Neutral Citation Number: [2022] EAT 119

Case No: EA-2020-000732-BA

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12 August 2022

**Before** :

**HIS HONOUR JUDGE SHANKS**

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**Between :**

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|---|---|
| **DR T F PIEPENBROCK** | **Appellant** |
| **- and -** | |
| **LONDON SCHOOL OF ECONOMICS & POLITICAL SCIENCE** | **Respondent** |

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**Theodore F Piepenbrock** (in person assisted by Garry Piepenbrock) the **Appellant**
**Paul Michell** (instructed by Pinsent Mason LLP) for the **Respondent**

APPLICATION FOR ANONYMISATION/
REPORTED RESTRICITON ORDER

Hearing date: 28 June 2022

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# JUDGMENT

## SUMMARY

## PRACTICE AND PROCEDURE

The EAT was invited by the Respondent LSE to make an order to protect the identity of Ms D, a young woman about whom the Appellant had made lurid allegations which the employment tribunal had found to be untrue.

The EAT found that Ms D's Art 8 rights were engaged and that the Appellant's intentions in relation to publicizing his allegations were against the interests of justice. Balancing these matters against the principle of open justice and the Appellant's Art 6 rights and the right of freedom of expression of the Appellant and others, the balance came down firmly in favour of the former and it was appropriate and necessary to make an order.

Given the Appellant's intentions it would not be sufficient simply to anonymize Ms D in the EAT judgment; it would also be necessary to control public access to documents lodged with the EAT and to make an order preventing any disclosure of Ms D's identity. It was also necessary to make the order indefinite (though subject to a right to apply to revoke or vary it).

**HIS HONOUR JUDGE SHANKS:**

## Introduction

1. This is an application by the Respondent to this appeal, the LSE, for an order to prevent the disclosure to the public of the identity of a woman who has up to now been referred to as "Ms D" in these appeal proceedings and in the proceedings in the employment tribunal below. The appeal itself, which I dismissed in a judgment dated 21 December 2021 following a hearing on 30 November 2021, was brought by the Appellant, Dr Piepenbrock, against a decision by EJ Hodgson not to allow him to amend his claims against the LSE in the employment tribunal.

2. The background to the appeal and to this application are described in my judgment dated 21 December 2021. As I said at para 7 of the judgment I decided that this application should be the subject of a separate hearing to give Dr Piepenbrock, who is strongly opposed to the making of an order, an opportunity to make oral representations (while I made an interim order to preserve the position in the meantime).

3. The most important development since December 2021 is that Dr Piepenbrock's employment tribunal claims were heard by EJ Hodgson and members sitting in London Central over a period of nearly seven weeks in February and March 2022 and a very substantial judgment was promulgated by the tribunal on 8 June 2022. The tribunal rejected all Dr Piepenbrock's claims and made a number of relevant factual findings against him. Also, an application by Dr Piepenbrock for permission to appeal against my decision to dismiss his appeal to the EAT was refused on the papers by Warby LJ on 30 March 2022.

4. The LSE's application was heard remotely with the consent of all on 28 June 2022. As with the hearing on 30 November 2021 Dr Piepenbrock appeared with his son Garry who assisted him and

addressed me directly; Paul Michell of counsel appeared for the LSE. I was also provided with a bundle which included material coming into existence in the intervening seven months, including the employment tribunal's judgment of 8 June 2022, and with skeleton arguments from both sides, Dr Piepenbrock's extending to 54 pages.

## The legal framework

5. Although there is no express provision in the EAT's rules of procedure, there is no doubt that the EAT has a jurisdiction analogous to that provided to employment tribunals by rule 50 of the Employment Tribunals Rules of Procedure by virtue of section 30(3) of the Employment Tribunals Act 1996. Rule 50 provides, in so far as relevant:

> **(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 to protect the Convention rights of any person …**
>
> **(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:**
> **…**
> **(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 anonymization or otherwise …**
>
> **(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 for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.**
>
> **(5) …**
>
> **(6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998.**

6. The proper approach to this jurisdiction has been considered by the EAT in recent years in Fallows v News Group [2016] ICR 801 (Simler P) and TYU v ILA Spa Ltd [2022] ICR 287 (Heather

Williams QC, sitting as a deputy High Court Judge), to which I have had regard.

