.
32. The defendant knew that the allegations of mass murder and rape were unsubstantiated following an intensive enquiry.
33. The defendant therefore presented X as a very dangerous man who would never be held to account.
34. The defendant describes X to the Police in his e-mail sent shortly after the blog was published as 'plainly and unambiguously an extremely dangerous psychopath'. This is how he represented X on the blog. The comments together with the report give a seriously misleading picture of an unchallenged and very dangerous man. This is not in the public interest and could lead to reprisals against X or to X taking revenge on witnesses and even on the defendant.
35. As a result of the blog, there was an independent review of the investigation by the Metropolitan Police. The review concluded that the 1999 investigation had been thorough; there were no further areas that could or should have been pursued either in 1999 or in 2009; there were no grounds to reopen the enquiry.
36. However, the review recommended that an up to date risk assessment be carried out on X. This was done expeditiously and the recommendation that X should not be employed in a nursing or care environment was sent to the nursing regulatory body (now the NMC). Registration has expired and is not expected to be renewed.
37. Both the review and the risk assessment were in the public interest and both sprang directly from the blog, but both would have been carried out and acted upon if the defendant had brought his concerns to the Police, either directly or indirectly rather than publishing on the blog. There was no need at all to have published X's name on the blog. Indeed there was no need to publish anything.

38. A referral to the Police would have been sufficient. The Police were due to review the case in any event. No date had been set but the blog merely brought the review forward.
39. Police made proper disclosure to NMC in 1999 according to the law at the time. Practice in disclosure of sensitive information has changed in recent years and there is no reason to believe that a review in 2009 which recommended a risk assessment would not have been acted upon.
40. Since 1999 Police have acted properly to protect the public when there have been concerns as to X's sporadic work in care homes. For example they were prepared to assist Mrs Amy of Les Houmets nursing home in ensuring X did not gain permanent employment at a care home when she referred the matter to them.
41. The Police have a robust and proper system for assessing and grading intelligence. Disclosure of intelligence is taken very seriously by the Police and only the DCO can authorise disclosures of sensitive information where it is necessary and proportionate to do so and even then, disclosure is to specific individuals who need to know, usually for public safety. Procedures are compatible with the European Convention on Human Rights and conform to the DPL. They cannot be cavalier with information and disclose suspicions indiscriminately.
42. There is no justification whatsoever for publishing the name of Y. The defendant merely named Y in order to punish her, presumably for not being more suspicious of X.
43. Questions must be asked as to what the defendant's motives were in disclosing this information the way he did.
44. The prosecution allege that no thought was given to the public interest when the defendant published. It was not a rational, balanced decision. The defendant was not trying to protect people – if he was, he would have exhausted other routes first and not published lies about the investigation. The defendant published to cause a scandal.

Defence

45. The defendant puts his case in the strongest possible terms and at great length which I shall summarise as follows:
 - X is undeniably a dangerous maniac who is possibly, if not probably, a mass murderer and a rapist.
 - In 1999 the Jersey authorities failed both to convict him of the most serious offences and to prevent him working with patients.
 - If he is allowed to work with patients, either as a carer or as a nurse, they will be at grave risk from him.
 - It is imperative that X should be prevented from working with patients and having the opportunity to do them harm.
 - The authorities are so corrupt that they will not take the appropriate action to stop him now.
 - It therefore fell to the defendant to attempt to obtain justice but as importantly, to prevent harm to patients. It was his public duty and he was compelled to act.

