EMPLOYMENT TRIBUNALS

BETWEEN

Claimant **Respondent**
MS J FAIRRIE **AND** **WHITE EAGLE LODGE**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 29TH NOVEMBER 2024

EMPLOYMENT JUDGE MR P CADNEY MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- **IN PERSON**

FOR THE RESPONDENT:- **NO ATTENDANCE**

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's applications that:

a) The Judgment be anonymised; and/or redacted

Are dismissed.

Reasons

1. At an earlier hearing in February 2024 the tribunal heard the claimant's claims of automatic unfair dismissal pursuant to s103A Employment Rights Act 1996, and discrimination arising from disability (s15 Equality Act 2010).

2. The tribunal's Judgment and Reasons were sent to the parties on 8th March 2024 and subsequently entered onto the public register of ET Judgments. The claimant has made an application for anonymity/redaction as set out below.

Application

3. The respondent has indicated that it is neutral as to the application and has elected not to participate in this hearing.

4. The claimant has made the initial application set out below, and has subsequently provided a "draft order" which sets out the basis of the application in greater detail. Both are set out in full below. In addition the claimant originally sought an order removing the judgment from the register, and has made an application pursuant to the GDPR that all details relating to her are deleted from the tribunal's record. The latter application falls within the administrative jurisdiction of HMCTS and is being dealt with separately, and is not the subject of this judgment. In giving directions I referred the parties to the case of *Ameyaw* (see below) and the application to remove the judgment from the register is no longer pursued; and would not in any event have been an order that was within the tribunal's jurisdiction to make.

Anonymity Application / Draft Order

Request for Anonymity and Restricted Reporting Orders

I am writing to formally request that the Employment Tribunal impose anonymity and restricted reporting orders in relation to my case 1401636/2022.

The publication of my personal information in connection with this case causes me significant distress. I am particularly concerned about the potential negative impact on my employment prospects and my ability to maintain a normal private life.

I understand that the tribunal must consider the European Convention on Human Rights (ECHR) when making these decisions. I respectfully submit that the right to freedom of expression can be balanced against the principle of open justice in this case. The publication of my personal information is not necessary to ensure the fairness of the proceedings or to protect the public interest.

I would be grateful if the tribunal would grant my request for anonymity and restricted reporting orders. I believe that these measures are essential to protect my privacy and well- being.

DRAFT ORDER

1. Introduction

1.1 The Claimant seeks an anonymity order pursuant to Rule 50(3)(b) of the Employment Tribunal Rules of Procedure, or alternatively, a redaction order pursuant to Rule 29 of the same Rules.

1.2 The Claimant's claim for unfair dismissal was dismissed by a Judgment Dated: 23rd February 2024

1.3 The Judgment contains details of the Claimant's disability and mental health conditions, which the Claimant considers to be highly sensitive personal information.

2. Grounds for the Order

2.1 The Claimant submits that the public disclosure of her identity and sensitive personal information would infringe her right to privacy and family life under Article 8 of the European Convention on Human Rights.

2.2 The Claimant further submits that the public disclosure of her identity and sensitive personal information would have a detrimental impact on her ability to secure employment. Potential employers often conduct online searches of prospective employees, and the publication of the Judgment including details of her disability, mental health conditions, and experiences of bullying and harassment, could lead to discrimination, prejudice, and a reduced likelihood of securing employment.

2.3 The Claimant further submits that the nature of her original claim for unfair dismissal contained several contentious issues, most of which were undetermined. These issues were of a sensitive nature, including medical, financial, allegations of bullying, harassment and whistleblowing. All of which require further context and are open to misinterpretation. Any prospective employer could interpret these unresolved issues as an indication of a predisposition to a reduction of capacity to work. This would leave the Claimant extremely disadvantaged.

2.4 The Claimant fears potential retribution from future employers due to the nature of the claim, which may be perceived as whistleblowing. Whistleblowers and any attempt by an individual or employee to disclose information should be protected. Not just during employment but post-employment. By disclosing the nature of the original claim, the Claimant may be considered a disloyal employee and would be further disadvantaged in the employment market.

2.5 The Claimant's inability to secure employment would have a significant adverse impact on her ability to provide for herself and her children. This

could lead to financial hardship, increased stress, and harm to her mental health.