7. The latter case concerned, as does this one, the rights of an individual who was neither a party to nor a witness in the proceedings deriving from Art 8 of ECHR. Art 8(1) of ECHR provides: "Everyone has the right to respect for his private and family life, his home and his correspondence". Art 8(2) permits interference with these rights where it is justified, in the sense of being necessary and proportionate, for a number of reasons including "the protection of the rights and freedoms or others". The right to protection of a person's reputation constitutes an element of private life which is protected by Art 8 and being named in a judgment in connection with disreputable allegations (even if true) potentially engages Art 8.

8. No order can be made under this jurisdiction without giving full weight to the fundamental principle of open justice (which goes with Art 6 of the ECHR which itself requires, subject to exceptions including the protection of the private life of others, that trials are held in public and judgment pronounced in public) and Art 10 of the ECHR which, subject to similar exceptions, provides for the right to freedom of expression. The burden of establishing a derogation from the principle of open justice or full reporting lies on the person seeking the derogation and a balancing exercise must be carried out to establish which of the competing rights or principles or interests should prevail.

## Dr Piepenbrock's allegations against Ms D

9. The basic allegations made by Mr Piepenbrock against Ms D in these proceedings are described in para 9 of my judgment dated 21 December 2021. During the course of the appeal various documents have been lodged with the EAT by Dr Piepenbrock where these allegations are set out and elaborated (including some in which Ms D is named). Most recently in para 8 of his skeleton argument prepared for this hearing Dr Piepenbrock puts the main allegation in these terms:

> **On 12 November 2012 Ms D sexually harassed and exposed herself to her supervisor, the innocent, unsuspecting and happily-married Dr Piepenbrock, during the course of her employment at the LSE.**

Para 8 goes on to describe what she did as "gross sexual misconduct." In para 9 Dr Piepenbrock states that she had admitted to making a "false and malicious complaint" against him and states that she then initiated a "false grievance" against him. His case as described by in para 11 of the skeleton is that the way the LSE dealt with that grievance led to him having a "major autistic meltdown", having to take sick-leave for 20 months and to the unlawful and unfair termination of his employment on 2 September 2014. This was what led to him bringing proceedings against the LSE in the employment tribunal for discrimination and unfair dismissal and in the High Court for personal injury.

10. The employment tribunal found unequivocally that Dr Piepenbrock's account of what happened on 12 November 2012 was not true, that in fact there were no sexual advances by Ms D at all and that his allegations were made maliciously (see in particular paras 5.222, 5.224 and 7.34 of the judgment of 8 June 2022). His conduct towards Ms D in the aftermath of 12 November 2012 had already been found by Nicola Davies J in the High Court trial to be improper and most likely caused by his personality traits and inability to observe boundaries (see paras 5.31 and 5.32 of judgment of 8 June 2022). The employment tribunal also found that Dr Piepenbrock did not make a grievance against Ms D on 19 November 2012 as he maintained before them and during the hearing of the appeal before me (see para 5.88 of the judgment of 8 June 2022).

## Dr Piepenbrock's behaviour and intentions towards Ms D

11. After the hearing and dismissal of Dr Piepenbrock's 2015 High Court claim in 2018, the LSE applied to strike out Dr Piepenbrock's claims in the employment tribunal, partly in reliance on the contents of a website called [redacted]. In the course of considering that application EJ Hodgson found that Dr Piepenbrock had "effective control of [the] website and what was published on it" (see: para 51 of his judgment dated 9 April 2020 at p 47 of bundle for this hearing) and that the website

had named and identified Ms D, quoted selectively from the High Court judgment to cast her in a negative light, referred to her as being a "stalker", posted numerous photos of her and made sexual references to her, including that she had dressed provocatively (see paras 59 and 60 of the judgment at p 48).

12. In 2019 Dr Piepenbrock started another High Court action against the LSE for defamation and other alleged wrongs arising from the same matters and Ms D was named as a defendant along with the LSE. An anonymity order was made for Ms D's benefit in that case in 2020. In 2021 he brought yet another High Court action against the LSE and 14 others including Ms D. Again, an order to protect Ms D's identity was made in that case by Nicklin J on 27 April 2022 (see pp 213-6 in bundle).

