Neutral Citation Number: [2025] EAT 66

Case No: EA-2024-000098-BA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 13 May 2025

Before :

MR JUSTICE CAVANAGH

- -

Between :

XY

Appellant

- and –

AB

Respondent

- -
- -

John Platts-Mills (instructed Pro Bono by **Advocate**) for the **Appellant**
Lydia Banerjee (instructed by **Kingsley Napley**) for the **Respondent**

Hearing date: 25 February 2025

- -

JUDGMENT

SUMMARY

Practice and Procedure

This is an appeal against a permanent anonymity order that was made in favour of the Respondent, in a claim of sex discrimination brought against him by the Appellant. The permanent anonymity order was made under Rule 50 of the Employment Tribunals (Rules of Procedure) Regulations 2013. The main, though not the only, considerations that led the Employment Judge to make the permanent anonymity order were that the Appellant had unilaterally withdrawn her claim against the Respondent before her allegations were tested in evidence and ruled upon, and that she had continued to make allegations against the Respondent in breach of rule 50 orders, and had falsely asserted to third parties that she had won a sexual harassment claim against him.

The EAT judgment reviews the law relating to derogations from open justice in the Employment Tribunal, as it relates to orders for permanent anonymisation. The EAT decided that the Employment Judge applied the law correctly in this case, and that her decision was neither plainly wrong nor one that a reasonable Employment Judge could not have reached. Accordingly, the appeal was dismissed. The permanent anonymity order in favour of the Respondent therefore continues, and it applies to the EAT proceedings as it does to the ET proceedings.

The EAT has also granted anonymity to the Appellant, both in respect of the ET proceedings and the EAT proceedings.

MR JUSTICE CAVANAGH:

Introduction

1. This is an appeal against a permanent anonymity order that was made in favour of the Respondent by Employment Judge Russell at East London Hearing Centre on 2 October 2023, pursuant to rule 50 of the Employment Tribunal Rules of Procedure 2013 ("the 2013 Rules of Procedure"). The 2013 Rules of Procedure were contained in Schedule 1 to The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, SI 2013/1237. The hearing on 2 October 2023 was a reconsideration hearing ("the Reconsideration Hearing"), at which a previous decision to grant a permanent anonymity order in favour of the Respondent, made at a hearing on 6 March 2023, was maintained. The EJ's written Reasons for maintaining this order were sent to the parties on 21 December 2023. The effect of the anonymity order is that, unless the order is set aside on appeal, the name of the Respondent (who was the Second Respondent in the Employment Tribunal proceedings) is permanently withheld and anonymised.

2. The procedural history of this case is complex and I will have to set it out in detail later in this judgment.

3. In a Notice of Appeal dated 23 January 2024, the Appellant asked the EAT to set aside the permanent anonymity order in favour of the Respondent, as "the ET failed to carry out a proper balancing exercise when imposing the order and concluded that [the Respondent's] privacy outweighed any other factor." The Appellant set out three grounds of appeal:

(1) The Judge erred by holding that the factors set out in **Dring v Cape Intermediate Holdings Ltd** [2019] UKSC 429; [2020] AC 629 were not engaged;

(2) The Judge erred in concluding that the administration of justice would be frustrated if the Appellant could maintain her allegation, and by giving weight to the Appellant maintaining that she had won her claim; and

(3) The Judge erred in not taking into account that the Respondent had alternative remedies if he maintained that the Claimant was continuing to make what he contended were untruthful allegations about him or the outcome of the case.

4. There is an issue between the parties as to whether the grounds advanced orally on behalf of the Appellant at the appeal hearing went further than the grounds of appeal for which permission to appeal was given and, if so, whether the Appellant should be refused permission to rely upon the additional grounds on the basis that the Respondent would be prejudiced by them. I will deal with this issue later in the judgment.

5. Though the arguments before me ranged widely, the key issue in this appeal is whether the Employment Judge was wrong to grant a permanent anonymity order in favour of the Respondent in circumstances in which the claims against him had been withdrawn and so had not been tested in evidence or been the subject of a ruling (though there had been consideration of a costs application), and in which there was evidence before the Tribunal that the Appellant had breached the Restricted Reporting Order ("RRO") that had been imposed in March 2022 and had falsely stated that she had won her sexual harassment claim against the Respondent.

6. The Respondent also seeks an anonymisation order in relation to the EAT proceedings. An interim anonymisation order was granted by HHJ Wayne Beard on 17 April 2024 in the same terms as the order made in the Respondent's favour in the ET proceedings, save that it applied to the EAT proceedings. In addition, the Appellant seeks an anonymisation order, both in relation to the ET proceedings and the EAT proceedings. An interim order to this effect was made by HHJ Auerbach on 6 November 2024, on the basis that it would, in due course, be reviewed by the judge who dealt with the full hearing. I have made this order permanent. The reasons for this are not connected to the substance of the Employment Tribunal proceedings and so I will not deal with them in this

judgment. I should say, however, that discussions with counsel about the steps required in relation to the anonymisation of the Appellant have led to some delay in the hand-down of this judgment. These discussions were, for good reason, somewhat protracted.

7. The Appellant has been represented before me by Mr John Platts-Mills of counsel (who has appeared pro bono, and who did not appear below) and the Respondent by Ms Lydia Banerjee (who appeared below). I am grateful to counsel for their clear and helpful submissions, both oral and in writing.

PMC and Abbasi

8. I should mention at the outset that, at the oral hearing on 25 February 2025, I informed the parties that, on the same day, an appeal was listed before the Court of Appeal in the case of **PMC (a child by his mother and litigation friend FLR) v A Local Health Board**, an appeal from a judgment of Nicklin J ([2024] EWHC 2969 (KB)). This appeal, presided over by the Master of the Rolls, was to consider the practice in the King's Bench Division of anonymising, as a matter of course, the names of claimants in personal injury and medical negligence cases in which the Court was being asked to approve settlements in circumstances in which the claimants, normally children or those who are very severely disabled, are not able to take decisions for themselves. I mentioned the case because of the possibility that the Court of Appeal might, in its judgment, give general guidance on anonymisation, and on the circumstances in which there should be a departure from the principle of open justice, which would be relevant to the present case. In the event, the Court of Appeal decided to adjourn the hearing in **PMC** to await the decision of the Supreme Court in a pending case, an appeal against the judgment of the Court of Appeal in **Abbasi v. Newcastle Upon Tyne NHS Trust & Others** [2023] EWCA Civ 331. The **Abbasi** case is about whether the courts have a power to impose a reporting restrictions order so as to anonymise the names of medical

professionals who are involved in end-of-life cases. The Court of Appeal decided that the **PMC** appeal would be relisted in the Summer Term, after the **Abbasi** judgment became available.