- The only measure sufficient to protect vulnerable patients was to tell the public X's name and crimes so that the public could protect themselves from him.
46. The defendant maintains, despite my rulings to the contrary that what he alleges to be the serious failings in the 1999 investigation are of central importance to his case.
 47. X has remained on the UK nursing register since 1999 despite convictions for theft of lethal quantities of drugs from the hospital, illegal possession of a firearm and ammunition, possession of cannabis and theft of a Police radio. The Police informed the UKCC (now NMC) of the convictions but not of the accusations and suspicions covered in The Report. He was thus able to continue to work in a care environment in Jersey and had to be stopped.
 48. X has worked in Jersey nursing homes on a number of occasions since 1999. In one case he had a sexual relationship with a patient. The defendant argues that as the patient was so vulnerable it amounted to rape. The prosecution would describe this as a consensual relationship but nevertheless agree that it would amount to serious professional misconduct.
 49. Police procedures for making public interest disclosures to individuals who might need to know about X depend on luck rather than anything else. They are reactive rather than preventative and rely on the judgment of an individual giving information to the Police and the judgement of individual officers in acting on that information.
 50. Even now, with the benefit of the 2009 risk assessment the NMC has not struck X off the register -due, the defendant says to interference by the Jersey authorities- which is a further vindication of his decision to name X on the blog as the only way to stop X working with the vulnerable.
 51. The prosecution's suggestion that the defendant should have referred the matter to the Police rather than publishing it in 2009 was fanciful. He had approached the Police in 2005 and in 2007 and they had failed to act.
 52. The defendant first heard of the allegations against X in 2000 from Mr Jennings who said the allegations had been investigated but the AG had concluded that there was no evidence to charge and the case was closed. At this stage the defendant accepted the explanation.
 53. On seeing the Report in or around 2005 the defendant was deeply concerned at the allegations. He spoke to Mr Faudemer on the telephone. He was reasonably reassured that there had been an investigation and that it had been halted on proper grounds. He was not given any great detail but he trusted the authorities and took them at their word.
 54. By 2007 the defendant had lost his position as Minister and was alarmed at what he believed to be the growing evidence of endemic incompetence corruption and cover up in the States of Jersey establishment, in which he includes the Law Officers, Judiciary and senior civil servants. He lost faith in the whole system.
 55. However, the defendant did have confidence in the leadership of the Police being CPO Power, DCO Harper and DI Fossey.
 56. The defendant e-mailed them in November 2007 alleging that the case of X was probably stopped for political reasons and asking them to look at it again.

57. There was no reply but he assumed they were very busy with the child abuse enquiry but as they were honest they would look into it.
58. The suspension of Mr Power in late 2008 led to the defendant's complete loss of faith in the integrity of the Police. The defendant alleges that this was a political move to take the leadership of the Police from an honest officer and confer it on one who would concur with the corrupt political establishment and ensure that scandals were suppressed.
59. Thus the defendant had no confidence that the Police would act and he was therefore compelled to act in order to protect the public from X. It was his duty to act in order to protect the public and he had no alternative.
60. In his blog the defendant says he published the name of X to provoke the authorities into acting but more realistically, to let the public draw their own conclusions.
61. The defendant also argues that X is so unfit and so dangerous that he plainly deserves to be exposed.
62. The defendant makes little reference in his defence to the need to name Y. In cross examination he said that it was right to name her as she was the type of staff member who turns a blind eye and he needed to expose failings in H&SS staff.
63. The defendant states in the strongest possible terms that X is a dangerous maniac and must be prevented from working with patients. His lack of faith in the Police, prosecuting authorities and judiciary meant that the only way to achieve this was to publish X's name on his blog so the public could protect themselves.
64. The defendant also argues that as his blog was journalistic material and that it was of literary and artistic merit and it therefore exempt from the DPL.
65. Finally the defendant argues that if he was not allowed to name X on his blog this would be an interference with his right to free speech under Article 10 ECHR.
66. Arguments made in the earlier abuse of process hearing regarding the legitimacy of the proceedings; the conduct of the trial; the independence of the court; the good faith of the prosecution; the actions of the DPC and the defendant's legal representation are repeated.

Findings

67. In hearing this case I have borne in mind that the defendant is unrepresented. The Court has assisted him with full transcripts of evidence and sought to explain procedure and rules of evidence. I have applied those rules liberally in the defendant's favour and given him considerable latitude in the questioning of witnesses and the speeches he has made. I have allowed the defendant the greatest scope I can to put his case. I believe he has had a fair trial.
68. Nothing I have heard in this trial has caused me to change the conclusions I came to in the abuse of process argument and I repeat those findings.
69. I will make two observations in relation to this trial:

69.1 Firstly, this is not a public enquiry into what happened in 1999. The defendant has sought to argue that the conduct of the 1999 enquiry and what he alleges were its gross failings are central to his case.

69.1.1 I have ruled against admitting evidence of the alleged shortcomings of the enquiry.

69.1.2 The existence of an enquiry in 1999 and its scope are relevant but only to a limited extent.

69.1.3 The defendant's blog carried the report of allegations made against X in 1999 and gave the very clear impression that there had been no enquiry; that the AG had swept it under the carpet; that a dangerous man was on the loose and free to work in hospitals. The absence of an enquiry gave the impression that the allegations remained; that X was unchallenged and never likely to be. He was therefore an imminent danger to the public which would not be addressed by the Police or prosecuting authorities.

