

**EMPLOYMENT APPEAL TRIBUNAL**  
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal  
On 4 October 2018

**Before**

**HIS HONOUR JUDGE MARTYN BARKLEM**

**(SITTING ALONE)**

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NORTHAMPTON BOROUGH COUNCIL

APPELLANT

MS M WOLSTENHOLME

RESPONDENT

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Transcript of Proceedings

JUDGMENT

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## APPEARANCES

For the Appellant

MR PAUL BOWNES  
(Solicitor)  
Weightmans LLP  
St Philips Point  
Temple Row  
Birmingham  
B2 5AF

For the Respondent

MS MARGARET WOLSTENHOLME  
(The Respondent in Person)

## **SUMMARY**

### **PRACTICE AND PROCEDURE - Disclosure**

An Employment Tribunal erred in law in ordering disclosure which would, if given, have put the Respondent in breach of section 19(5) of the **Anti-Terrorism, Crime and Security Act 2001**, by which the Respondent was prevented from further disclosing information obtained by it from HMRC pursuant to subsection 19(2) except in certain circumstances and with the consent of the Commissioners of HMRC. No reasons for the decision had been given despite there having been sought.

**A** **HIS HONOUR JUDGE MARTYN BARKLEM**

1. In this Judgment I shall refer to the parties as they were before the Employment Tribunal.

**B**

2. This is the Full Hearing of an appeal brought by the Respondent against an Order made by Employment Judge Ord on 29 May 2018, whereby the Respondent was ordered to deliver to the Claimant all documents received from and sent to HMRC regarding the Claimant, redacted as required but left unredacted insofar as is necessary so that the evidence upon which the Respondent relied in relation to the matters about which the Complainant complains in these proceedings can be seen and understood by her.

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**D**

3. The Claimant was dismissed (and I am describing this in the briefest of terms) for undertaking work other than the job she was doing for the Respondent, in breach of a requirement that she seek permission to undertake any such employment. In her ET1, which is handwritten but clearly legible, the Claimant admits having taken secondary employment, and says that, at the disciplinary hearing, she said “*some stupid things and denied secondary employment*”. Given these admissions I am not sure to what issue the disclosure ordered goes, in any event. The Claimant has appeared today and has addressed me briefly, and I think following our discussion we are both a lot clearer as to what the issues might be, but these plainly will have to be resolved elsewhere.

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4. As part of its investigation into the Claimant having undertaken secondary employment (and, I infer, possible criminal offences, as HMRC would only have been able to provide

**H**

**A** information in relation to such an investigation) the Respondent sought and obtained certain information from HMRC: I infer that these will have been records of declared earnings.

**B** 5. However, under section 19(5) of the **Anti-Terrorism, Crime and Security Act 2001**, the Respondent is prevented from further disclosing information obtained by it pursuant to subsection 19(2) except in certain circumstances and with the consent of the Commissioners.

**C** 6. An officer of HMRC wrote to the Respondent, which had sought its advice, and confirmed that the information which had been provided could not be disclosed in connection with Employment Tribunal proceedings. This email was forwarded to the Employment **D** Tribunal, but as no Reasons have been provided by the Tribunal, despite having been sought, it is not clear whether it was seen by the Employment Judge, or, if it was, why he nevertheless made the Order which he did.

**E** 7. To make an Order which would result in a public body breaching the law is clearly an error of law. If the Tribunal had in mind some exception to the statutory provision engaged, then the failure to give Reasons itself constitutes a similar error. Consequently, I have no **F** hesitation in allowing this appeal, setting aside the Disclosure Order and remitting it back to the Tribunal.

**G** 8. The Tribunal considering the matter afresh should, first, establish to what issue in the case the HMRC information is relevant: the Claimant seems to admit that she was indeed engaged in secondary employment despite having denied it to the Respondent. If there is **H** indeed a live issue, it should then consider the comment by HMRC in the email to the effect

**A** that it would be able to disclose the material to the Employment Tribunal if ordered to do so by a Tribunal Judge. This might afford a route forward.

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