13. The employment tribunal in this case has reached some highly critical conclusions about Dr Piepenbrock in their judgment of 8 June 2022. They say that he is not a reliable or credible witness; that has " … demonstrated behaviour which is manipulative and dishonest"; and that his approach to individuals who he believes have wronged him is "frequently malicious and actively destructive" (see: para 7.24 of judgment at p334 of bundle). At para 5.216 the tribunal refers to his "vilification" of Ms D and others on a public website and that it demonstrates " … his willingness to seek to destroy her reputation." The tribunal say at para 7.34 that his antipathy towards Ms D has " … deepened and intensified with time."

14. As I have said, Dr Piepenbrock has continued to name Ms D in documents he has submitted relating to this application; he continues to refer to her as the "stalker" and to make allegations against her, including that she has created multiple fake identities (see: documents at pp57-152 and para 8 at p59 in particular). His skeleton argument dated 14 June 2022 prepared for this hearing has continued true to form. At para 37 he goes into unnecessarily lurid detail about the allegations of exposure on 12 November 2012 he makes against her. At para 66 he says that she is " … clearly a deeply sad,

lonely and unhappy person." At para 79 he expressly describes her as a "sociopathic liar." At para 84 he says:

> **… Ms D continues to deceive by attempting to continue to portray herself as the victim when it is Dr Piepenbrock who is the victim and she is the stalking perpetrator … If Ms D wants her victim to leave her alone (ie not to be forced to have to file lawsuits against her) then she should not have sexually harassed and stalked him and then lied about it to destroy his health and career. Dr Piepenbrock is not stalking or harassing his acknowledged stalker, he is simply using the UK legal system to bring justice to remedy the unlawful wrongs that she and the LSE have maliciously and negligently inflicted, and so that Ms D and the LSE do not destroy other innocent lives …**

15. He continues to oppose this application in strident terms and makes clear that he intends to continue to pursue the point. He indicates in the skeleton argument that he will appeal any finding that goes against him to the Court of Appeal and the Supreme Court come what may "on behalf of all disabled autistic litigants in person in the UK" (see: para 103). When I asked him in the course of the hearing why he is so keen to resist this order, he maintained it was solely because of his absolute dedication to the rule of law in this country and the concomitant principle of open justice.

16. Taking account of all this material I am quite satisfied that, whatever his precise subjective motivation, Dr Piepenbrock continues to bear a very strong animus against Ms D and that, if I were to name her in my judgment or to make no order preventing him from naming her and identifying her to others, he is very likely to use any document associated with this appeal (including the judgment) in an attempt to "name and shame", vilify and harass her and that he will not stop doing so voluntarily.

## The effect of publicity on Ms D

17. In November 2012 Ms D had recently graduated and must have been in her early 20s. Dr Piepenbrock was in his mid-40s and (on his own account) a successful academic who had taught her as an under-graduate. On any view she was in a vulnerable position in relation him. Whatever exactly happened, it is plain from the judgments of the employment tribunal and Nicola Davies J that the

events of November 2012 and the aftermath must have been very traumatic for her.

18. In her statement dated 11 October 2020 prepared for the employment tribunal on behalf of the LSE (see: pp 191-204) Ms D describes her horror at the publicity surrounding the High Court hearing and says that she had lived in constant fear that she would be identified and then publicly associated with Dr Piepenbrock's "mortifying, false claims, which [she] feared would ruin [her] reputation and affect [her] professional standing." She then describes coming upon the website I mention above and says that she was "distraught" and concerned that professional colleagues and contacts may find the website by searching her name online. She then describes Dr Piepenbrock's attempts to serve the 2019 High Court proceedings on her and how it was evident that he had access to her work, home and family addresses in the US. She ended the statement at para 56:

> **I sincerely hope this is the end of the matter. [Dr Piepenbrock] has caused me and my family significant upset and anxiety over the years. I just want him to leave me alone.**

19. In an email dated 7 December 2021 (see: p211 of the bundle) prepared for the purposes of this application Ms D said:

> **The idea that these almost decade old allegations, which were the subject of a confidential internal LSE complaint, could be published in the public domain and with my name is incredibly upsetting. This is particularly so given the history of [Dr Piepenbrock] twisting and misrepresenting the facts, sharing photos from my personal Facebook with false and defamatory allegations, and publicly sharing this with my employer and prospective clients for what I can only see are malicious reasons ... I just want him to leave me alone. It is awful to be at the receiving end of such hatred and fact-twisting, for so long. I just want him to stop.**
>
> **It would be deeply upsetting and traumatizing if my name was published in association with [Dr Piepenbrock's] case.**

20. I have no reason to doubt the truth of the contents of Ms D's statement and email. It follows that I accept that she has suffered very considerable distress as a consequence of this whole affair and

Dr Piepenbrock's actions and would continue to do so if her identity was published. I agree with the employment tribunal that if this Tribunal allows her to be identified, there may be reports in the press about the affair linked to her (see para 4.19 at p 228). Even if the press did not take up the matter of their own accord, I am satisfied, as I have indicated, that Dr Piepenbrock would take steps to "name and shame" her either through the press or other forms of publicity.