9. At the hearing, both counsel invited me not to postpone the handing down of the judgment in this case until the **Abbasi** and **PMC** judgments become available. They pointed out that there is no certainty that these judgments will say anything new that is relevant to the issues in this appeal, and that there is already ample guidance in the existing case law to guide me. Also, if I was to postpone judgment until after the **PMC** judgment becomes available, this may result in a delay of six months or more. I agreed with counsel's proposal on the basis that, though I would have preferred to have the opportunity to consider the judgments in **Abbasi** and **PMC** before handing down judgment in this case, the prospect of a very lengthy delay, accompanied by the risk that, even if I waited, I might not derive any further assistance from **Abbasi** and **PMC** beyond that which is already available in the authorities, had persuaded me to press ahead with my judgment.

10. In the event, the Supreme Court handed down the judgment on **Abbasi** on 16 April 2025 ([2025] UKSC 15). This was at a time when a draft of this judgment had been circulated to counsel for proposed corrections. I invited counsel to make submissions on the **Abbasi** judgment, if they wished. I received short further submissions from Ms Banerjee, which I have taken into account. Mr Platts-Mills indicated that he would not make any further submissions in respect of **Abbasi**. I agree with Ms Banerjee's submission (supported, implicitly, by Mr Platts-Mills) that the ruling and reasoning in **Abbasi** is not relevant to the issue in this case, and does not affect the reasoning or outcome of this judgment, but I will refer to the Supreme Court's judgment briefly, later in this judgment.

11. I remain of the view that it is not necessary or appropriate to delay the hand-down of this judgment until the Court of Appeal has given judgment in **PMC**.

The order under appeal

12. In her written ruling dated 19 December 2023, following the Reconsideration Hearing on 2 October 2023, EJ Russell declined to vary or revoke the orders that she made on 6 March 2023, which included the anonymity order. The orders made on 6 March 2023 included the following:

> "The Restricted Reporting Order made on 5 May 2022 pursuant to rules 50(1) and 29 of the Employment Tribunal Rules of Procedure 2013 and section 11(1)(b) of the Employment Tribunals Act 1996 is made permanent in respect of the Respondent."

13. The RRO made on 5 May 2022 was in the following terms:

> "Pursuant to rules 50(1) and 29 of the Employment Tribunals Rules of Procedure 2013 and section 11 of the Employment Tribunals Act 1996….
>
> the identity of the Second Respondent, or matters from which his identity may be deduced, including but not limited to his job title, the identity of those within his reporting lines and identity of his current partner, shall not be published or included in a relevant programme.
>
> Further, throughout the hearing, in its listing and on any document entered on the Register during the litigation or otherwise forming part of the public record, the Second Respondent shall be referred to as AB.
>
> This order will have effect, unless revoked, until the promulgation of the decision of the Employment Tribunal determining the final case, any such decision to include consideration as to whether to continue or vary the terms of this order. Save that the order and its continuation will be considered afresh at the outset of the final hearing.
>
> A breach of this order is a criminal offence. Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale."

14. I will refer to the order that was made at the Reconsideration Hearing as the permanent anonymity order.

The relevant provisions of the Employment Tribunals Act 1996 ("the ETA 1996") the 2013 Rules of Procedure, and the European Convention on Human Rights

The ETA 1996

15. Section 11(1)(b) of the ETA 1996 provided, at the relevant time (a relatively minor amendment was made to section 11 in 2024, but one which did not give effect to any change of substance):

> "(1) Employment tribunal procedure regulations may include provision—
>
> ….
>
> (b) for cases involving allegations of sexual misconduct, enabling an employment tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal."

16. "Sexual misconduct" is given a broad definition in section 11(6), as follows:

> "sexual misconduct" means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed"

17. A "restricted reporting order" is also defined in section 11(6):

> "restricted reporting order" means an order—
>
> (a) made in exercise of a power conferred by regulations made by virtue of this section, and
>
> (b) prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain"

18. Section 11(6) provides that "identifying matter", "in relation to a person, means any matter that is likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation". "Written publication" is given the same broad definition as appears in section 6 of the Sexual Offences (Amendment) Act 1992, and so covers any written publication which is addressed to the public at large or any section of the public. It is not limited to publication of material by the press or print media, but encompasses matters circulated, sent, or published in writing, by an individual, even if it is to a single other person.

19. Sections 11(2) and (3) provide that any person or body corporate who breaches a RRO is guilty of a criminal offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale, unless they can prove that they were unaware and neither suspected nor had reason to suspect that the written publication or programme referred to the matter in question.

Rule 50 of the 2013 Rules of Procedure

20. The 2013 Rules of Procedure have been replaced by the Employment Tribunal Procedure Rules 2024 (SI 2024/1153), which came into force on 6 January 2025. It is the 2013 Rules that were in force at the relevant time. There is no material difference between the 2013 Rules and the 2024 Rules.

21. It will be noted that the express power to make regulations in section 11(1)(b) of the ETA 1996 applies only to RROs which have effect until the promulgation of the decision of the tribunal. It is common ground before me, however, that rule 50 of the 2103 Rules of Procedure went further, and permitted anonymity orders to be made which had a permanent effect. It also permitted an ET, in an appropriate case, to prohibit disclosure of material that might identify a party, witness, or other person, whether or not that disclosure is by means of a programme or written publication or by any other means, and to make an anonymity order in a case which does not involve an allegation of sexual misconduct or the other matters that are specifically dealt with in sections 11 and 12 of the ETA 1996 (allegations of the commission of sexual offences and complaints relating to disability giving rise to evidence of a personal nature). Such orders may be indefinite.

