Case No: 2201013/2019

EMPLOYMENT TRIBUNALS

Claimant: Ms A L Cuases

Respondent: Mr P Evans

Heard at: London Central Employment Tribunal **On:** 21 - 21 January
and in Chambers 23 January 2020

Before: Employment Judge K Welch (sitting alone)

Representation
Claimant: Ms M Reid, for support
Mrs M Fabiola Berta Lugo, Interpreter
Respondent: Mr J Crozier, Counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's claim for notice pay is not struck out;
2. The Claimant's claim for holiday pay is not struck out;
3. The Claimant was a Domestic Servant for the purposes of the Working Time Regulations 1998;
4. The Claimant was not a family worker in accordance with the National Minimum Wage Regulations 2015;
5. The Tribunal does not have jurisdiction for the Claimant's claims of sex discrimination and sexual harassment since the claims were presented out of time. The Tribunal will not extend time as it is not just and equitable to do so.
6. The Respondent's application for a continuation of the interim restricted reporting order and/or an anonymity order is refused. The Interim Restricted Reporting Order dated 21 January 2020 is revoked.

RESERVED REASONS

1. The Claimant brings claims of sex discrimination/sexual harassment, notice pay, holiday pay, a breach of the National Minimum Wage Regulations (together with wages owed in respect of that alleged breach), breaches of the Working Time Regulations 1998 (in relation to working over the maximum working week and not being provided with rest periods). She also, at clause 8.1 of the claim form, claims "other payments", although it is not entirely clear what those other payments are.
2. The claim was listed initially for a preliminary hearing for case management purposes on 9 August 2019, although as there was no Spanish interpreter present and the Claimant indicated that one was required in order to fully understand the hearing. This was postponed until 19 September 2019 (incorrectly stated on the order as 2018). At the subsequent preliminary hearing for case management, Employment Judge Pearl listed the case for an open preliminary hearing to be held for three days commencing on 21 January 2020 in order to consider the following:
    2.1. "Should the notice pay claim be struck out as having no reasonable prospects of success?
    2.2. Should the holiday pay claim be struck out on the same basis?
    2.3. Do the relevant National Minimum Wage and Working Time Regulations apply and was the Claimant either a 'domestic servant' and/or 'family worker'?
    2.4. In relation to the claims of sex discrimination/harassment, is there jurisdiction to entertain these claims which are, on the face of matters, out of time? (This may involve the Tribunal saying whether it is just and equitable to extend time.)
    2.5. At the outset of this preliminary hearing the EJ will wish to deal with the Respondent's application for the parties to be anonymised and for the press to be restricted from reporting their identities. Currently the Claimant opposes such application".
3. It was agreed between the parties that there should be consideration of whether a restricted reporting order and/or an anonymity order should be made in respect of the proceedings. I agreed to consider this on an interim basis at the start of the hearing, although the parties had the opportunity to address me on these applications for both the interim and continuing orders at the start of the hearing.

4. I granted an interim restricted reporting order at the commencement of the hearing, since I was not in a position to come to a final decision on whether a restricted reporting order and/or an anonymity order should be granted prior to hearing evidence from both the Claimant and the Respondent. I felt it appropriate to preserve the status quo and to prevent publication of evidence which might impact upon the Respondent's human rights (articles 8 and 10) prior to making a substantive decision. To have failed to have done so might have severely prejudiced any subsequent decision on the application once further consideration had been given to it.
5. I was provided with an agreed bundle of documents relevant to the issues to be decided in the preliminary hearing. Page numbers in this judgment refer to pages within that bundle. The Claimant referred in evidence to additional text messages/ emails that the Respondent had sent to her during her employment. The Claimant provided these to the Respondent's solicitor and they were added to the bundle in readiness for the second day of the hearing.
6. The bundle included witness statements from the Claimant and the Respondent together with additional written statements from one of the Claimant's friends (HH) who attended Tribunal on the first day, although in the absence of a Czechoslovakian interpreter, was unable to give oral evidence on this day and could not attend the subsequent days. In any event, her statement appeared to only recite what the Claimant had told her and did not have relevance to the issues which I had to decide at the preliminary hearing. Therefore, the Claimant agreed that HH would not give evidence. There was an additional statement from another of the Claimant's friends (Doctor AB) who was not attending Tribunal. For similar reasons, the evidence within the statement was not material to the issues to be considered at the preliminary hearing.
7. I heard evidence from the Claimant and the Respondent whose evidence was tested by cross-examination and questions from myself.