69.1.4 The question of whether there had been an investigation and in general terms the extents of that inquiry are relevant to show whether or not publication could be said to be necessary for the detection of crime. Did the publication draw to the attention of the Police anything they did not already know?

69.1.5 Was the allegation that there had not been an inquiry or no attempt at a serious inquiry, true? If not, is the public interest served by untrue statements which might cause fear and alarm and possibly lead to violence?

69.1.6 Did the defendant know at the time that there had in fact been an extensive inquiry? If he did, why did he say otherwise? This is not relevant to the objective tests I must apply but it could be relevant to motive and therefore sentence.

69.1.7 I reject the defendant's assertion that the quality of the investigation, beyond whether it was a genuine attempt to investigate, is an issue. Even if the investigation had been as bad as he claims, it is the Police who are charged with investigation of crime and they who should be asked to review or to reopen an investigation. The question for the court is not whether it was necessary for the investigation to be reopened or reviewed but did the defendant need to name X or was he justified in naming X in order to bring that about?

69.2 My second observation is that the defendant has made many very serious allegations against a number of individuals and against senior civil servants and the State of Jersey in general.

69.2.1 These people are not on trial. The defendant is fond of terms such as 'well evidenced', 'indisputably', 'recorded history of', etc. The defendant offers as proven facts his own suspicions and prejudices. The defendant's allegations are just that. None of these people have had the opportunity to refute these allegations. The only relevance these accusations have is whether the court believes these are the defendant's genuine beliefs which affected his actions on 19th March 2009 and so could be relevant to sentence.

Article 10 ECHR and Human Rights (Jersey) Law 2000

- 70 Freedom of expression is not an unfettered right and brings with it duties and responsibilities. It may be subject to limitations and penalties which are prescribed by law and are necessary in a democratic society for, amongst other things, public safety, prevention of disorder or crime, for the protection of health and morals, for the reputation or rights of others or for preventing the disclosure of information received in confidence.
- 71 That is what this trial and the provisions of Article 55 DPL are all about. In considering the evidence in light of the 'defences' in Article 55, I am dealing with the right to freedom of expression and legitimate limitations to that right.

Journalism and works of literary and artistic merit

- 72 In raising this issue the defendant is, I believe, referring to Article 32 DPL which is a regulatory exemption from the Data Protection Principles, it is not a defence or an exception to Article 55.

Detection of Crime and Public Interest (Articles 55 (a) and (d))

- 73 Detection of crime is a matter for the Police. It is also clearly in the public interest that, where there is sufficient evidence, those accused of serious crime should be brought to justice. It is not in the public interest to bring people to trial as a result of unsubstantiated allegations when not even the Police and the Prosecution believe there is a reasonable prospect of conviction.
- 74 I have no doubt that an investigation was carried out. This is a point the defendant grudgingly concedes but alleges the investigation was so insubstantial as to be hardly worth the name.
- 75 I heard from Mr Barry Faudemer. I found him to be an excellent witness. He was a highly capable and dedicated police officer who approached the alarming allegations made in 1999 with an open mind, a professional thoroughness and a great deal of hard work. I was impressed with his recall of events 10 years ago. I found him to be honest and robust. It is inconceivable that he would have travelled to Rochdale to find out how best to conduct such an investigation; brought in the HOLMES system; drafted in a large team of officers from Jersey and the UK and then conducted a half hearted or sham investigation either because he couldn't be bothered to do otherwise or under pressure from the AG or his senior officers not to look too seriously into the matter. He told us that the Law Officers' Department had been extremely helpful in assisting the Police to gain the confidence of H&SS and thus access to Health records. I accept his evidence.
- 76 The defendant did not provide the Police with any information they did not already have.
- 77 The investigation was intensive and a genuine attempt to determine whether there was evidence to support allegations made. Mr Faudemer found no such evidence. Whether he would have done so had the investigation been carried out in a different way as the defendant suggests is not a matter for this court.
- 78 I also heard from Acting DCO Taylor. He was also a very impressive witness. He was calm, measured, reasonable and honest. He had a very clear understanding of police duties and powers and I have no reason to doubt his evidence. The investigation in question was 10 years

old and was due for review as part of normal police practices. As at 19th March 2009 no date had yet been set for a review but it would have happened in due course.