22. Rule 50 provided:

> "50.—(1) A Tribunal may at any stage of the proceedings, 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”

23. In the present case, the first order made on 22 May 2022 only had effect until the end of the Tribunal proceedings. It was a RRO that was made under rule 50(3)(d), and which came within the terms of section 11 of the ETA 1996. The order that was made on 6 March 2023 and which was confirmed on 2 October 2023 was different. It was not an RRO made pursuant to the power granted by section 11 of the ETA 1996 and rule 50(3)(d), because it had permanent effect and did not come to an end at the conclusion of the Tribunal proceedings. Rather, it was an anonymisation order which was made pursuant to the broader power granted to the ET by rule 50(3)(b). The Appellant does not suggest that an ET did not have the power, in an appropriate case, to make an anonymisation order under rule 50(3)(b) which has indefinite or permanent effect.

24. In the Order dated 6 March 2023, the written reasons for which were dated 9 March 2023, the EJ said that she was making the RRO permanent. Strictly, she was replacing the RRO, made under rule 50(3)(d), with an anonymity order, made under rule 50(3)(b), but in **Fallows v News Group Newspapers** [2016] IRLR 827, at paragraph 39, Simler J said that there is nothing wrong with describing a permanent anonymity order that is made under rule 50 as a permanent RRO. I have, however, chosen to call this type of order as a permanent anonymity order in this judgment.

The relevant provisions of the European Convention on Human Rights

25. Rule 50(2) provided that, considering whether to make an order under rule 50, the Tribunal should give full weight to the Convention right of freedom of expression. This right is to be found in Article 10, which states:

> "**Article 10 – Freedom of expression**:
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ….
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,

> in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

26. Rule 50(1) made clear that ET's must take account also of other convention rights. The other Convention rights that are engaged in this case are those in Art 6 and Art 8. Art 6 states, in relevant part:

> "**Article 6 – Right to a fair trial**:
>
> 1 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."

27. Article 8 states:

> "**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 is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing 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."

The procedural history of the case

28. As I have said, the procedural history of this case is complicated. It is necessary to set it out in considerable detail.

29. The Appellant (the Claimant below) brought claims for sex and race discrimination against her former employer, a City bank. She also brought a claim of sex discrimination against the Respondent, who was a fellow employee. In her Claim Form, dated 26 August 2021, the Appellant complained about the way in which he treated her during the course of a relatively brief relationship and said that it amounted to sexual harassment. The Respondent accepted that he had been in a relationship with the Appellant but denied that he had mis-treated her and denied the details of the allegations made against him. He also denied that the Appellant's allegations were concerned with events that took place in the course of employment. The Appellant's complaint against the First Respondent, her former employer, included, but were not limited to, an allegation that her former employer had failed adequately to investigate her complaints about the way that the Respondent had treated her, and that this amounted to sex discrimination.

30. The Appellant said that the Respondent was a senior director and that they became friendly at work. The Appellant claimed that the Respondent pursued her between February and June 2020, at which point they started dating. She said that she fell pregnant soon afterwards and suffered a miscarriage. She said that, when she told him of the miscarriage, the Respondent told her he had already decided to leave her and screamed at her, accusing her of deliberately getting pregnant to obtain money from him. She alleged that the Respondent laughed at her and threw some magnesium pills at her before leaving her flat. The Appellant said that, some days later, she had suffered medical complications and started bleeding and that, when she called the Respondent to tell him and to seek help, he was harsh and unsympathetic, merely telling her to get an ambulance. She said that she fell into a depression as a result. The Appellant said that the Respondent re-established contact with her in Christmas 2020 and sought to renew the relationship, but did not tell her that he had a new girlfriend.

31. In his Grounds of Resistance, the Respondent accepted that he had been in a relationship with the Appellant between June and October 2020. He said that they had worked in separate parts of the business, that he was not a senior manager, and that the Appellant was only slightly more junior than him. He had no line management responsibility for her. He said that the relationship was mutual and reciprocated, and that, before embarking upon it, he had checked the employer's Relationships at Work Policy to satisfy himself that the relationship did not need to be disclosed. He denied the allegations that he had mistreated the Appellant. He said that he had been supportive after her miscarriage. He said that they did not argue, but had an emotional discussion, during which he was open about his feelings and expressed feelings of being hurt and used. He denied throwing magnesium pills at the Appellant, and said he offered to get some for her. The Respondent said that when, later, he was told by the Appellant that she was bleeding, he took immediate action to provide her with comfort and support. He said that, after the relationship ended, they saw each other on a purely platonic basis at Christmas 2020 and continued to communicate on an amicable and platonic basis until March 2021. He said that, as the relationship was platonic by then, he did not consider it necessary to tell the Appellant about his new girlfriend.

32. The Respondent applied for a Preliminary Hearing to determine whether the Appellant's claim should be struck out, or a deposit order made, on the basis that the claim of sexual harassment was out of time and/or the conduct was not "in the course of employment" as required by sections 109-110 of the Equality Act 2010, in order for it to come within the scope of the relevant protections conferred by that Act.

33. A Case Management Preliminary Hearing was listed for 28 February 2022. In the meantime, on 30 September 2021, the Respondent's solicitors sent a "without prejudice save as to costs" letter to the Appellant, in which they said that if she continued with her sexual harassment claim and it was dismissed, the Respondent would apply for his costs against her. The Appellant responded in

correspondence to the contention that the conduct complained of was out of time and was not in the course of the Respondent's employment. As for the former, she said that her complaint was in time because it concerned a continuing course of conduct, or, in the alternative, that it was just and equitable to extend time. As for the latter, she said, in an email dated 15 October 2021, that they had interacted occasionally at work and had gone for coffee at lunch-time, and had regularly worked together in the Appellant's flat. She also alleged that on about 25 September 2020 the Respondent had sent a photograph of the Appellant in a bikini to a WhatsApp group without her permission, and that the group consisted of quantitative analysts employed by the parties' employer and other banks.

34. In November 2021, the Appellant sent two emails to the Respondent in which she set out her version of what had happened between them and her sense that she had been seriously wronged by him, particularly in the dying days of their relationship. The Appellant indicated that this would be shared with members of the press, both in the United Kingdom and in other countries. As the EJ said in the Reconsideration Reasons, the content of the emails appeared to be designed to cause embarrassment for the Respondent. In response to correspondence from the Respondent's solicitors about this threat, the Appellant said that she now lives in a country where GDPR is not a known concept and said that it would be rather difficult for the Respondent to sue someone who does not have an address in the UK or any assets left in the country.

