MC/CRIM/06/23

SENTENCING REMARKS

REX

v

DEMI LOU STEVENS

before
HHJ Malcolm Simmons

GIVEN ON
22nd May 2023

Representation:	
Mr Stuart Walker	Crown Counsel, Prosecution
Ms Shantel Hazelman, Falklands Legal	Defendant

These sentencing remark] will be published until 22 November 2026 for this reason:

- As per Schedule 10 of the Criminal Procedure Evidence Ordinance, 2014, the conviction of the defendant will be considered spent.

Any concerns about the publication or content of this document will be placed before the Judicial Officer(s) for consideration.

IN THE FALKLAND ISLANDS
MAGISTRATES COURT **Case No. MC/CRIM/06/23**

BETWEEN:

Before:

HIS HONOUR JUDGE MALCOLM SIMMONS

REX

-v-

DEMI LOU STEVENS

MR. STUART WALKER, Crown Counsel, appeared for the Prosecution
MISS SHANTEL HAZELMAN appeared for the defendant

REPORTING RESTRICTIONS APPLY

SENTENCING REMARKS

Introduction

1. You appear before this court today for sentencing, having been convicted by the Summary Court on 12th April 2023 on sixteen counts of unauthorsied access to computer data under section 409 (1) of the Crimes Ordinance 2014 that:

    i. On 21st June 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 16814, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

ii. On 21st June 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 17221, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

iii. On 21st June 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 20736, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

iv. On 30th June 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 4029, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

v. On 13th July 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 16814, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

vi. On 5th August 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 22302, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

vii. On 8th August 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 3671, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

viii. On 9th August 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 15650, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

ix. On 29th August 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 12931, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

x. On 29th August 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 23731, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

xi. On 29th August 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 20886, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

xii. On 8th September 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 19319, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

xiii. On 23rd September 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 81, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

xiv. On 26th September 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 5442, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

xv. On 26th September 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 5915, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

xvi. On 20th October 2022 you caused a computer to perform a function with intent to secure access to data contained in the computer, namely medical records relating to patient 15650, the access was unauthorised and you knew the access was unauthorised at the time you caused the computer to perform the function;

Facts

2. When you committed these offences you were employed within the Community Support Team at the King Edward VII Memorial Hospital in Stanley. You began working in that role on a casual basis in April 2022. You applied for and were subsequently appointed as an Administrative Assistant within the Community Support Team on 1st June 2022. Your duties included collecting paper records generated by community support nurses and carers during their routine tasks and scanning them into the relevant service users' electronic records. You were also required to provide community support nurses and carers with information from service users records when nurses and carers were off-site and needed information urgently.

3. You received training on accessing and handling patient data. You received a copy of the Department of Health and Social Services Code of Confidentiality and the Code of Conduct for the Community Support Team. You swore an oath of secrecy relating to the data to which you became privy in the course of your employment.

4. The Code of Confidentiality is quite clear. It provides that all members of staff must *'not access any record for which they do not have a proper reason in the course of their duties'* and must *'not access records for their personal interest'*. You signed a confidentiality statement in which you confirmed that you had fully read and understood the Code of Confidentiality and confirmed that you would comply with its content.

5. There can be no doubt that you were aware of the sensitive nature of patients personal data, the circumstances in which you were permitted to access that data and the requirement of confidentiality.

6. Your data access privileges were not limited to the data of patients under the care of the Community Support Team but included patients under the care of the Emotional Wellbeing Service. It appears you were given broad access to patient data and simply trusted not to abuse the data access privileges you had been afforded.

7. In October 2022 an audit revealed that you had accessed the records of a patient not under the care of the Community Support Team. You initially denied having any knowledge of the access and stated that, any accessing of data that might have occurred, had been accidental. However, that same evening, you contacted your line manager and admitted that you had inappropriately accessed the data of other patients. It is surprising, and somewhat troubling, that you were able to access the confidential records of patients not under the Community Support Team with such apparent ease.

8. The Royal Falkland Islands Police commenced an investigation which focused on the unauthorised accessing of patient data during the period June to October 2022, involving 14 specific individuals, comprising 6 children and 8 adults. It is in respect of those offences that formal complainants were made.

9. When you were interviewed by police, you admitted that you had accessed patient records in breach of the Code of Confidentiality. You stated that you had not disclosed any of the information that you had accessed to other people and that you had looked at patient records out of curiosity or boredom. You stated that you had been prompted to access the records of specific patients, having seen their names displayed on the daily appointment screen.

Impact Statements

10. I have read and taken into account the victim impact statements of six patients whose records you unlawfully accessed.