Findings of fact relevant to the open preliminary hearing

8. The Claimant was employed as a housekeeper in the Respondent's home. There appeared to be a dispute over the start date of the Claimant's employment. It was accepted that from January 2018 until her resignation on either 12 or 19 January 2019, she was employed by the Respondent. The Claimant agreed that her duties were as contained within schedule 2 of her contract of employment [page C15] as follows:-

> "General housekeeping duties;
> Food shopping and miscellaneous shopping;
> Looking after any of the pets at the property [although it was acknowledged that there were no pets during the time that the Claimant worked for the Respondent];
> Cleaning;
> Cooking;

Laundry".

9. The Respondent lives in a large house comprising of five bedrooms, a swimming pool, a garden TV room (otherwise known as the family room), a kitchen, study, dining room, cinema room and conservatory. There was a difference in evidence as to whether the staff (which included the Claimant and the Respondent's daughter's housekeeper who, whilst working at his daughter's property, lived with the Respondent and the Claimant) had the garden TV room as a staffroom. However, I accept the evidence of the Respondent that there was no set rules as to which rooms the two housekeepers could use. However, it was accepted that there were unspoken rules concerning the Claimant's use of the Respondent's home. For example, the Claimant would not be entitled to use the Respondent's own bedroom, bathroom and also his study, due to the likelihood of it having confidential papers.
10. The Claimant gave evidence that she asked the Respondent's permission to use the swimming pool on one occasion but was then told by him not to use it again. The Respondent gave evidence that the Claimant was able to use the swimming pool and had indeed done so during the time she lived in his house. I accept the evidence of the Respondent that the Claimant was able to use the swimming pool and had in fact done so on at least one occasion.
11. Both parties accepted that the Respondent was away from his home on a number of dates during the Claimant's employment with the Respondent. The Claimant accepted, although could not confirm exact dates, that the schedule of dates provided by the Respondent (as taken from the Respondent's diary and appeared at pages B42-44) were correct which meant that he was away from home for approximately half of his time.
12. When the Respondent was at home, he would regularly go out for dinners with business associates and/or be late home from work. The Claimant would prepare meals, which they would sometimes eat together in either the dining room or the kitchen, should he be at home.
13. The Respondent had a subscription to a local cinema which entitled him to take a guest to watch films. On various occasions throughout the Claimant's employment, it was accepted that the Claimant attended the cinema as the Respondent's guest.
14. It was agreed between the parties that the Claimant had been allowed to undertake English language classes during the day on Tuesdays and Thursdays although prior to her resignation, this had been refused by the Respondent, as he had recently come out of hospital and needed someone at home with him.

15. It was clear that the Claimant undertook all of the tasks relating to the running of the household including shopping, (an Ocado delivery was used for most of the food shopping although the Claimant went out to shops in any event) cooking, cleaning and generally running the house. The Respondent did very little around the house, which may have been due to the little time that he spent there.
16. The Claimant was not allowed to bring third parties/ friends to the Respondent's home if he had not previously met them and given his consent. The reason for this is that a former housekeeper's guest had burgled an amount of jewellery from his home and he did not wish for this to be repeated.
17. I accept the Respondent's evidence that other than working, business engagements, and going to the cinema, the Respondent did not socialise generally. He gave evidence that he would sometimes watch TV in a separate room to the Claimant, mainly when he wished to watch rugby, since no one else wanted to watch this with him.
18. The Claimant gave evidence that she was required to work excessive hours (being 15.5 hours per day) and that she was 'enslaved' to such an extent that every time she left the house she would be telephoned or had messages or emails from the Respondent telling her to return. I do not accept either of these propositions from the Claimant. I accept that she was required to be in attendance when the Respondent was there in order to prepare his breakfast and that she was required to undertake housekeeping tasks throughout the day, which included being in the property when maintenance people and/or shopping deliveries were expected. However, I do not accept that she was subjected to carry out onerous duties. I make no finding of the actual hours worked since this is a matter for a subsequent full merits hearing concerning her claims under the National Minimum Wage legislation and/or the Working Time Regulations.
19. The Claimant provided screenshots of messages sent between her and the Respondent, together with evidence of a few missed calls from the Respondent, some of which were additional documents the Claimant provided on the second day of the hearing. However, I do not accept the Claimant's assertion that the Respondent would require her to stay in the home and that on many occasions when she left it, she was telephoned or texted to return home. There was no documentary evidence to support that, since there were no messages or emails which ever referred to the Claimant having to return home.
20. The Claimant was provided with a £1,000 a month kitty to buy food and other sundries for the household's use (including the Claimant and the other housekeeper).