3. The Order

3.1 Primary Request: The Tribunal ORDERS that the Claimant's identity shall not be disclosed to the public pursuant to Rule 50(3)(b) of the Employment Tribunal Rules of Procedure.

3.2 Alternative Request: If the Tribunal cannot justify full anonymity, the Tribunal ORDERS that the following sensitive information be redacted from the Judgment and any future documents relating to these proceedings, pursuant to Rule 29 of the Employment Tribunal Rules of Procedure:

- *Medical information*
- *Financial information*
- *Details of allegations of bullying, harassment, and whistleblowing*

4. Conclusion
The Tribunal considers that the public interest in protecting the Claimant's privacy, safety, and well-being outweighs any public interest in open justice in this case.

5. Further Evidence / Information – Following the hearing the claimant sought permission (which was granted) to lodge further evidence / information in support of her anonymity application. The further information evidence includes further medical evidence and a letter from the claimant's mother; and the accompanying email states, "*As you are aware my personal and private health information as well as details of my whistle blowing allegations have been publicly disclosed. This exposure has caused significant distress and harm to myself and my family. I continue to experience several health issues……. I am particularly concerned that exposure of my private information may exacerbate these conditions. I respectfully request that you consider the potential harm that disclosure of my identity may have on my health and well-being. I believe that an anonymity order is necessary to protect my privacy and safeguard my family.*"

6. Oral Submissions – In her oral submissions the claimant amplified and clarified some of the points made above. She contends that:

   i) She was not aware the judgment would become a matter of public record, and had she known she may not have brought or pursued the case at all.

   ii) She is concerned not simply for herself but her children in that the judgment refers to the medical conditions in some detail in the discussion of whether she was a disabled person at the material times; and that a stigma still attaches to either or both of the conditions and may attach to her or her children;

   iii) She has made hundreds of applications for jobs without success. Prior to the publication of the judgment she was at least successful in obtaining some

interviews. Since the judgment was published she has not been invited for interview at all. If her name is googled the link to the judgment comes up in the first few entries. She is convinced that prospective employers are doing this, and automatically rejecting her applications. Whilst this may be unlawful it is essentially impossible to prove and she has in reality no recourse against it. As a consequence unless the judgment is anonymised she will effectively be punished for having brought the claim which is manifestly unjust.

Law

7. The legal principles to be applied were set out by Eady J in *Ameyaw v PriceWaterhouseCoopers Services Ltd UKEAT/244/18 (I have omitted paras 39-41 which relate to national security and are not relevant to the issues in this case)*:

The ET's Power to Restrict Publication of a Judgment and Written Reasons: the Legal Principles

30. The starting point is the common law principle of open justice. In **R (Guardian News & Media Ltd) v Westminster Magistrates Court and Another** [2012] EWCA Civ 420, [2013] QB 618 CA, Toulson LJ (as he then was) described this principle, and its origins, as follows:

"1. Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? … In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse. Jeremy Bentham said … "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial".

2. This a constitutional principle which has been recognised by the common law since the fall of the Stuart dynasty … It is not only the individual judge who is open to scrutiny but the process of justice. …

…

4. There are exceptions to the principle of open justice but, as Viscount Haldane LC explained in *Scott v Scott*, they have to be justified by some even more important principle. The most common example occurs where the circumstances are such that openness would put at risk the achievement of justice which is the very purpose of the proceedings."

31. In **Scott v Scott** [1913] AC 417 HL, Lord Atkinson acknowledged the importance of the principle in the following terms:

"… The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses, and in many cases,

especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect. …"

32. This principle can also be seen as an aspect of what is commonly known as the right to a fair trial, provided by Article 6 of the **ECHR**. By Article 6(1), it is provided:
"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

33. 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. It is a principle that does not simply require that judicial hearings should generally take place in public; it also requires that Judgments will generally be publicly available (see, e.g., **Pretto v Italy** [1984] 6 EHRR 182 at paragraphs 21 to 23). This is not only a consequence of the right to a fair trial under Article 6 **ECHR**, it is also an aspect of the Article 10 right of freedom of expression, which encompasses the right to impart and receive information (see per Lord Judge CJ at paragraphs 37 to 42, **R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 2) (Guardian News & Media Ltd and Others intervening)** [2011] QB 218 CA.