35. In December 2021, the Appellant entered into settlement negotiations with her (by then) former employer and sought to engage the Respondent in similar negotiations with a view to concluding the claim without a hearing. In an email sent on 1 December 2021, the Appellant proposed terms that she and the Respondent would each bear their own costs and would agree to a mutual obligation not to make any derogatory comment about other in return for her withdrawal of the claims against him.

36. In January 2022, the Appellant wrote to the Respondent and threatened to make disclosures to the press. On 4 January 2022, she emailed the Respondent's line manager, enclosing a proposed press release which detailed her allegations and said that she would name the bank and the line manager. She set out a list of publications to which she was threatening to send the press release, which including daily and financial papers in the UK and the US. This threat was not carried out.

37. On 13 January 2022, the Respondent's solicitors responded to the settlement overtures. They expressed a willingness to settle but said that the Respondent wanted the Appellant to pay a contribution to his costs. They said that the Respondent was not interested in a mutual non-disparagement agreement, and that if no settlement was reached the Respondent would proceed with his application for a strike out, a deposit order, and/or costs. The Respondent's solicitors also said that the Respondent had a recording which would make clear that the Appellant had lied to the Tribunal in key parts of her claim, and that the recording would be referred to the Tribunal in due course if the case proceeded. The Respondent's solicitors did not provide a copy of the recording to the Appellant's solicitors. The Respondent's solicitors also reserved rights to bring claims against the Appellant in the ET and in the courts for defamation and for sexual harassment. The Respondent did not say what contribution to costs was sought, saying that "costs are at a level you would expect".

38. On 18 January 2022, the Appellant's solicitors wrote back to say that an "in principle" settlement agreement had been reached with the employer. The Appellant's solicitors said that she wished to settle on the basis of a non-disparagement agreement and on the basis that each party would be responsible for their own costs. The email said that, if the Respondent continued to insist on his costs being paid without saying what they were, the Applicant would apply for costs if her claim succeeded.

39. The Respondent's solicitors replied on 20 January 2022. They said that the Respondent would settle but only if his costs were covered, and that he was not prepared to agree to a non-

disparagement clause when the Appellant had already made derogatory and false comments about him to numerous parties. The Respondent's solicitors did not specify an amount of costs but said that this would be provided if agreement was reached in principle. On 9 February 2022, the Appellant's solicitor reiterated the position that she would only settle with the Respondent on a "drop hands" basis and with a non-disparagement clause.

40. The Preliminary Hearing took place on 28 February 2022. The Appellant was represented by a solicitor and the Respondent by Ms Banerjee. At the Preliminary Hearing, EJ Russell made a Deposit Order in the sum of £500 in favour of the Respondent. She said that the Appellant's claims against the Respondent had little prospect of success because (a) they appeared to be out of time, and (b) the claims did not appear to arise out of a working relationship, but purely from a personal relationship. The EJ ordered that a further open Preliminary Hearing should take place to determine whether the Appellant's claim for sex discrimination against the Respondent should be struck out. EJ Russell also said that the further Preliminary Hearing should consider whether the Appellant's claims against the Respondent should be struck out because of unreasonable conduct of the proceedings by the Appellant, arising from the threat to send press releases to financial news organisations and others, in the UK and abroad. EJ Russell said that it was arguable that the content and/or tone of the Appellant's correspondence could lead an EJ to conclude that the claims were being pursued with the intention of causing maximum embarrassment and with a view to extorting either revenge or financial settlement. The next Preliminary Hearing was listed for 8 July 2022 and a final hearing (if required) was listed for dates in September 2023.

41. The EJ also made the RRO that is set out at paragraph 13, above. It is dated 5 May 2022 because that is the date on which the orders and the written reasons that accompanied them were sent to the parties, but it was made on 28 February 2022.

42. At paragraph 15 of her reasons, the EJ said:

> "15. The Second Respondent applied for a rule 50 order for anonymisation. Mr Sakrouge [the Appellant's solicitor] did not oppose the application and, following discussion, Ms Bannerjee submitted an amended order which I have approved."

43. No application for a RRO was made on behalf of the Appellant on 28 February 2022.

44. One of the points made by Mr Platts-Mills in this appeal is that the EJ was wrong to make this order by consent, because any derogation to the principle of open justice has an impact upon the interests of the public as a whole and so does not concern the parties alone. I was informed by Ms Bannerjee, who was present at this hearing, that in fact the EJ did not simply rubber-stamp the order, but sought submissions as to why it was required and whether it would be in the public interest. This is borne out by the text of paragraph 15, which refers to a discussion and which also makes clear that the order which was made was an amended version. There is, therefore, no substance to this criticism. Mr Platts-Mills also criticises the EJ for failing to refer to authorities in this part of her Reasons and for failing to set out in detail why she considered it appropriate to make an RRO. He says that this failing taints the later anonymity order which is the subject of the appeal. I will deal with this criticism later in this judgment.

45. The next events are summarised at paragraph 23 of the Reconsideration Reasons dated 21 December 2023. On 11 March 2022, the Respondent's solicitors made an offer of settlement on terms that the Appellant withdraw her claims against him and pay him £15,000 in respect of costs. In return he would not bring an ET claim against her. This offer was repeated via ACAS on 14 March 2022, with a copy of a draft ET claim by the Respondent for sexual harassment and/or sex discrimination. This draft made a number of allegations against the Appellant, including that she shared personal messages and inappropriate comments about the Respondent with colleagues and with his new partner, that the Appellant made complaints about him to HR at their employer, subsequently made an ethics violation complaint about him, and, in November 2021, threatened to go to the press. On 15 March 2022, the Appellant offered to withdraw her claim with each side bearing their own costs.

On 21 March 2022, the Respondent rejected this offer, saying that he would settle only if the settlement did not compromise his own potential claim, or if all claims were settled upon the payment of £15,000 to him. Further correspondence took place and the Respondent increased the sum sought to £20,000.

46. On 3 May 2022, having settled her claim with the employer, the Appellant unilaterally withdrew her claim against the Respondent. This means, of course, that the Appellant's allegations against the Respondent were not tested in evidence and were not the subject of a determination by the ET.