21. The Claimant made allegations of sexual harassment by the Respondent on two occasions, namely February 2018 and a date shortly after 23 March 2018. These allegations are denied by the Respondent. It is unnecessary and not appropriate for me to consider the allegations in respect of whether or not they occurred. I had to consider, however, the reasons why they had been presented out of time.

22. The Claimant gave evidence that she knew that what she alleged the Respondent to have done was wrong, and it was clear from the statement she provided that she had spoken about the alleged incidents with others. The Claimant had access to the internet and use of the Wi-Fi in the Respondent's home and I am satisfied that she was in a position to have been able to find out about any time limits regarding claims for sexual harassment should she have chosen to do so.

23. The Claimant sought legal advice around the date of her resignation. She confirmed that she spoke to someone at Camden Community Law Centre on or around 12 December 2018. She had also informed the Respondent that on two occasions during her notice period she needed time off in order to seek legal advice.

24. The Claimant confirmed in her evidence that she had taken paid holiday from the Respondent's employment during her employment. She had confirmed prior to the hearing in her witness statement that she had been paid holiday pay and notice pay in accordance with the contract but that they were not based on what the levels of pay should have been due to her assertion that she had worked hours considerably in excess of those contained within the contract.

Law

Restricted Reporting Orders/Anonymity Orders

25. The starting point for this consideration is Rule 50 of the Employment Tribunal Rules of Procedure which states:

    "50.— Privacy and restrictions on disclosure

    (1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.

    (2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include—

(a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;

(b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;

(c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;

(d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.

(4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.

(5) Where an order is made under paragraph (3)(d) above—

(a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification;

(b) it shall specify the duration of the order;

(c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and

(d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.

(6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998".

26. I also had regard to the case of Ameyaw v PricewaterhouseCoopers Services Limited UK EAT/0244/18/LA which confirmed that the starting point is the common law principle of open justice, which is at the heart of our system of justice and vital to the rule of law. Whilst there are exceptions to the principle of open justice, these have to be justified by some even more important principles.

27. At paragraph 33, Judge Eady QC stated, "The principle of open justice - whether derived from common law or from the ECHR - is, therefore, a fundamental aspect of the rule of law, which can only be curtailed where other competing rights are engaged such as to effectively mean that, in that case, justice would otherwise be denied." She went on to say at paragraph 45, "Although an ET's power to restrict the publication of Judgments and Written Reasons is thus not unlimited, there is a broad discretion vested in the ET under r50. which is not limited in time…That said, it is likely to be a rare case where other rights (including those derived from Art 8 ECHR) are so strong as to grant an indefinite restriction on publicity….:the requisite balancing exercise in each case is for the ET….".

28. In the case of Fallowes and others v News Group Newspapers Limited UK EAT/0075/16/RN, Mrs Justice Simler provided useful guidance at paragraph 48 of her judgment (and which was referred to in Ameyaw) on earlier authorities as follows:

"(i) That the burden of establishing any derogation from the fundamental principle of open justice or full reporting lies on the person seeking that derogation. It must be established by clear and cogent evidence that harm will be done by reporting to the privacy rights of the person seeking the restriction on full reporting so as to make it necessary to derogate from the principle of open justice;

(ii) Where full reporting of proceedings is unlikely to indicate whether a damaging allegation is true or false, courts and tribunals should credit the public with the ability to understand that unproven allegations are no more than that. Where such a case proceeds to judgment, courts and tribunals can mitigate the risk of misunderstanding by making clear it has not adjudicated on the truth or otherwise of the damaging allegation;

(iii)The open justice principle is grounded in the public interest, irrespective of any particular public interest the facts of the case give rise to. It is no answer therefore for a party seeking restrictions on publication in an employment case to contend that the employment tribunal proceedings are essentially private and have no public interest accordingly;

(iv) it is an aspect of open justice and freedom of expression more generally that Courts respect not only the substance of ideas and information but also the form in which they are conveyed".