11. One patient described feeling disgusted, disappointed and angry about what had happened. He said he became ill after being informed that you had accessed his medical records and those of his son and experienced an escalation in his depression, anger and anxiety. He stopped attending appointments because of that anxiety and is now very cautious about what he discloses to medical staff at the Hospital. He described the paranoia he had experienced, believing that information from his medical records may now be in the public domain.

12. A family member of a child patient described the negative impact your offending has had on their family as a whole. The patient knows something about what is going on and his behaviour has deteriorated. He is receiving additional support at school. Other family members have also suffered and continue to suffer as a result.

13. Another patient described the distress and sleepless nights she had experienced after being told her records had been unlawfuly accessed. The knowledge that someone may have read her most sensitive personal information has exacerbated her anxiety.

14. Another patient described feeling physically sick when informed her records, and those of her children, had been unlawfully accessed. She said her trust in the hospital had been shattered and that she had had to re-live memories and emotions from an extremely difficult period in her life, thereby re-opening old wounds. She said she cries when she thinks about what has happened.

15. Another patient described being shocked and upset when she was informed and was incredibly worried at the thought of what had been read. She said she felt violated and had experienced waves of emotion, sleepless nights, stress and worry.

16. Another patient described how she had suffered a panic attack when she learned of what had happened and had needed to take time off work. Those panic attacks continue intermittently. This had resulted in a set-back in the progress she had been making with her anxiety and depression. Having to take time off work has also had a detrimental effect on her income. She has been left feeling low, with a lack of trust in the hospital, leading to her missing important appointments and prolonging her recovery from trauma.

17. I have also read and taken into account the Community Impact Statement of Detective Inspector Robert Lewis. In addition to the harm caused to the victims, your offending has had a significant impact on others. The hospital received a substantial number of enquiries and requests for data audits from people, thus creating a significant burden on staff. In addition, police were required to assist members of the public with advice and support due to an apparent loss of trust in the Department of Health and Social Services arising out of your offending.

Pre-Sentence Report

18. I have read the Pre-Sentence Report of the Probation Service dated 12th May 2023. It is a very thorough report that has assisted me in reaching an appropriate sentence.

19. You were born on 5th May 2003. You are now 20 years of age. You were 19 when you committed these offences. You had a child, a daughter, in March 2023 and you are the main carer of that child. You are in a stable relationship and you are supported by your partner. You are currently unemployed and dependent on your partners income.

20. Other than the convictions on 12th April 2023, in respect of which you today appear before this court for sentencing, you have no other convictions in the Falkland Islands. I have taken that into account when sentencing.

Guidelines

21. There are no offence-specific sentencing guidelines for this offence. The maximum sentence for a single offence under section 409 (1) is imprisonment for 2 years or a fine, or both. I take into account the Overarching Sentencing Guideline and the General Principles Guideline.

22. Mr. Walker has, very helpfully, referred the Court to the case of *R v Mangham* [2012] EWCA Crim 973 in which the Court of Appeal stated that aggravating features in computer misuse cases would include whether the offence was planned or persistent, the nature of the damage caused to the system and to the wider public interest, the motive (including revenge) and the extent of gain by the offender, and whether the information had been passed on to others.

Offending

23. The offences of which you stand convicted are serious.

24. You were someone in a position of trust. You were trusted by your employer to carry out your duties professionally and to adhere to the rules that had been put in place to ensure data security. You were also trusted by the patients of the hospital who were entitled to expect that their medical records would remain confidential and that the highest standards of integrity would be maintained. Instead, you abused that trust, you say, to alleviate boredom.

25. Your offending was persistent, taking place over a period of approximately 4 months and involving numerous unauthorised accesses and multiple victims. You knew that your accessing this data was not authorised and yet you deliberately chose to access highly sensitive and personal information. You committed an obvious and significant abuse of trust, both in terms of the trust patients should reasonably expect of you to abide by the Code of Confidentiality and the trust the Department of Health and Social Services had in you as its employee. The victims of your offending were vulnerable, particularly those with mental health conditions who were under the care of the Emotional Wellbeing Service and your offending has had a significant impact on them. Your offending has also had a substantial detrimental effect on the wider public interest.

26. The court is entitled to treat community impact as an aggravating factor if satisfied that the level of harm is significantly higher than that already inherent in the sentencing guideline levels; that the circumstances can properly be described as exceptional; and that it is just and proportionate to increase the sentence for such a factor. I have taken into account community impact in sentencing and will not, therefore, impose a further upward adjustment.

27. In terms of mitigation, you are a young woman. You are now 20 years of age. You were 19 when you committed these offences and, given your age, I recognise a possible lack of maturity, particularly around your ability to properly evaluate the consequences of your decisions. You gave birth in March 2023 and you are the primary carer; you are in a stable relationship and your partner has been supportive of you and will continue to support you. You admitted the offending when first interviewed by police and you entered a guilty plea at the first opportunity.