47. On the same day, the Respondent made an application for costs against the Appellant. This was on three grounds: (1) the Appellant had acted unreasonably in bringing a complaint which had little reasonable prospect of success; (2) she had behaved unreasonably and/or vexatiously in the way she conducted the proceedings, in particular by threatening to go to the press, and in continuing the proceedings having been told on 28 February 2022 that they had little prospects of success; and (3) the claims were borne of malice.

48. A hearing took place to determine the application for costs on 6 March 2023, almost a year later. This was the hearing at which the permanent anonymity order was first made in favour of the Respondent. Both parties were represented by counsel. The permanent anonymity order was not resisted by the Appellant, and no application was made on her behalf for a similar order.

49. At this hearing, the Respondent filed a schedule of costs, and claimed costs in excess of £63,000.

50. At the hearing on 6 March 2023, the EJ declined to order costs against the Appellant. The written reasons for this decision were not provided to the parties until 21 December 2023, on the same date as the written reasons were provided for the Reconsideration Decision. The reason for this was

that the Respondent had asked the ET not to issue written reasons for the decision on costs dated 6 March 2023, and this request was not considered until the Reconsideration Hearing took place.

51. Paragraph 3 of the reasons for the costs decision and the anonymity order that was made on 6 March 2023 states that the Appellant provided a bundle of documents, a witness statement, and written submissions for the hearing, and that the Respondent provided his own bundle of documents. The Appellant gave evidence on oath on 6 March 2023 and was cross-examined by Ms Banerjee.

52. As there is no appeal against the decision not to award costs, I can deal with this aspect of the matter relatively briefly. As for ground (1), the EJ decided that the Appellant's prospects were not so weak as to mean that she had acted unreasonably by bringing her claim. As for ground (2), and having reviewed the history of events since the claim was filed, the EJ said that the threats to go to the press was clearly foolish behaviour by the Appellant which reflects badly on her judgment and which could properly have formed the basis of a strike-out application. The EJ decided that the behaviour was not vexatious – as the threats were not carried out, and the Appellant was not seeking money from the Respondent as part of the settlement – but it was unreasonable as it was unnecessary and it was an attempt to put pressure on the Respondent to settle. The EJ also considered the conduct of the Respondent. She said that the Respondent had also acted unreasonably in threatening to bring an ET claim and by making unsubstantiated allegations that the Appellant had lied – unsubstantiated because he did not produce the recording which he said would prove this. He had also put pressure on the Appellant to settle by seeking an unspecified sum by way of costs and then by asking for the arbitrary sum of £15,000.

53. EJ Russell set out her conclusions at paragraphs 38 and 39 of her reasons:

> "38. On balance, I find that this is a set of proceedings where both the Claimant and the Respondent has sought to use the Tribunal's time and resources to continue their dispute arising primarily out of the breakdown of their personal relationship. Much as the Claimant had been criticised for allegedly bringing

> the claim to cause maximum embarrassment to the Respondent, I do not consider that it was to extort a financial settlement. The Respondent has also sought to use these proceedings, and indeed his own threatened claim, to cause difficulty to the Claimant. It is unattractive behaviour on both parts not least at a time when Tribunal resources are stretched and much time has been expended on an acrimonious dispute arising from a failed short-lived relationship.
>
> 39. For those reasons, whilst I am satisfied that the unreasonable conduct threshold has been met by the Claimant's conduct in threatening to go to the press, I conclude that it is not appropriate to exercise my discretion to order her to pay the Respondent's costs."

54. Whilst the Appellant did not oppose the permanent anonymity order at the hearing on 6 March 2023, she swiftly changed her mind. The following day, 7 March 2023, she wrote to the ET to ask it to lift the rule 50 order. She said that she had given the matter much thought. She said that the Respondent should have settled if he did not wish to associate himself with the events that took place between them. Instead, she said, he had unnecessarily dragged her through a nightmare for 18 months. The Respondent knew that, by taking this matter to the ET, evidence would be presented and his name would be part of the public record. In a further email, dated 10 March 2023, the Appellant said that she only agreed to the RRO at the hearing on 6 March 2023 because the EJ had led her to believe that this would guarantee her anonymity as well. I should say that Ms Banerjee disputes that EJ Russell gave any such guarantee and there is no other evidence that the Judge said this: there is no reference to it in the reasons dated 19 December 2023 and it would be very surprising if EJ Russell would have said it, as it would not reflect the true position. In a letter dated 28 March 2023 (below) the ET said that the EJ did not give this guarantee. Moreover, I note that the assertion by the Appellant was not corroborated by her then counsel. I am satisfied, therefore, that EJ Russell did not give any such guarantee.

55. At the end of her email dated 10 March 2023, the Appellant said, "Assuming my anonymity is clarified, in the interests of not wasting any more time, energy or resources, I will drop any opposition to this issue."

56. The ET wrote to the parties in 28 March 2023, stating:

> "The reasons for making a permanent rule 50 order for the Respondent and not for the Claimant were given orally at the hearing. The Claimant was not led to believe that anonymity would be guaranteed. It was explained that Judgments are published on-line and, if written reasons were requested, there would also be published, including the nature of the claims and the parties' conduct of proceedings.
>
> The Claimant has now requested written reasons for discussing the Respondent's costs application and for the decisions on Rule 50. These will be provided."

57. The written reasons for the decision on 6 March 2023, sent to the parties on 21 December 2023, deal only briefly with the permanent anonymity order. This is no doubt because they were sent out at the same time as the written reasons for the Reconsideration Decision dated 3 October 2023 which deals with the matter in considerably greater detail. At paragraph 40 of the reasons for the decision on 6 March 2023, EJ Russell said:

> "At the conclusion of the hearing, the Respondent made an application for the rule 50 anonymity order to be extended permanently. This was not opposed by the Claimant's counsel. Given the strong feeling on both sides, including the Claimant's vehement belief that she has been ill-treated by the Respondent, and the fact that there has been no determination of the merits of the claims, which are equally vehemently denied by the Respondent, I am persuaded that such an order is an appropriate derogation from the principle of open justice."

58. Immediately after the hearing on 6 March 2023, the Appellant messaged the Respondent's then girlfriend, saying, "I heard your boyfriend needs some money to cover his legal expenses after he lost his case today. You may want to help him out a bit… I think his bills are around 80k… He was very annoyed when the judge read the outcome. It made my day watching him so pissed."