34. That is not to say that the fair trial principles of Article 6 or the right to freedom of expression under Article 10 will always outweigh other rights under the **ECHR**. Both Articles 6 and 10 allow that the rights in question may need to be qualified so as to respect other Convention rights. Where such rights give rise to competing interests:
"… neither article has as such precedence over the other. … where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. … the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. …"

See **In re S (A Child) (Identification: Restrictions on Publication)** [2005] 1 AC 593 per Lord Steyn at paragraph 17.

35. Within the jurisdiction of the ET, these principles can be seen in play in the **2013 Regulations** and the **ET Rules**, made pursuant to the powers afforded to the Secretary of State under sections 7, 10B, 11 and 12 of the **ETA**. Section 7 provides for the general power to make procedural regulations; sections 10A, 10B, 11 and 12 provide for restrictions to be made in respect of publicity in cases involving (respectively) confidential information,

national security, allegations of sexual misconduct, and evidence of a personal nature where the complaint relates to disability.

36. The principle of open justice is thus acknowledged by Regulation 14(1) of the **2013 Regulations**, which provides that:
"The Lord Chancellor shall maintain a register containing a copy of all judgments and written reasons issued by a Tribunal which are required to be entered in the register under Schedules 1 to 3."

37. Rule 1(1) of the **ET Rules** defines "register" as the:
"register of judgments and written reasons kept in accordance with regulation 14 [of the 2013 Regulations]"

38. By Rule 67, it is provided that:
"Subject to rules 50 and 94, a copy shall be entered in the Register of any judgment and of any written reasons for a judgment."

And a document purporting to be certified by a member of staff of a tribunal to be a true copy of an entry of a Judgment in the Register is, unless the contrary is proved, sufficient evidence of the document and its contents (see Regulation 14(3) of the **2013 Regulations**).

…….

42. Turning then to Rule 50 of the **ET Rules**, this (relevantly) provides that an ET:
"(1) … 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 …

(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 …

43. As well as allowing for a restriction in cases concerning confidential information (as provided by section 10A **ETA**), Rule 50 thus provides that restrictions on publicity may be imposed both in the cases expressly referenced at sections 11 and 12 **ETA** (sexual misconduct

allegations; disability cases) but also more generally. This wider ability to restrict publicity derives from the Secretary of State's general power to make procedural regulations for ETs, under section 7 **ETA**, whether read by itself or construed in accordance with section 3 of the **Human Rights Act 1998** (see **Fallows v News Group Newspapers**, per Simler P at paragraph 43). It is apparent, however, that the Secretary of State has chosen to exercise that power in a different way to that allowed in national security cases.

44. Taken at face value, the power to restrict publicity, whether for reasons of national security or otherwise, stands in contrast to the transparency that would otherwise be required by the principle of open justice. As already stated, it is a power, however, that acknowledges the fact that other competing rights and interests may sometimes require that transparency is curtailed. The rights provided by both Articles 6 and 10 ***ECHR*** *are qualified and allow that interests of national security or other Convention rights (including the right to respect for a private life under Article 8) may outweigh the requirement for public access to judicial proceedings or pronouncements. In proceedings before the ET, the balancing out of these competing interests or rights is governed by the* ***2013 Regulations*** *and the* ***ET Rules****, which provide (to summarise):*

a. That the Lord Chancellor is required to maintain a public Register of all ET Judgments and Written Reasons (Regulation 14 ***2013 Regulations****).*
b. Subject to Rules 50 and 94, the ET is required to enter on to the Register a copy of every Judgment and document containing Written Reasons for a Judgment (Rule 67 ***ET Rules****).*
c. In national security cases, Rule 94 ***ET Rules*** *permits the ET to make certain redactions from the Judgment and Written Reasons and – significantly – to determine that the Written Reasons will not be entered on to the Register in some cases.*
d. In cases involving confidential information or where required by the interests of justice or in order to protect rights under the ***ECHR****, Rule 50* ***ET Rules*** *permits the ET to make certain redactions from the Judgment and Written Reasons (including the anonymisation of the parties) but makes no provision for the ET to do other than enter the Judgment and Written Reasons on to the Register.*

