



# EMPLOYMENT TRIBUNALS

**Claimant:** CR

**Respondent:** (1) Ravenscroft Park Preparatory School  
(2) Lucy Bennison  
(3) Gardener Schools Groups Limited

## JUDGMENT ON RECONSIDERATION WITHOUT A HEARING

The Judgment of the Tribunal is as follows:

1. The claimant's application for reconsideration dated 7 July 2023 in respect of the Tribunal's judgment dated 1 June 2023 (with written reasons of 23 June 2023) regarding the refusal to grant the claimant an anonymity order is granted.
2. The Judgment of 1 June 2023 (with written reasons of 23 June 2023) in respect of the claimant's application for an anonymity order is revoked.
3. The claimant's application for an anonymity order was taken again and the claimant is granted an anonymity order in accordance with Rule 50(3)(b) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1. This order takes effect from 1 June 2023.
4. The Judgment of 1 June 2023 (with written reasons of 23 June 2023) shall be amended, and the claimant's identity anonymised.

## REASONS

### Background

1. A Preliminary Hearing took place on 1 June 2023 to determine three issues;(a) whether the claimant was in employment for the purposes of her disability discrimination claim, (b) to consider the claimant's application to amend her claim to include a victimisation complaint and, (c) to consider whether to grant the claimant's application for an anonymity order.
2. The first issue did not require determination, but the Tribunal determined issues (b) & (c). The Tribunal granted the claimant's application for an amendment but refused her application for an anonymity order.
3. Oral reasons were provided at the Preliminary Hearing and the claimant applied for written reasons by email dated 16 June 2023. Reasons were provided to the parties on 23 June 2023.

### Application

4. The claimant submitted an in-time application for reconsideration in accordance with **Rule 71 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1** on 7 July 2023. The reconsideration application relates only to the Tribunal's decision in respect of her application for an anonymity order. The claimant does not wish to have her identity disclosed to the public and she seeks anonymisation.
5. The claimant referred to various medical evidence in her reconsideration application and the Tribunal asked the claimant to supply that information by 6 August 2023. The claimant submitted that evidence on 6 August 2022 and this was information that was not provided at the Preliminary Hearing on 1 June 2023.
6. Upon receipt of that information the claimant's reconsideration application was not refused, and the Tribunal asked the respondents to provide their response to the application and both parties to confirm whether the application could be dealt without a hearing on or before 23 August 2023. Neither party responded by that date, and they were asked to confirm their position again by 8 September 2023. No responses were received.
7. Having regard to the parties' lack of responses, the Tribunal determined it was not necessary in the interests of justice to list a reconsideration hearing.

### Decision of 1 June 2023

8. The claimant's original application for an anonymity order was premised on four factors; (1) she has been subject to a lengthy campaign of stalking and harassment and as such she limits her online presence and if it were to be revealed in these proceedings that will place her at risk, (2) she pursues a

disability discrimination claim and sensitive personal information will be disclosed during the course of the proceedings, (3) disclosure may prevent her from securing future employment and, (4) if her identity is not anonymised she will not be able to provide her evidence at its fullest. The claimant presented documentary evidence but did not give oral evidence at the Preliminary Hearing on 1 June 2023. In submissions, her representative submitted the claimant's article 5 & 8 rights were engaged.

9. During the Preliminary Hearing the Tribunal considered the claimant's documentary evidence, submissions and balanced the claimant's Convention rights with the principle of open justice and article 10 freedom of speech. The tribunal concluded the claimant had not presented clear and cogent evidence to justify derogation from the principle of open justice and her application was refused.