- 79 The defendant's blog publication brought the review forward. This review was commissioned immediately and produced promptly by a Metropolitan Police specialist team. There are no grounds to doubt the thoroughness or veracity of this review.
- 80 Mr Taylor confirmed that it was not necessary to name X either publicly on the blog or even privately to the Police. They knew exactly which case this was. The defendant had no new information to provide, even if he had, he could have done so without publishing it on the blog. The review of the evidence by the Police would have been taken had the defendant simply asked them to do so either directly or indirectly.
- 81 The evidence of Mr Taylor was entirely unchallenged by the defendant on this point.
- 82 I therefore find that it was not necessary for the detection of crime, nor, in this respect was it justified in the public interest to publish X's personal data on the blog. Nor can I see any necessity or justification in naming Y.

Prevention of Crime and the Public Interest (Articles 55 (a) and (d))

- 83 No one would dispute that it is in the public interest to prevent crime, in particular, crimes against patients who are vulnerable due to their age, illness or infirmity. It is also in the public interest to protect patients from inappropriate behaviour or incompetent treatment by trusted nursing or care staff which, whilst not being criminal, could cause harm.
- 84 Despite the defendant's derogatory remarks about the competence and independence of the 2009 Metropolitan Police review, the defendant accepts as does the prosecution, that an up to date risk assessment on X was a public good which originated from the publication of the blog.
- 85 Again, despite impugning the integrity of some of those who wrote the risk assessment, the defendant must be satisfied with its conclusion that, taking into account the unproven allegations against X, he was assessed as being unsuitable to work in a care environment.
- 86 Was it therefore necessary to publicise the defendant's name on the blog to prevent him from obtaining such work?
- 87 I heard from DCO Taylor on this point and from DI Beechey whom I also found to be honest and trustworthy. I have no doubt that had the defendant contacted the Police, without even repeating X's name to them, and expressed his concerns, the Metropolitan Police review and the subsequent risk assessment would have been carried out and acted upon.
- 88 The defendant accuses the Police of dragging their feet in referring the new risk assessment to NMC and only referring it when they knew that the NMC had been informed of the details by him. I do not accept this. I believe the Police were acting with care when assessing the right steps to take and that a decision had already been taken to refer to the NMC when the NMC contacted them.
- 89 The Police do not regulate the employment of nurses, the NMC does. I find that in respect of nursing regulation, the Police would have taken the action they did if the defendant had contacted them directly or indirectly and expressed his concerns.

- 90 If the defendant had been so concerned that X was still registered as a nurse and able to work, he could have referred the matter to the NMC himself (as he later did) and asked them to investigate.
- 91 There was no need to disclose personal data on the blog to achieve this.
- 92 X has obtained work in Jersey in private care environments for a number of short periods since 1999 in private nursing or care homes and once in a person's own home. He is not registered as a nurse in Jersey. H&SS will not employ him. There has been no report of X being suspected of committing a crime since 1999 but the prosecution agree that he did have an inappropriate sexual relationship with a patient who has since died. I cannot determine whether this was rape as alleged by the defendant but it is clearly something which should not have happened between a carer and a patient.
- 93 I cannot say whether X would have obtained this work if he had been struck off by the NMC in 1999. I doubt, however, that a person has to be a registered nurse to work as a carer. Thus it must be possible to apply for such work in the private sector in Jersey.
- 94 The defendant argues vehemently that it was necessary and in the public interest to publish X's name on the blog to prevent him committing crimes against, or otherwise harming patients. He specifically published the name so that the public would know not to employ X.
- 95 In some circumstances the Police will disclose conviction information and intelligence to a person who needs to know for the prevention of crime or where it is in the public interest. This is as a response to intelligence which shows them someone might pose a risk, rather than a proactive system which prevents the risk occurring in the first place. The defendant is right to point this out. It does rely on the Police, by whatever means, becoming aware of the risk so they can respond to it.
- 96 When the Police make such a disclosure they do so in a very measured way. I heard from Mr McKerrell, Mr Bonjour and Mr Taylor on this point. I have no doubt they take their responsibilities very seriously. Intelligence must be graded as to reliability; the risks of disclosing or not disclosing must be weighed carefully; the DPL must be complied with and any disclosure objectively justified; the Human Rights of both the suspect and the person who could be at risk must be considered. No disclosure can be made without the consent of the Deputy Chief Officer. Mr Taylor told the court that the Police cannot be cavalier with information, they must act on evidence, they cannot publicise suspicions indiscriminately. Mr Bonjour told the court that when the Police do make a disclosure it is proportionate, giving the minimum necessary amount of information to the minimum number of people who actually need to know.
- 97 If someone who is unsuitable to work in care home applies to do so, they could be given a job. If the Police do not know about it they cannot warn the employer. However, Police disclosures, criminal records checks and registration are only part of the process an employer should use to ensure staff are safe to work, indeed a dangerous person might not have come to the Police's attention before and therefore even the most thorough check with the Police would reveal nothing. Not even naming someone on a blog will ensure everyone who might potentially employ X will know his name. Not everyone reads the defendant's blog. Those wishing to employ others in this area should make careful enquiry in every way they are entitled to, including asking for references and taking them up personally, questioning gaps in employment and so forth. Both care homes and individuals should make themselves aware of good practice and follow it.