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 Rule 50, which is not limited in time (see ***Fallows*** *per Simler P at paragraphs 38 to 44). That said, it is likely to be a rare case where other rights (including those derived from Article 8* ***ECHR****) are so strong as to grant an indefinite restriction on publicity (****Fallows****, paragraph 42): the requisite balancing exercise in each case is for the ET (see the discussion of this exercise and the respective roles of the first instance and appellate tribunals in* ***Fallows*** *at paragraphs 49 to 52).*

46. Thus far in this analysis, I have assumed that a competing right (relevantly, under Article 8 of the ***ECHR****) is engaged. In determining whether that is in fact so, the ET will, however, first need to determine:*

"… is the information private in the sense that it is in principle protected by Article 8? If no, that is the end of the case. …"

See ***McKennitt v Ash*** *[2008] QB 73 per Buxton LJ at paragraph 11.*

47. Where information is revealed in the course of discussion in a public trial, there can be no expectation of privacy (see the observation made by Lord Sumption at paragraph 34(1), ***Khuja v Times Newspapers Ltd*** *[2017] UKSC 49). As for what the ET should take to be the record of what took place in a public judicial hearing, an earlier Judgment provides conclusive evidence of its own existence (as distinguished from the accuracy of the decision rendered): "Judgments being public transactions of a solemn nature are presumed to be faithfully recorded", see Phipson on Evidence (19th edition) at [43-02] (and see, to like effect, Halsbury's Laws of England Volume 12A (2015) at [1591]).*

48. Should the ET be satisfied that an Article 8 right is engaged, however, in exercising its discretion under Rule 50 it will need to consider whether the interests of the owner of that right should yield to the broader interests established by the rights afforded by Articles 6 and 10. In carrying out the balancing exercise thus required, the ET will be guided by the following principles derived from the case-law (helpfully summarised by Simler P at paragraph 48, ***Fallows****): (i) the burden of establishing any derogation from the fundamental principle of open justice or full reporting lies on the person seeking that derogation; (ii) 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; (iii) where full reporting of proceedings is unlikely to indicate whether a damaging allegation is true or false, the ET should credit the public with the ability to understand that unproven allegations are no more than that; and (iv) where such a case proceeds to judgment, the ET can mitigate the risk of misunderstanding by making clear it has not adjudicated on the truth or otherwise of the damaging allegations.*

8. Although I have set out a substantial extract from Ameyaw for the assistance of the parties, the central issues I am required to determine are set out in paras 44 -48 (italicised above).

9. Article 8 - The first question for the tribunal is whether the Article 8 right is engaged (see Ameyaw para 46 above and the cases of McKenna and Khuja referred to in the Judgment). In this case:

i) The hearing although conducted via CVP video was a public hearing and all the matters now the subject of the application were publicly ventilated. The claimant has stated that she did not understand that the judgment would be a matter of public record, but has not contended that she was unaware that the trial was a public hearing or that she was unaware that all of the matters, to the publication of which she now objects, would be aired in public and necessarily be in the public domain;

ii) The fundamental objection of the claimant is not that the information was made public during the hearing, but that by placing the judgment in the public register the information is readily available to anyone who searches the register, or simply

googles her name with the consequences set out at paras 2.2 – 2.5 of her Draft Order;

iii) One of the claimant's original applications was to remove the judgment from the register. Given that it is not open to the tribunal to remove the judgement from the register she contends that it must be anonymised/redacted to protect her and her children from the consequences of it being so easily accessible.

10. In my judgement it follows that the real and fundamental objection of the claimant is not to the information in principle being in the public domain, or having been put in the public domain during the hearing, but rather being put in the public domain after the hearing in a form which is very easily accessible. In those circumstances in my view Article 8 is not engaged and the application is bound to be dismissed.

11. However in the event that I am wrong in that conclusion I have gone on to consider the balancing of any Article 8 rights against the broader Article 6 and 10 rights, and the principles to be applied are (see Ameyaw para 48 above):

(i) the burden of establishing any derogation from the fundamental principle of open justice or full reporting lies on the person seeking that derogation;

(ii) 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;

(iii)) where full reporting of proceedings is unlikely to indicate whether a damaging allegation is true or false, the ET should credit the public with the ability to understand that unproven allegations are no more than that; and

(iv) where such a case proceeds to judgment, the ET can mitigate the risk of misunderstanding by making clear it has not adjudicated on the truth or otherwise of the damaging allegations.