## The parties' submissions

21. The LSE say there is a " … clear need to protect Ms D's privacy, reputation and peace of mind by way of anonymization … " and that this is so " … whether viewed through the prism of Convention Rights, or as a simple counter to what must surely be [Dr Piepenbrock's] vexatious intent."

22. As I have described Dr Piepenbrock is strongly opposed to the making of an order. He says that the principle of open justice must prevail. He also raises a number of more or less technical points which I address first.

23. First, Dr Piepenbrock says that because Ms D is a US citizen and moved back to the US in November 2012 and now lives and works there (which is not disputed), and that the events in question took place there, she has no rights under the ECHR which fall to be protected by the Tribunal. The point is developed in paras 87-95 of Dr Peipenbrock's skeleton.

24. Mr Michell did not engage with this point in any detail. He said that Ms D's whereabouts were irrelevant and reminded me that section 6 of the Human Rights Act 1998 governs what the Tribunal does and makes it unlawful for the Tribunal to act in a way which is incompatible with a Convention right. He also said that in any event it would in the "interests of justice" for the Tribunal to make an order.

25. I do not feel inclined to research this issue at length myself. I would be surprised and troubled if it was indeed the case that Ms D's citizenship and/or whereabouts prevented me from making an order if I would otherwise consider it appropriate to protect her privacy or reputation and I am content to proceed on the basis that section 6 of the Human Rights Act would require me to make an order in those circumstances regardless of her whereabouts.

26. Further, it seems to me, based on my finding at para 16 above, that it can be said that Dr Piepenbrock is in effect threatening to abuse the justice system and therefore act contrary to the interests of justice; this provides a separate basis for exercising the jurisdiction to protect Ms D's identity and it seems to me that it would be quite legitimate to consider the effects on her of not making an order in deciding whether to exercise the jurisdiction on that basis. However, in this context I should say that I accept that, since I have now decided the appeal and my judgment has been promulgated, there can be no question of needing to protect the integrity of the judicial decision making process; nor do I consider it would be appropriate to make an order just to support separate orders which have been made by the employment tribunal and the High Court.

27. Second, Dr Piepenbrock raises issues as to whether the LSE properly "represent" Ms D for the purposes of making this application. I am quite satisfied that there was no need for the LSE to be instructed by her to make an application and in any event the Tribunal can make an order on its own initiative. It is also plain that Ms D does indeed wish the EAT to make an order.

28. Third, he complains that the order proposed by the LSE has no end date. I am satisfied that I have jurisdiction to grant an indefinite order in this case if I consider that such an order is necessary.

29. Fourth, he raises issues as to whether Ms D was accused by him of any "sexual offence" or "sexual misconduct." These are technical issues which may have been relevant to applications made

specifically under rule 23 of the EAT Rules but which in my view have no relevance to this application which is made under the general jurisdiction I discuss above.

30. Fifth, he says Ms D is the "architect of her own downfall" because she violated confidentiality in the grievance that she filed against him to the LSE (see para 5 of his skeleton). In fact, it is clear from the passage quoted at para 5.42 of the employment tribunal's judgment that Nicola Davies J found that Ms D's complaint about Dr Piepenbrock was substantially justified and that no one told her it should not be disseminated and she stopped disseminating it when she was told to. In those circumstances this point does not seem to me to be of any great significance and it certainly does not disbar the Tribunal from making an order for her protection. It does provide another example of Dr Piepenbrock's attitude towards Ms D and his use of rather chilling language.

