

Suspicious Activity to Report? Careful How You Draft as You Might Have to Disclose What You Say in Confidence.

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The recent High Court decision in *Lonsdale v. National Westminster Bank plc* [2018] EWHC 1842 (QB) serves to highlight that the content of a suspicious activity report (“SAR”) could be discloseable to an opponent in Court proceedings. Not only that – it could also form the basis of a claim in defamation.

Facts

Mr Lonsdale held several accounts with National Westminster Bank (“Bank”). The Bank froze Mr Lonsdale’s accounts following the submission of one or more SARs to the National Crime Agency (“NCA”) and subsequently gave him notice that they would be closing his accounts.

Mr Lonsdale’s Claim

Mr Lonsdale started Court proceedings against the Bank alleging a) breach of contract; b) defamation; and c) breach of the Data Protection Act 1998.

Mr Lonsdale also applied under Civil Procedure Rule 31.14 for disclosure and inspection of the SARs, as the Bank had referred to them in its Defence (CPR 31.14 allows a party to inspect documents referred to an opponent’s statement of case). The Bank opposed Mr Lonsdale’s application.

The Court’s Decision

The Court ruled in favour of Mr Lonsdale’s and allowed him to inspect the SARs. This is despite the Bank’s arguments that:

1. the SARs were confidential, having been disclosed to the NCA in the strictest confidence;
2. by disclosing the SARs the Bank may commit the offence of “*tipping off*” and/or the offence of making a “*disclosure which is likely to prejudice*” an investigation; and
3. inspection was not necessary for the fair disposal of the proceedings.

The Court’s Reasoning

In response to the Bank’s arguments, the Court held:

1. CPR 31.14 applied and the ordinary position is that inspection of documents should be granted where they are mentioned in statements of case. The Court was not persuaded to use its discretion otherwise.
2. There was not sufficient evidence that the SARs should be kept confidential. The Court referenced the fact



Article By [Rose Castle](#)
[Garon Anthony](#)
[Squire Patton Boggs \(US\) LLP](#)
[UK Finance Disputes and Regulatory](#)
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that they had been submitted around sixteen and seven months ago respectively.

3. There was no evidence that the Bank would be made to commit an offence as suggested. In any case, the Court was ordering inspection 14 days after the date of the order, to allow the NCA time to apply to vary the order.
4. Inspection was necessary for the fair disposal of the proceedings, as the SARs were plainly relevant. They were the primary communications that Mr Lonsdale alleged to be defamatory.

Conclusion

There are a couple of lessons to be learnt from this case.

Firstly, be careful about the drafting of a SAR, chose your words carefully. It si clear that SARs will not always be held to be confidential and may be discloseable in Court proceedings. And you don't want them being used against you to form the basis of a claim, in defamation or otherwise.

Secondly, you will need strong evidence to persuade the Court of the confidentiality of a document or the risk of committing an offence of tipping off/prejudicing an investigation to protect the SAR from disclosure to and inspection by an opponent. Mere concern over confidentiality will not be enough.

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