- 98 The defendant e-mailed the police shortly after the disclosure on his blog, stating what he had done and that, now, exposed, X might go on the rampage, kill his wife and child and possibly kill the defendant. Whilst this is far-fetched hysterical language there must have been a risk, foreseen by the defendant that X could have resorted to violence or that members of the public, fearing there was a mass murderer who would never be held to account by the authorities, could have been tempted to harm X. At the very least there will be people whose relatives were nursed by X left with the distress of not knowing whether their relative might have been killed by him.
- 99 All this is set against a background of an investigation which was very far from finding any evidence that X had harmed patients; in fact Mr Faudemer said that in some respects the evidence led them in the opposite direction. The defendant did not consider the effect of disclosure on X, except to say that he deserved it. This disclosure and its consequences cannot have had anything but the most profound effect on X and his family.
- 100 This was an ill considered, alarmist and inaccurate disclosure of personal data which could in itself have led to harm being done.
- 101 I have no doubt that it was neither necessary to prevent crime nor justified in the public interest.
- 102 What possible justification or public interest there could have been in naming Y, I have no idea. If the defendant had concerns over her performance when he first saw The Report in 2005, he was Minister for Health and should have done something about it then.

Wider Public Interest

- 103 The defendant gave untrue information to the public about the investigation in 1999. He told them that there were serious allegations of mass murder against a named individual, showed them a preliminary report containing details of the allegations and told them that they were swept under the carpet by the AG and not investigated for political reasons. Very few blog contributors questioned that X was undoubtedly a very dangerous man.
- 104 The public interest is not served by untrue and sensationalist disclosures on the internet, nor the widespread publication of unsubstantiated allegations.
- 105 The public interest is served by the Police being able to conduct their investigations and air their views in confidence.
- 106 Unless there are particular circumstances which have been carefully assessed, usually by the Police, it is not in to the public interest to make widespread disclosures about suspects. Even if a disclosure has to be it should be to those who really need to know. If it really is necessary to put information into the public domain the minimum necessary should be published to avoid the risk of prejudicing a fair trial.
- 107 The public interest is served when Police, having sufficient evidence to support a reasonable prospect of conviction, charge a suspect. The evidence against them is heard in open court where they can put the prosecution to proof and make their own defence. This is the rule of Law. If every unsubstantiated allegation made to the Police about named individuals was published on the internet we would have no need of courts. Everyone would be treated as guilty. There would be no fair trials.

108 The defendant gave X no trial at all, let alone a fair trial, before pronouncing him guilty to the world at large of the most serious of crimes.

109 I have no doubt in concluding that disclosure of personal data about X in this case was not justified in the public interest.

I therefore find the defendant guilty on Charge 1.

Motivation

110 I have heard the defendant's case at great length as he has sought to justify his disclosures in March 2009. I have convicted him on objective tests. Whether he genuinely believed he was acting in the public interest or to prevent or detect crime is a matter relevant to sentencing.

Charge 2

111 Processing data is a serious responsibility. Information can be very valuable and very powerful.

112 Registration is required by law to protect individuals whose information, including personal data and sensitive personal data, is held by others. Registered data controllers must, amongst other things, store and process data according to the principles set out in the DPL. This is to ensure that the use of data is reasonable, proportionate and justified. The proper use of information held by individuals or companies is an important protection for individuals whose information is held.

113 Mrs Martins produced correspondence with the defendant dating to 2008 in which her office sought to alert him to the fact that he was apparently processing personal data on his blog and inviting him to register. These letters were polite and reasonable yet they were met with obduracy and abuse from the defendant.

114 The provisions of the Law were pointed out to the defendant, he had been given guidance as a States member and been further directed to the Commission's website.

115 I can only conclude that the defendant was aware of the requirements of the DPL and that he knew he should have registered. It is clear that he had no intention of registering with the Commissioner and no intention of abiding by the Data Protection principles. The defendant submitted to this court that had he abided by the DPL he would not have been able to retain possession of The Report. This was controlled by the Health and Social Services Department and since the defendant has not been Minister for some 20 months he had no right to retain that document. The defendant was adamant that he would not register as registration would bring an obligation to process information according to the DPL and he was not prepared to do that. The defendant apparently considers that the Law he helped to pass in the States should not apply to him.