59. On 17 March 2023, the Appellant messaged a colleague of theirs and said "[the Respondent] wasted £80k suing me and he lost his case today…" This was at best disingenuous and at worst an outright lie. It was likely to give the impression to the reader that there had been a hearing in which

the evidence had been considered and the Appellant's claims had succeeded. In fact, she had withdrawn her claims.

60. In a further message to the same colleague, dated 24 March, the Appellant said, "His girlfriend was lying to the tribunal. He was lying. His lawyers were hiding my documents from the judge. In the end the judge said that this was harassment and he was not entitled to receive any money from me… He was determined to bankrupt me with the lawsuit so that I would never get a job in Finance, even though he knew he could never collect any money from me because I live in Dubai. Now, he is scared because the table turned." Once again, this account was incomplete and potentially misleading, to say the least. There had been no finding that the Respondent had harassed the Appellant, and the judge had found that both parties had acted unreasonably. That was not the impression that was given by the Appellant's message.

61. On 21 March 2023, the Appellant emailed senior managers at the Respondent's new employer, another financial institution, including the Head of HR. She said:

> "I wanted to inform you that I won a sexual harassment lawsuit against [naming the Respondent and his role] 2 weeks ago at the East London Employment Tribunal. The events took place at [the employer] in 2020. The lawsuit started in August 2021 and concluded on March 6th 2023. He hired a legal team and spent £80,000 trying to wash his name clean, but he failed. …. I am waiting for the tribunal to release the court documents and I will be sending these to the financial press. If you would like to see details, I am happy to provide them to you."

62. The assertion in this paragraph, the essence of which was that the Appellant had won a sexual harassment claim against the Respondent, and that he had failed to protect his good name, was false, or at least was so misleading as in effect to be false. The Appellant had not won her claim: she had withdrawn it. All that had happened was that she had successfully resisted an application for costs on the basis that the claim had no reasonable prospects of success, and/or that her pursuit and conduct of the litigation was unreasonable and vexatious. The ET had found that her behaviour in relation to

the proceedings had been unreasonable, but had decided not to award costs. It was also not the case that the Appellant was waiting for court documents to be released and would be in a position to send them to the new employer or to the press. Although the Appellant may well have expected to receive written reasons for the rulings that were made at the hearing on 6 March 2023, she knew full well that a permanent anonymity order had been made which would have barred her from sending the reasons to the new employer or to anyone else in circumstances which would have identified the Respondent as being their employee. Still further, it was wrong for the Appellant to suggest that the Respondent had failed to "wash his name clean": she had withdrawn her claims against him and there were no adverse findings against the Respondent in relation to the allegations made against him.

63. Upon being notified of the Appellant's email dated 23 March 2023, the Respondent's solicitors wrote to the ET by email dated 30 March 2023, and asked that the ET refrain from issuing written reasons for the decisions on 6 March 2023, in case they were used by the Appellant in ways that would breach the permanent anonymity order. They also stated that the Respondent objected to the Appellant's request for an anonymity order for herself.

64. This email was placed before EJ Russell. On 13 April 2023, EJ Russell notified the parties that, in light of these allegations, she considered that it was in the interests of justice for her to reconsider the costs judgment, of her own initiative. She said that if the allegations in the Respondent's solicitors' email of 30 March 2023 were true, there were not only serious breaches of the Rule 50 order, but they also suggested that the Tribunal was materially misled at the costs hearing on 6 March 2023.

65. The hearing to reconsider the costs judgment took place on 2 October 2023. The Appellant represented herself and the Respondent was represented by Ms Banerjee. Written reasons were provided on 19 December 2023. EJ Russell decided not to vary the costs order. She said that, at the hearing on 2 October 2023, the parties had submitted large numbers of documents which

essentially criticised each other's conduct and sought to call new evidence to support or undermine the allegations at the heart of the claim. The judge pointed out that the Appellant's claims were withdrawn before there had even been disclosure or exchange of witness statements and that in so far as the Appellant contended that she had won her claim or that there were any findings of sexual harassment or misconduct against the Respondent, she was simply wrong. The EJ decided that she should decline to accede to the Respondent's request not to provide written reasons for the decision on 6 March 2022.

66. The EJ's reasoning in relation to the Appellant's application to reconsider and to set aside the anonymity order, and/or to grant one in her favour, should be set out in full:

> "**Rule 50 anonymity orders**
>
> 10. In correspondence since the last hearing, the Claimant has challenged both the making of a permanent rule 50 anonymity Order in favour of the Respondent and the fact that no equivalent Order was made in her favour. Whilst no such Order was sought by the Claimant's counsel at the last hearing, I nevertheless consider it in the interests of justice to consider her arguments on such an important point of principle and indicated that I would do so at this reconsideration hearing.
>
> 11. Rule 50 provides that the Tribunal may at any stage of proceedings, on its own initiative or 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.
>
> 12. Rule 50(2) provides that in considering whether to make an Order under this rule, the Tribunal should give full weight to the principle of open justice and to the Convention right to freedom of expression.
>
> 13. In **Millicom Services UK Ltd and others v Clifford** [2023] IRLR 295, Warby LJ sets out at paragraphs 2 to 10 the legal framework that applies in applications of this sort. At paragraphs 31-33, Warby LJ held that:
>
> > "31. … the appropriate starting point is the common law. This holds that open justice is a fundamental principle. But it also contains a key qualification: that every court or tribunal has an inherent power to withhold information where it is necessary in the interests of justice to do so: see **Khuja v Times Newspapers Ltd** [2017] UKSC 49, [2019] AC 161 [14] (Lord Sumption), citing the foundational common law