Following the discovery of your offending, you were dismissed from your job at the hospital and I recognise that you may find it difficult in the future obtaining certain employment. You have shown remorse. It appears you now understand the impact that your actions have had on the victims of your offending. I will give full credit for the guilty pleas.

28. I have read the character references that have been handed-up. They have spoken of you warmly and described your offending as being out of character. They also describe the remose that you have shown. I have considered those letters carefully and they have have given me a useful insight into your character that I have taken into account when sentencing.

29. It appears your decision to access these records was done on impulse and the product of boredom and curiosity rather than any other motive. You told police you had not revealed to a third party what you had discovered in those records. The information that was accessed related to medical records, which by their nature contain often very sensitive information. Many of the records related to patients who are considered vulnerable. It appears you now recognise the impact of your actions. There is no evidence you intended to cause harm.

30. The Probation Officer assesses you as posing a low risk of re-offending without a significant change in circumstances and a medium risk of serious harm to the public.

31. I have taken into account the Pre -Sentence Report. I have been assisted by Ms. Hazelman and Mr. Walker and I have considered carefully their respective submissions, which I have taken into account in sentencing.

32. I must take account of the ruling in *R v Butler* [2018] SC/CRIM/04/17 and in determining sentence I do not give additional discount because the licence point for a custodial period differs in the Falkland Islands from that in England and Wales.

33. When sentencing, I am required to consider the totality principle. I am obliged to impose a total sentence which reflects all of your offending, but it must be no more than is just and proportionate. I have taken that into account in my determination of the sentence. I have considered all sentencing options including custody and community sentences.

34. The unauthorised access of confidential information in a hospital database, on multiple occasions and involving multiple individuals is a serious offence. There was an obvious pattern in your behaviour. Many of the records that you accessed contained information of the upmost sensistivity and involved many patients who are considered vulnerable. This within the context of a small, close-knit, community. Patients are entitled to expect that what they tell their doctor will be treated in confidence and not disclosed to unauthorised third parties. That is a

fundamental premise of the doctor-patient relationship. Indeed, patients might be reluctant to share important information with their doctor if they thought it could be accessed by a third party. Your former employer was also entitled to expect the highest standards of professionalism and integrity. The unlawful disclosure of confidential patient information not only causes considerable distress to the patients concerned, it also serves to undermine public confidence in the healthcare system. The implications for the healthcare system are significant and likely to be ongoing for some time.

35. I have considered the case of *R v Kadiri [2017] EWCA Crim 2667, [2019] 1 Cr App R (S) 25* which involved a female of previous good character, who repeatedly accessed the data of a former partner and people linked to him. The data was passed to a private detective The defendant in that case was also charged with misconduct in public office. The Judge took a starting point of 9 months and with the plea made it 6 months. With the personal mitigation, she reduced that to 4 months. The Court of Appeal suspended that sentence, on the basis of the lack of financial beneift, and the caring responsibility of the Appellant.

36. The appropriate starting point for your offending under counts 1 to 16 at trial is **12 months custody on each count, concurrent**. This reflects the high number of victims, but also the lack of gain to yourself, and the fact that the data was not passed on. I reduce that by one third giving full credit for your early guilty plea, to one of **8 months custody**. Regarding the principle of totality, I consider the sentence to be one that reflects the overall criminality.

37. The custody threshold is passed. However, I have to consider if appropriate punishment can only be achieved by immediate custody. Weighed against this is the prospect of rehabilitation, personal mitigation and concern that immediate custody will have a harmful impact on others. You are a young woman with a very young child for whom you care. You have no previous convictions. You are clearly remorseful. I have carefully considered your character references. I have read in the pre-sentence report the options for your baby if you are to go immediately into custody. Whether the baby were to join you in prison, or you were to be separated, it is clear that the impact upon her, at just 2 months of age, is likely to be severe. I have, therefore, decided to suspend this sentence.

38. The sentence will be suspended for 18 months. A suspended sentence means that if you commit another offence for which you could be sent to prison within the next 18 months, there is a real possibility you will be sent to prison for 8 months.

39. The pre-sentence report suggests a supervision requirement to support your rehabilitation. I agree, and impose that requirement.

SENTENCE

40. In sentencing, I have taken into account the aggravating and mitigating factors. After trial the sentence under counts 1 to 16 would be 12 months imprisonment which I reduce to **8 months imprisonment** with credit, suspended for 18 months.

41. You will be subject to a Supervision requirement for a period of 18 months from the date of this order.

42. I am not going to make compensation orders. Any claims for compensation are more appropriately dealt with in the civil courts.

43. The defendant is ordered to pay prosecution costs of £150 within 14 days.

HHJ Malcolm Simmons
Senior Magistrate
***22nd* May 2023**