31. Sixth, Dr Piepenbrock raises a point about the application being out of time. LSE's application was made by email at 16.25 on the evening before the appeal hearing on 29 November 2021 and Dr Piepenbrock points out that the notice of the hearing of the appeal sent out by the EAT says at note (a): "Any interim applications must be made AT LEAST SEVEN DAYS BEFORE THE DATE OF THE HEARING". Since it is Ms D's rights and/or the interests of justice that I am primarily concerned with in deciding the application, I am quite satisfied that it would be appropriate to extend time for the making of this application. In any event, it is open to me to consider whether to make an order protecting her identity at any stage in the proceedings on my own initiative without any application being made.

32. For the reasons indicated I reject each of the specific points raised by Dr Piepenbrock. I turn to consider whether in the all the circumstances it is appropriate to make an order as sought by the LSE.

## The balancing exercise

33. For the reasons set out above, I am quite satisfied that Ms D's rights under Art 8 of ECHR are engaged and that unless I make an order there is a substantial risk that they will be contravened in a serious way. I am also satisfied that unless I make an order there is a substantial risk that Dr Piepenbrock will use the court process, including the EAT judgment and other documents, in a way that is an abuse of the system and contrary to the interests of justice and that would have a serious detrimental effect on Ms D.

34. The seriousness of the effect on Ms D would be increased in my view by her relative youth and vulnerability, by the fact that the central allegations being made by Dr Piepenbrock have been found to be untrue, by the length of time the dispute has been going on and by Dr Piepenbrock's previous activities during that period, particularly in relation to the website. I do not think that any previous publicity, for which Dr Piepenbrock would have been responsible, can be said to lessen the seriousness of future publicity on Ms D.

35. I must determine whether those matters should outweigh the principle of open justice and Dr Piepenbrock's rights under Art 6 and the rights to freedom of expression given to him and others (in particular the press) by Art 10 of the ECHR in the circumstances of this case.

36. The principle of open justice of course has an intrinsic value which must always be kept in mind. However, it is hard to see in practice that the anonymization of Ms D will have a serious impact on that principle in this case: the fairness of the hearing of Dr Piepenbrock's appeal (which was as public as could be in the circumstances) was not undermined in any real way by her being referred to as Ms D and my judgment is perfectly comprehensible without including the detail of her name. Likewise it is hard to see that Dr Piepenbrock's Art 6 rights will be damaged in any substantial way.

37. The right to freedom of expression will also in my view not be seriously undermined. It will remain open to anyone to describe the case in all its detail save for the identity of Ms D; the fact that Dr Piepenbrock's central allegation against her is rather lurid and has been found to be untrue substantially lessens the weight to be attributed to the right in so far as it covers the details of Ms D's identity.

38. Weighing things up, I am in no doubt that Ms D's Art 8 rights and the interests of justice substantially outweigh the principle of open justice and any Art 6 and Art 10 rights in the specific circumstances of this case and I therefore consider that it would be appropriate to make an order to protect Ms D's identity from becoming public. I am naturally reassured in reaching that conclusion by the fact that EJ Hodgson and three High Court judges appear to have come to similar views.

## The terms of the order

39. It seems plain that it will not be sufficient simply to anonymize the judgment to protect Ms D's rights and the interests of justice. It will also be necessary to limit access to documents lodged with the EAT which may contain Ms D's details in order to prevent third parties from obtaining details of her identity which can then be published in connection with the judgment or other documents. Further, although the LSE were not formally seeking such an order, given my findings at para 16 above I consider it is necessary to make an order preventing any disclosure of Ms D's identity by Dr Piepenbrock or anyone else, which, if it were to take place, could undermine the whole point of anonymizing her in the judgment. I also consider it appropriate to make the order indefinite in length; if any compelling reason should emerge later, it will be open to Dr Piepenbrock or any third party to apply to the Tribunal to revoke or vary the order.

40. I will therefore order as follows:

**(1) The judgment of the EAT dated 21 December 2021 will remain in its anonymized**

**form and refer to "Ms D";**

**(2) No non-party may inspect or obtain a copy of any document from the EAT file in this case (except for a copy of this order) without the permission of the Registrar or a Judge of the EAT. Any application for such permission must be made in writing on notice to the Respondent and the EAT will not grant permission without giving the Respondent an opportunity to make representations.**

**(3) There shall be no publication or other disclosure of the identity of Ms D or of any information which may lead or reasonably be expected to lead to her identification.**

**(4) This order will remain in force indefinitely and can only be revoked or varied by a Judge of the EAT on application by a party or other person with a legitimate interest after all parties and anyone else the EAT considers appropriate has been given an opportunity to make representations.**