> authority of **Scott v Scott** [1913] AC 417, 446. I see nothing in Rule 50 or the context to suggest that when enacting the "interests of justice" limb of the Rule the draftsman intended to extend or to restrict the scope of the common law principle. On the contrary, the language of Rule 50(1) coupled with that of Rule 50(2) suggests that the principal intention was to reflect the common law, expressly authorising the ET to derogate from open justice to the extent that would in any event be permitted at common law, whilst emphasising the strength of the open justice principle.
>
> 32. The EJ should therefore have begun by asking herself whether the derogations sought were justified by the common law exception to open justice. This has been put in various ways in the authorities. In **Scott v Scott** at 439 Lord Haldane spoke of the need to show "that the paramount object of securing that justice is done would be rendered doubtful of attainment if the order were not made". Earl Loreburn said, at 446, that the underlying principle that justified the exclusion of the public was "that the administration of justice would be rendered impracticable by their presence". In **Attorney General v Leveller Magazine Ltd** [1979] ACT 44, 550 Lord Diplock spoke of the need to depart from the general rule "where the nature or circumstances … are such that the application of the general rule in its entirety would frustrate or render impracticable the interests of justice." Usually, the court's concern will be with the requirements of the due administration of justice in the proceedings before it. That is the focus of attention in the present case.
>
> 33. The qualification is certainly of wider application, as Eady P noted at [69] [of the EAT Judgment below]. It certainly permits derogations that are required for the protection of the administration of justice in other legal proceedings or even to secure the general effectiveness of law enforcement authorities: see Lord Reed's discussion of the point in **A v BBC** at [38]-[41]. It may go further. But this appeal does not require us to identify the boundaries of the common law exception to open justice.´

14. At paragraph 42, Warby LJ endorsed the relevant factors identified by Eady P in the EAT Judgment below. These include the extent to which the derogation sought would interfere with the principle of open justice, the importance to the case of the information which the applicant seeks to protect and the role or status within the litigation of the person whose rights or interest are under consideration. He added that also relevant considerations were the harm that disclosure would cause, conversely the extent to which the order sought would compromise the purpose of open justice and the potential value of the information in advancing that purpose. The main purposes of the open justice principle were identified by Baroness Hale in **Dring v Cape Intermediate Holdings Ltd** [2019] UKSC 429 at paragraphs 42 and 43 as being: (1) to enable public scrutiny of the way in which courts decide cases - to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly and (2) to

enable the public to understand how the justice system works and why decisions are taken.

15. At paragraphs 49 and 50, Warby LJ held that:

> 49. That is not the end of the decision-making process on the 'interests of justice' limb of r 50. As indicated by Lord Reed in **A v BBC** at [57], a court or tribunal that has struck the common law balance will need to check its conclusions against relevant human rights. The ET will need to undertake this task when the r 50 application is remitted for redetermination. Here, there is an added reason for doing so. Rule 50 is delegated legislation which must be construed and given effect compatibly with Convention rights: ss 2, 3 and 6 of the HRA all apply. And for good measure r 50(2) expressly requires the tribunal to give effect to the Convention right to freedom of expression.
>
> 50. A decision to grant a derogation would therefore need to be reviewed for compatibility with the art 6 and 10 rights of the parties and the art 10 rights of the press and public. Under art 6 the question would be whether the restrictions on disclosure are justified because 'the protection of the private life of the parties so require' or whether they are 'strictly necessary' because 'publicity would prejudice the interests of justice'. On the facts of this case the relevant justifications under art 10(2) would seem to be "for the protection of the … rights of others" and "for preventing the disclosure of information received in confidence."

16. I start by considering the Respondent's position in respect of a rule 50 Order. The Respondent did not bring these proceedings, he was named in them by the Claimant. He did choose to defend the claim but given his vehement denial of the serious allegations of sexual harassment, he had little real choice to do otherwise. The Claimant has exercised her right to withdraw the claim before any substantive hearing. This has deprived the Respondent of the ability to put evidence before the Tribunal refuting the claims and of the opportunity to have a Judgment clearly stating whether the claims succeeded or were dismissed. The Claimant continues to repeat her allegations, contacting the Respondent's new employer, his friends and current partner, and even wrongly informing them that she has won her claim. If the Respondent's identity was not anonymised, the administration of justice would be frustrated as the Claimant could maintain her allegations freely naming the Respondent but with him entirely unable to defend himself due to a decision to withdraw that was entirely within her power.

17. In terms of the **Dring** factors, the main purposes of the principles of open justice are not engaged as there are no decisions on the merits to be subject to public scrutiny or for a judge to be held to account. As for understanding how the justice system works and why decisions are taken, again, this is a claim that was withdrawn without any substantive decision on the merits being made.

18. For these reasons, I am satisfied that it is necessary in the interests of justice to make an Order to protect the Respondent's identity and his reputation. On

> the facts of the case, the need for a limited anonymity order is a proportionate derogation to the principle of open justice.
>
> 19. Such a derogation is not incompatible with Convention rights. There is evidence before me to show a real risk to his Article 8 rights if he is named and the detail of the claim enters the public domain without any testing of the merits. The Claimant has shared her allegations with others, and threatened press involvement during the proceedings and even after withdrawing and avoiding a costs order despite her unreasonable behaviour, has contacted the Respondent's new employer, his friends, and even his current partner. These are claims that were withdrawn without any final hearing but where the Claimant still, wrongly, maintains that she has won her claim of sexual harassment. Applying articles 6 and 10, the restrictions on the disclosure of the Respondent's identity is justified because the protection of his private life requires it and publicity would undermine faith in the justice system.
>
> 20. I turn then to the Claimant's application for Rule 50 order in respect of her own identity. The Claimant is in a very different position to the Respondent. She chose to bring these claims. She chose to make the allegations. She has actively threatened publicity by going to the press. She chose to withdraw before the merits of her claim could be tested by the Tribunal. She has shared the details of her allegations and falsely claimed to have won with the Respondent's new employer, friends and current partner. The Claimant requested written reasons for the costs judgment given orally even after I explained that if provided they would be published. The interests of justice do not require a derogation from the principle of open justice.
>
> 21.I have some sympathy for the Claimant's submissions that publication of her name in connection with these proceedings has had an adverse effect on her private life, and indeed that of her family given that her surname is not common in this country. However, the only Judgments in the public domain are those dismissing the claims upon withdrawal and the Judgment refusing to award costs (albeit now with written reasons detailing the Claimant's conduct as a result of her decision to exercise her right to the same). For these reasons, I am not satisfied that her article 8 rights justify a restriction on the disclosure of her name in order when balanced against the rights under articles 6 and 10."