#### Grounds for reconsideration

10. The claimant requests the Tribunal reconsider her application for an anonymity order for the following reasons. First, the claimant is a vulnerable person due to emotional, physical, social, relational, and financial difficulties and the Tribunal must follow the **Presidential Guidance on vulnerable parties and witnesses in Employment Tribunal proceedings April 2020** and the **Equal Treatment Bench Book 2023**.
11. Secondly, the claimant remains vulnerable to both potential and actual harm if her identify is not protected because of her history of domestic abuse and stalking in respect of which she continues to receive medical treatment for depression, anxiety and PTSD.
12. Thirdly, the respondent accepts the claimant is a disabled person, but the claimant will give evidence at the final hearing regarding both her physical and mental impairments and other evidence of a personal nature.
13. The claimant's fourth basis for applying for reconsideration relates to the impact of the online publication of the judgment on 1 June 2023 (with written reasons of 23 June 2023). The claimant submits this has had a significant and detrimental impact on her mental well-being and she has experienced thoughts of self-harm and suicidal ideation.
14. The final ground the claimant relies on is her ability to effectively participate in the proceedings without an anonymity order. The claimant was represented at the Preliminary Hearing on 1 June 2023, but she reports she experienced significant distress during the previous two Preliminary hearings when she was unrepresented. She states she suffered a panic attack during the hearing on 7 November 2022. She was unable to speak, and it affected her vision. The process is already challenging for the claimant without the additional stressor of her identity being disclosed publicly.
15. In the circumstances the claimant maintains that her Convention rights are engaged (articles 2 & 8), and the balance is in favour of granting her application

for an anonymity order and the Tribunal should reconsider its judgment of 1 June 2023 accordingly.

16. The additional medical evidence the claimant relies on in support of her application consists of a letter dated 18 December 2017 from a Consultant Psychiatrist confirming both her physical and mental impairments. The claimant has been diagnosed with recurrent depressive disorder (F33), panic disorder (F41.0) and five other physical impairments.
17. The claimant also supplied an NHS 111 report dated 26 June 2016 when she requested ambulance assistance in respect of depression, anxiety, self-harm and suicidal ideation. Another report from 2016 was supplied by a High Intensity CBT Therapist regarding the claimant's treatment for the same issues.
18. The claimant supplied a list of the 16 medications she is currently prescribed. She also supplied a letter dated 21 December 2022 from Mind Matters regarding various treatment options. Finally, the claimant provided a copy of her adult support plan completed by her social worker dated 12 June 2023 and the claimant is currently receiving support in respect of anxiety, PTSD and suicidal ideation. The plan refers to the claimant being involved in an employment dispute and "*this is effecting her mood and she has had suicidal thoughts.*"

#### The Law - Reconsideration

19. In reconsideration applications, the Tribunal must consider whether reconsideration of the Judgment is necessary in the interests of justice as provided in **Rule 70 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1**. If it is necessary in the interests of justice and on reconsideration, the decision (the "original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.
20. The Employment Appeal Tribunal held in **Outasight VB Ltd v Brown 2015 ICR D11, EAT**, that necessary in the interests of justice in accordance with Rule 70 affords the Tribunal a wide discretion that must be exercised judicially. The Tribunal must determine whether reconsideration is appropriate in the circumstances having regard to the party seeking the reconsideration but also the other party to the litigation and the public interest requirement for finality in proceedings.
21. In **Ebury Partners Ltd v Acton Davis 2023 EAT 40**, the Employment Appeal Tribunal confirmed that it would be unusual for a party to be given a second bite of the cherry and reconsideration should be exercised with caution.
22. Notwithstanding that, reconsideration may be necessary in the interests of justice if new evidence becomes available after the judgment. If that is the case, Tribunals must apply the principles in **Ladd v Marshall 1954 All ER 745, CA** which are the evidence could not have been obtained with reasonable diligence for use at the original hearing, that the evidence is relevant and would probably

have had an important influence on the hearing and the evidence is apparently credible.

Conclusion – Reconsideration Application

23. The Tribunal is mindful the claimant is a litigant in person with both physical and mental impairments. Although the claimant had an opportunity to make submissions at the Preliminary Hearing on 1 June 2023, and she repeats those submissions albeit with more substance, new evidence has been adduced in relation to the impact of these proceedings on her mental health. In particular, the necessity for the claimant to have an adult action plan to support her with suicidal ideation related to her employment dispute.
24. The plan was put in place on 12 June 2023 after the Preliminary Hearing on 1 June 2023 and links the necessity for support with these proceedings. Furthermore, the claimant herself confirms that her mental health significantly deteriorated as a result of the publication of the Judgment on 1 June 2023 (with written reasons on 23 June 2023) at paragraph 22 of her reconsideration application.
25. Although the historic medical evidence could have been obtained and submitted by the claimant at the Preliminary Hearing on 1 June 2023, the impact on the claimant's health and its deterioration is a new matter that has arisen subsequent to the Preliminary Hearing and it is both in the interests of justice and in furtherance of the overriding objective to deal with cases fairly and justly for the Tribunal to consider that.
26. In the circumstances, the claimant's application for reconsideration is granted. The original decision in respect of the claimant's application for an anonymity order is revoked, and the Tribunal takes it again.