29. Rule 37 of the Employment Tribunal Rules and Procedure 2013 provides:

"37.— Striking out

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;…

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing."

30. As regards to the issue as to whether the Claimant was a 'family worker' I had regard to Regulation 57 of the National Minimum Wage Regulations 2007 which provides:

"**57.— Work does not include work relating to family household**

(1) In these Regulations, "work" does not include any work done by a worker in relation to an employer's family household if the requirements in paragraphs (2) or (3) are met.

(2) The requirements are all of the following—

(a) the worker is a member of the employer's family;

(b) the worker resides in the family home of the employer;

(c) the worker shares in the tasks and activities of the family.

(3) The requirements are all of the following—

(a) the worker resides in the family home of the worker's employer;

(b) the worker is not a member of that family, but is treated as such, in particular as regards to the provision of living accommodation and meals and the sharing of tasks and leisure activities;

(c) the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, as respects the provision of the living accommodation or meals;

(d) if the work had been done by a member of the employer's family, it would not be treated as work or as performed under a worker's contract because the requirements in paragraph (2) would be met.

31. The only case on this area appeared to be Nambalat v Taher and another and Udin v Chamsi-Pasha and others [2012] EWCA Civ 1249 which was a combined appeal. The Court of Appeal's judgment in this case was given by Lord Justice Pill which provided, "I agree with the approach and conclusion of the EAT and the Chairman of the Tribunal. As the EAT stated, the test requires an overall approach to family membership…

"What is clear from reg 2(2) read as a whole is that, for the exemption to apply, the work must relate 'to the employer's family household' and that 'the work is done in that context', the context being that of a family household in which the worker is treated as a member of the family."

32. The case went on to say that the central requirement is that the worker must be treated as a member of the family and particular regard must be had to the provision of accommodation and meals and the sharing of tasks and leisure activities. The case went on to state at paragraph 42 “A person receiving free accommodation and meals may be expected to perform more household duties for the family than other family members. What matters is whether the work is done in a context in which the worker is treated as a member of the family. The way in which household tasks are shared is, as the regulation recognises, an important indicator of whether the worker is treated as member of the family. The way in which accommodation is allocated, meals taken and leisure activities are organised are other indicators. It is for the Tribunal to decide whether, on the evidence, it is established that the worker is being treated as a member of the family and not as a domestic servant.”

33. The Working Time Regulations 1998 at Regulation 19 provides that:
“domestic service”
Regulations 4(1) and (2)….6(1), (2) and (7),… 7(1), (2), (6) and 8 do not apply in relation to a worker employed as a domestic servant in a private household”.

34. There is no further definition of ‘domestic service’ and no real authorities in the Employment Tribunal as to what this amounts to.

35. I was referred by the Respondent to the case of Cameron v Royal London Ophthalmic Hospital [1941] KB350 which confirmed that the label “domestic servant” is one of fact and little reliance can be placed on its application in a number of different statutes in which it appears (as here). I was also referred to In re Junior Carlton Club [1922] 1KB 166, where Mr Justice Roche stated “Domestic servants are servants, whose main or general function is to be about their employer’s persons, or establishments, residential or quasi residential, for the purpose of ministering to their employer’s needs or wants, or to the needs or wants of those who are members of such establishments, or of those resorting to such establishments, including guests. That description, which, as I say, is not intended to be an exhaustive one, certainly covers the case of a club”.

36. Finally, I had regard to the time limits for discrimination complaints from Section 123 of the Equality Act 2010 which provides

s 123 Time limits

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it."