12. The importance of the principle of open justice is emphasised in the first two factors to be taken into account above, and is summarised in paras 33/34 of Ameyaw above. In balancing the competing rights, in my judgement the reasons set out by the claimant at 2.2 – 2.5 are not ones which it is in principle open to me to take into account; or even if I am entitled to take them into account are not in the circumstances sufficient to displace the principle of open justice. It is difficult not to have sympathy with the claimant, and it is a common complaint that the easy accessibility of tribunal judgments makes it much easier for prospective employers to discriminate (in the lay sense) against potential employees who have brought claims against previous employers, but which is notoriously hard to prove. However, the answer to this, if any, must lie with Parliament. In my judgement that argument could apply to all, or at least a substantial proportion of claimants and would result in the complete or substantial anonymisation of a very large number of tribunal judgments, which would necessarily offend the principle of open and transparent justice. Whilst it is impossible not to

sympathise with the claimant, the essence of her application is that the system of making public tribunal judgments is potentially open to abuse, and that she should be protected from any potential abuse by anonymisation. In my judgment whist this may be true, it is also true of many or all cases, and there is nothing exceptional about this case which takes it outside the fundamental proposition that justice both in the hearing and the judgment flowing from that hearing must be public. There is, in my judgement nothing exceptional in this case which result in the conclusion that the claimant's article 8 rights outweigh the article 6 and 10 rights to open justice.

13. The other reason put forward for anonymisation/ redaction relates to the details of the conditions said to amount to a disability and/or financial information and/or the whistleblowing claims.

14. Disability – There is relatively little case law on the circumstances in which a restricted reporting order/ anonymity order can or should be made based on contentions in relation to personal medical information. In *Olukanni v John Lewis plc* an application for anonymity was rejected at the appellate stage, although the EAT accepted that in principle it had the power to grant an anonymity order in circumstances similar to a s12 ETA 1996 restricted reporting order (where evidence of a personal nature may be given – being defined as 'any evidence of a medical, or other intimate, nature which might reasonably be assumed to be likely to cause significant embarrassment to the complainant if reported' — S.12(7)). It is however implicit in s12 that the restriction will apply prior to the publication of the judgment, and it follows that in the ordinary course of events the information will be made public in the judgment even if reporting is restricted at an earlier stage. Thus the details of most claims involving allegations disability discrimination will be put in the public domain either during the original hearing or in the final judgment; and there are innumerable first instance and appellate authorities in which the details of the alleged disability are set out, usually in the context of a dispute as to whether the tribunal was correct or incorrect to hold that the claimant was or was not a disabled person within the meaning of s6 Equality Act 2010. The hearings at which these determinations are made are in public preliminary hearings, or public final hearings, and appeals. There is a clear and obvious public interest in the public understanding of why tribunals have or have not concluded that an individual was disabled and/or was the victim of some form of disability discrimination, which in the ordinary course of events will necessarily involve the public disclosure of what would otherwise be private medical information.

15. In weighing up the claimants Article 8 right to privacy and fundamental principle of open justice, there is nothing in this case which appears to me to take it outside the ordinary/ normal case in which the details will be made public. In my judgement, the Article 6 / 10 rights reflecting the principle of open justice outweigh the claimant's interest in privacy and I am not persuaded it is necessary to make an anonymity or redaction in order in relation to the facts of the conditions underlying the claim.

16. Financial Information – It is not at all clear what the claimant means by this, and having reviewed the judgment cannot see that there is any financial information relating to the claimant set out in it.

17. Public Interest Disclosures – Similarly it is not at all clear why the claimant contends that her Article 8 rights will be breached by the disclosure of, and our conclusions as to the allegation that she was automatically unfairly dismissed, the reason or principle reason being the making of one or more public interest disclosure. There is equally , in my judgment a clear public interest in the public understanding of why public interest disclosure claims have either been upheld or dismissed. Even if the claimants Article 8 rights are engaged they are, in my judgment clearly outweighed by the fundamental principle of open justice in relation to the public interest disclosure claims.

18. As a result there is no basis in my judgement for making either an anonymity or redaction order; and the claimant's application is dismissed.

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EMPLOYMENT JUDGE

Dated: 7th January 2025

Judgment entered into Register
And copies sent to the parties on
27 January 2025 By Mr J McCormick

for Secretary of the Tribunals