The Law - Anonymity Order

27. **Rule 50 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1** provides: -

**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 interest of justice or in order to protect the Convention rights of any person in the circumstances identified in section 10A of the Employment Tribunals Act.*

*(2) In considered 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 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.*

28. **The European Convention of Human Rights** provides:

**Article 2 Right to Life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

**Article 8 Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

These rights were incorporated into UK law by the Human Rights Act 1998.

29. In **British Broadcasting Corporation v Roden [2015] ICR 985, EAT** the Employment Appeal Tribunal confirmed the principle of open justice is of paramount importance and derogations from it can only be justified when strictly necessary to secure the proper administration of justice.

30. The burden of establishing a derogation from the principle of open justice is on the person seeking it and this requires clear and cogent evidence as stated by the Employment Appeal Tribunal in **Fallows v News Group Newspapers Ltd [2016] ICR 801, EAT.**

31. An anonymity order can be issued where persons affected by the case would otherwise suffer an infringement of their right to a private and family life in accordance with article 8 as confirmed by the Employment Appeal Tribunal in **F v G [2012] ICR 246, EAT.**

32. In **A v Burke and Hare [2022] IRLR 139** the Employment Appeal Tribunal held the principle of open justice assumes that all the details in a case should remain

public unless there is some identifiable injury to the claimant's Convention rights. The Tribunal must balance whether granting an anonymity order to protect the claimant's Convention rights or in the interests of justice outweighs the principle of open justice and freedom of expression.

33. In **LQP v (1) City of York Council & (2) City of York Training Limited (T/A Work with York) [2022] EAT 196**, the Employment Appeal Tribunal stated; *"When considering an application for an anonymity order pursuant to r.50, there is a clear structure to be adopted. It is necessary to identify the relevant Convention rights and then carry out the requisite balancing act between those rights. Open justice is a very important founding principle of our judicial system. The identities of the parties to litigation are important, integral aspects of the principle of open justice. Exceptions need to be properly evidenced."*
34. The **Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings** at paragraph 13 states that it would be sensible for Tribunals to consider whether a party's participation and/or the quality of their evidence is likely to be diminished by reason of vulnerability. The guidance further states at paragraph 14 that when deciding whether to make appropriate directions or orders to facilitate participation regard may be had to; any actual or perceived or potential intimidation of a party or witness, whether the party has a mental or physical disability, whether the party is undergoing medical treatment, whether any measure is available to the Tribunal, the views of the vulnerable part and any other relevant matter.

#### Conclusion – Anonymity Order

35. The Tribunal has retaken its decision in respect of the claimant's application for an anonymity order pursuant to **rule 50(3)(b) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1**.
36. As set out in **rule 50**, the Tribunal must give full weight to the principle of open justice and the Convention right to freedom of expression provided in article 10. Also, the principle of open justice can only be derogated from if the claimant can provide clear and cogent evidence that her Convention rights will be injured or infringed if the order is not granted.
37. The claimant has provided additional medical evidence confirming she has experienced mental health problems since 2016 and they persist. The evidence also confirms her mental health deteriorated following the original decision of 1 June 2023 and as a result she is experiencing thoughts of self-harm and suicidal ideation because of her employment dispute and, she has an adult support plan in place with effect from 12 June 2023. Therefore, the claimant's Convention rights protected by Articles 2 & 8 are engaged.
38. The Tribunal must balance granting an anonymity order to protect the claimant's Convention rights (specifically Articles 2 & 8 rights) and the principle of open justice and freedom of expression provided in Article 10. On this occasion the claimant has presented clear and cogent evidence to justify that it is necessary to derogate from the principle of open justice to protect her

Convention rights and her application for an anonymity order to prevent her identity being disclosed to the public by way of anonymisation is granted with effect from 1 June 2023.

39. The original Judgment of 1 June 2023 (with written reasons of 23 June 2023) in respect of the claimant's application for an anonymity order is revoked and the Judgment amended accordingly to anonymise the claimant's identity.

Employment Judge J Galbraith-Marten

12 September 2023

SENT TO THE PARTIES ON

12/09/2023

FOR THE TRIBUNAL OFFICE