37. Robertson v Bexley Community Centre [2003] IRLR 434 (Court of Appeal) makes clear that an extension of time is not automatic. The case law requires the Claimant to raise something which the Tribunal considers makes it just and equitable to extend time. It is accepted that the Tribunal may consider the factors identified in Section 33 of the Limitation Act 1980. These are:

37.1. the length of and reasons for any delay;

37.2. the extent to which evidence is likely to be less cogent than it would if the claim had been brought in time;

37.3. the way in which the Respondent replied to any reasonable requests from the Claimant for information;

37.4. the extent to which the Claimant acted promptly and reasonably once she knew of the possibility of bringing a claim.

Conclusion

38. The Claimant gave evidence that she was paid for her notice period in accordance with the written contract. It was also clear that the Claimant had not worked for the vast majority of the notice period, either being on holiday or being paid in lieu of notice as the Respondent did not wish her to return to his home after her holiday. She had, in fact, worked for 5 days of her notice period. However, the Claimant's case was that she was not paid the correct amount for her notice pay due to the hours she worked. Whilst I accept the Respondent's counsel's argument that this claim is intrinsically linked with her claims under the National Minimum Wage legislation and/or the Working Time Regulations, due to my findings as set out below, it is not

appropriate to strike out the notice pay claim since it will be necessary for a Tribunal to consider whether there has been an underpayment under the National Minimum Wage legislation and whether the payments for notice were correct as to the amounts paid.

39. As far as holiday pay is concerned, the Claimant accepted that she was allowed to take her holiday entitlement. However, her complaint for holiday pay is that she considers that she was not paid the correct amount for her holiday pay. I do not consider that this has no reasonable prospects of success as is required to strike out the claim, and therefore am allowing this claim to proceed to a final hearing as to the amount of holiday pay she was entitled to receive.
40. I had to consider whether the National Minimum Wage legislation and the Working Time Regulations applied to the Claimant in light of the circumstances of her arrangement with the Respondent.
41. Turning firstly to the Working Time Regulations ('WTR'), I considered whether the Claimant should be classed as a domestic servant, as if so, regulation 19 WTR means that certain rights under that legislation would not apply to the Claimant, including the restrictions placed on the maximum working week (regulation 4 WTR).
42. I consider that at all material times the Claimant was a domestic servant in the Respondent's employ. It was clear that she was employed as a housekeeper in the Respondent's own home (ie a private household as is required by regulation 19 WTR), and was employed to carry out domestic tasks for the Respondent on a day to day basis (namely cooking, cleaning, shopping, etc). I therefore feel that she was a domestic servant for the purposes of the WTR.
43. Under the National Minimum Wage Regulations 2015 ('NMW') there is an exemption for workers who, whilst not being a member of that family, are treated as such, in particular as regards to the provision of living accommodation and meals and the sharing of tasks and leisure activities.
44. It was clear that the Claimant made no payments and had no deductions made from her wages in respect of the living accommodation or meals with which she was provided. It was necessary for me to consider whether she was treated as a member of the Respondent's family in order for the exemption to apply.
45. I accept that the Claimant and the other housekeeper employed by the Respondent's daughter had some meals with the Respondent, when he was at home. I also took into account that the Respondent visited the cinema with the Claimant on at least 5 occasions during the Claimant's

employment. However, I am not satisfied that she was treated as a member of the Respondent's family.