This is an aggravating feature in the commission of this offence.

Charge 1

No Investigation in 1999

116 The defendant told a lie to the public. He told them that there had been no investigation into the 1999 allegations. He knew this was false.

117 In 2000, Mr Jennings mentioned to the defendant that there had been an inquiry into X in 1999. The defendant remembers this.

118 In or around 2005 the defendant received a copy of The Report from what he calls a 'whistleblower' in H&SS. It caused him serious concern when he read it. He was so concerned he spoke to Mr Faudemer about it.

119 I accept Mr Faudemer's evidence that he gave the defendant a detailed explanation of the investigation and that the defendant appeared satisfied. The defendant was Minister of Health at the time, if he had had any doubts about the thoroughness of the inquiry or thought there were unresolved questions about mass murder in his hospitals I have no doubt he would have taken it further. The defendant was in a very powerful position to do so. I am therefore satisfied that he was given a full and truthful explanation of the enquiry in 2005.

120 In 2007 the defendant raised the matter with CPO Power, DCPO Harper and DI Fossey.

121 I do not accept that in 2009 he did not remember what he had been told by Mr Jennings and Mr Faudemer. The defendant knew both that there had been an inquiry, that it had been genuine and intense and that the allegations of mass murder and rape had been unsubstantiated. Even when questioned by the rare critical blogger as to what happened at the meeting convened by Mr Le Breton, or whether Phase 1 or Phase 2 of the investigation took place or even when prompted by a blogger to contact Mr Faudemer and given his present contact details, the defendant did not tell the truth.

Publication as a Last Resort to Protect the Public

122 In 2005 the defendant by his own admission did not ask Mr Faudemer to take the matter forward. He therefore cannot cite this conversation as an appeal to the Police to reopen the investigation or to take further steps to prevent X working.

123 In 2007 the defendant referred the matter to the Police but they did nothing. This was an allegation of mass murder which he alleged had not been investigated, or an investigation had stopped, for political reasons. Surely this should have been a top priority for the Police. As an individual and as a States Member the defendant would have been making urgent enquiries when he heard nothing from the Police for well over a year. Even when he heard of the suspension of Mr Power which caused him such alarm, the defendant could still have contacted the police (he still believed in DI Fossey) but he did not even try.

124 I cannot accept that if the defendant genuinely believed in 2007 that there was a probable mass murderer who had gone undetected and who was free to prey on vulnerable patients, he would really have waited from November 2007 to March 2009 without even telephoning the Police. It was either a desperate situation or it was not. Nothing changed with regard to X's risk to patients during those 16 months. If suspension of Mr Power was in some way a critical point, why did the defendant wait 5 months after the suspension of Mr Power to publish?

125 I can only conclude that the defendant did not publish what he did as a last resort to protect the public from someone he genuinely believed to be a mass murderer and rapist.

Action by the AG

126 I find there is no basis whatsoever either in evidence or in logic to believe that the AG or the LOD would sabotage such an investigation for political purposes.

127 It is the AG's role to prosecute where there is sufficient evidence and where it is in the public interest to do so. Mr Faudemer says the LOD were very helpful in giving legal advice and facilitating access to medical records. A number of cases come to court which do the reputation of the Island no favours and Mr Faudemer told us he had not been afraid to pursue them: if anyone had tried to obstruct the inquiry I am sure Mr Faudemer would have told us. There is no basis at all for this allegation and indeed strong evidence to the contrary.

Language Used

128 The language of the blog surrounding the report and the subsequent e-mail to the Police are hysterical and inflammatory. In my view they were not the measured and considered words of a responsible elected representative who is deeply concerned for public safety. Rather, they are designed to whip up public fear that there has been mass murder at the hospital and to create a scandal.

Conclusion

129 I conclude that the reasons given by the defendant as to why he says he was compelled to act as he did on 19th March 1999 do not stand up to scrutiny. He lied to the public to create a fear of harm from an unrestrained murderer and rapist who had struck in the General Hospital and who was free to strike people again at their most vulnerable. In doing so he must have caused distress to X and his family and risked provoking violence either by or against X. The defendant also risked causing great distress to relatives of the deceased. In my opinion this was done to create a totally unfounded scandal to undermine public confidence in the administration of justice.

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