46. It was clear that the Claimant had not spent time with the Respondent's grandchildren, or sat or ate with them when they visited. There was no sharing of tasks between the Respondent and the Claimant. I did not consider that this in itself was conclusive to the fact that the Claimant was not treated as a member of the family. The caselaw is clear that there is no need for equivalence in terms of the tasks performed by the worker and the employer. I was satisfied that the Respondent was not able to carry out tasks around the home due to his frequent absences, and his late hours spent working or entertaining. However, there did not appear to be any occasions on which the Respondent carried out any tasks relating to the household.
47. The Claimant made the Respondent's breakfast, made his and her bed, and carried out cleaning, shopping and the laundry. She would also be involved in the preparation of the evening meal, which was, on occasions, eaten together when the Respondent was at home. Also, the Respondent regularly used the TV room to watch television with the Claimant and his daughter's housekeeper.
48. However, I did take into account the Claimant's evidence, which I accepted, that there were some rules concerning the use of the Respondent's home including restrictions on entering certain rooms and the use of the swimming pool. The Respondent himself accepted that there were some unspoken rules in place concerning the use of his home. Also, it was clear that the Claimant was restricted from using certain rooms within the Respondent's house.
49. Turning to the claims of sexual harassment from February and March 2018, these were clearly out of time, since the claims were brought on 21 March 2019. The Claimant accepted in cross examination that she knew at the time that what had allegedly happened to her was wrong and that she had been in a position to take legal advice on it at any time during her employment.
50. The Claimant gave no reason as to why she had delayed in bringing her complaints other than that the Respondent had apologised and said he would not do it again (both of which are denied by the Respondent), and therefore there was no need to bring a claim at that time. I am not satisfied that the Claimant did not know, or could not have found out about the bringing of a complaint sooner. She had contacted the law centre around the time of her resignation and had complained to friends about the alleged treatment at the time it was said to have occurred, but took matters no further, when, in her evidence, there were no further alleged incidents of this nature.

51. I am concerned that the cogency of any evidence relating to these incidents would be seriously affected by the long delays in bringing these complaints. Had they been brought nearer to the date of the alleged incidents, it would have been easier for the Respondent to have recalled the events.

52. The Claimant did not request further information from the Respondent concerning these allegations. The Respondent was not responsible for any delay in the Claimant presenting these complaints. Finally, the Claimant appears to have brought these complaints only when she resigned and was considering bringing other complaints to the Tribunal.

53. I am therefore not satisfied that she brought her complaints as soon as she became aware of the possibility of bringing a claim, since I believe that she would have known of the possibility of pursuing complaints much sooner. I consider that had the Claimant chosen to do so, she could have brought proceedings within the prescribed time limits, but chose not to as there were no further alleged occurrences. Therefore, I do not consider it just and equitable to extend time on this basis. The time limits are clear and it is necessary for the Claimant to provide me with some reasons for the delay, which I do not feel that she has done, other than to say that as there were no further occurrences of this alleged behaviour she decided not to take any action. For the avoidance of doubt, I make no findings as to whether these alleged incidents occurred or not, since no evidence was heard concerning them.

54. Finally, I turn to the application of the Respondent for a continuation of the temporary restricted reporting order which I gave at the start of the hearing in order to preserve the status quo.

55. As the starting point is open justice, I feel that it is necessary to have this in mind when considering the Respondent's application for a restricted reporting order and/or anonymity order.

56. I am satisfied that the Respondent's right to privacy under Article 8 of the Human Rights Act 1998 ('HRA') is engaged, but it is necessary for me to consider whether the interests of the Respondent in owning that right should yield to the broader interest of open justice. I accept that neither article has precedence over the other. It is necessary to focus on the comparative importance of the specific rights being claimed in the individual case.

57. In this case, the Respondent's health condition, living arrangements and reputation (to his business connections, his adult children and his grandchildren) are all worthy of protection. However, as the complaints of sexual harassment are not to continue for the reasons set out above, and as we should credit the public with the ability to understand that unproven

allegations are just that, I consider that this materially affects the balancing exercise towards the need for open justice.

58. As the Claimant's remaining complaints are under the National Minimum Wage legislation and Working Time Regulations (for the calculation of holiday pay), I do not consider that it will be necessary or relevant for there to be a detailed consideration of the Respondent's health conditions and/or his private life so as to make it appropriate for a restricted reporting order or anonymity order to be necessary.
59. Therefore, the Respondent's application for a restricted reporting order to continue after the date of this Judgment is refused. As is the application for an anonymity order.
60. The remaining complaints under the Working Time Regulations for holiday pay and breaks, wages owed, the National Minimum Wage, and notice pay continue. It is necessary for a further preliminary hearing for case management to be held in private and this will be listed in due course. At this preliminary hearing, it will be appropriate for the case to be set down for a final hearing.

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Employment Judge Welch

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Date23 March 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

23/03/2020 .....

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FOR THE TRIBUNAL OFFICE