67. It is the order that was made following the Reconsideration Hearing which is the subject of this appeal. I should add that it has not been suggested on behalf of the Appellant that the EJ had no power or jurisdiction to reconsider her earlier orders at the Reconsideration Hearing on 2 October 2023, though Mr Platt-Mills referred to it as being "somewhat unorthodox". In my view, this is an unfair criticism of the EJ. The email that the Respondent's solicitors sent to the ET on 30 March 2023 provided clear evidence that the Claimant had lied to the Respondent's new employer about the outcome of the ET proceedings and the EJ was plainly entitled to reconsider the costs decision. More

pertinently, perhaps, the reconsideration of the rule 50 anonymisation order at the hearing in October 2023 took place at the Appellant's own request. It is, with respect, a bit rich for the Appellant's representative to criticise the EJ, however faintly, for doing what the Appellant asked her to do.

68. The sequence of events does not stop there. In about November 2023, the Claimant made a whistleblowing complaint about the Respondent to the Financial Conduct Authority. (I am informed by Ms Banerjee that in fact the Respondent has never worked in a role that is regulated by the FCA.) She sent to the FCA a copy of a blog post which she had published on a website called medium.com. The blog post referred to a number of alleged incidents of sexual harassment, throughout the Appellant's career in the US and the UK, including her allegations against the Respondent. Though she did not name the Respondent in this blog post, she identified his new employer. She described EJ Russell as being "biased" and dishonest and alleged that EJ Russell screamed at her. The Appellant also alleged that Ms Banerjee was dishonest. In a further blog post dated May 31 2024 she wrote that "There is an increasing number of evidence in the UK press that suggests that British judges are biased against women and repeatedly rule against them." In the blog post she was highly critical of Judge Russell, including alleging that she "lied at least 7 times in the published judgment to cover up the perpetrator and to silence me for life." The Appellant also gave negative reviews on Trustpilot for solicitors who had acted for the Respondent.

69. I should add that the grounds of appeal as originally filed do not include any allegation of bias or misconduct (or mendacity) against EJ Russell, or any allegation of misconduct against Ms Banerjee. I make clear that I have not seen anything that would provide the slightest support for any such allegations, if they had been made.

70. After permission to appeal had been granted on 1 March 2024 on most, though not all, of the grounds of appeal in the Appellant's Notice, the Appellant filed an application, dated 29 April 2024,

to amend the grounds of appeal. This was supplemented by revised draft grounds dated 14 May 2024 and further submissions in an email dated 23 May 2024. The proposed amendments focused upon allegations against the EJ, asserting that she was "repeatedly dishonest throughout the three hearings", that she "screamed at me for an hour at the first hearing and lied about the merits of my case to force me to drop it" and that she "published a dishonest judgment to justify a permanent Rule 50 Order."

71. At the hearing before me, Mr Platts-Mills made clear that the Appellant did not make an application to amend the grounds of appeal to take these points and that the appeal was advanced on the grounds as originally set out in the Appellant's Notice (that is, those for which permission to appeal had been given). I repeat, for the avoidance of doubt, that there was no evidence before me of misconduct, bias, or dishonesty on the part of the EJ, who dealt with difficult proceedings before her in a patient and measured way.

The submissions on behalf of the Appellant

72. At the hearing, Mr Platts-Mills said that the essence of the appeal was that the EJ had not conducted the correct balancing exercise before making the permanent anonymity order. He made six main submissions.

73. First, Mr Platts-Mills submitted that there was no fact-specific assessment by EJ Russell of the public or other interest in full publication in the present case, and that the EJ failed to apply an intense focus upon the comparative importance of the specific rights being claimed, or upon the justifications for interfering with or restricting them.

74. Second, Mr Platts-Mills submitted that, whilst the appeal is against the permanent anonymity order that was made (or continued) at the hearing on 2 October 2023, the EAT should have real concerns about the way in which the temporary RRO and permanent anonymity orders had been made

at the hearings on 28 February 2022 and 6 March 2023, respectively. In particular, he said that the EJ gave inadequate reasons for her decisions and did not refer to any authority. He said that she appeared to take the view that if the parties agreed to an RRO or an anonymity order, it should be granted without the need to engage in any form of balancing exercise. Mr Platts-Mills said that this error tainted the decision under appeal.

75. Third, Mr Platts-Mills submitted that the EJ wrongly held that the open justice principle was not engaged and/or did not give sufficient weight to the open justice principle because the Appellant's claim had been withdrawn without any substantive decision being made on the merits. He said that this was wrong in principle, particularly in a case such as this, in which a hearing took place of the application for costs, followed by a reconsideration hearing of the same issue.

76. The fourth main submission made by Mr Platts-Mills at the hearing was that the judge had failed to engage with the substance of the allegations made by the Appellant, which, he said, were not of the most serious kind. This error meant that the EJ failed properly to evaluate the impact that publication of his name in connection with the proceedings would have on the Respondent's Art 8 rights, and/or placed excessive weight on the Respondent's Art 8 rights. He emphasised that the fact that the allegations might be painful, humiliating, or have a deterrent effect was not sufficient to justify an Art 50 order being made. Rule 50 is not a general privacy charter for the protection of any material which those affected by Tribunal litigation wish to keep hidden.

77. Fifth, Mr Platts-Mills submitted that the EJ had wrongly approached her consideration of the potential impact upon the Appellant of the anonymity order, and had not properly engaged with the way in which the Appellant and Respondent had behaved. She placed too much weight on the fact that the Appellant had brought the claim. Whilst it was true, as the EJ pointed out, that it was the Appellant who had commenced proceedings, this was not the whole story, and did not reflect the reality and substance of the situation. She did not take account of the fact that the Appellant had

actively sought to settle the proceedings, that it was the Respondent who made the costs application, and that the EJ had criticised the Respondent (as well as the Appellant) for wasting the Tribunal's time and resources on a personal dispute between them. Mr Platts-Mills said that no weight should have been placed on the fact that the Appellant had breached the anonymity orders because those orders were plainly invalid.

78. Finally, Mr Platts-Mills submitted that the EJ had been wrong to hold that the interests of justice would be frustrated if the Appellant was able to identify the Respondent when referring to the proceedings. He said that there was no clear and cogent evidence of a risk of an adverse impact upon the interests of justice, or of a major impact upon the Respondent's Article 8 rights. He said that the EJ had failed to give any or any adequate weight to the Appellant's Art 10 right to freedom of expression. It was wrong in principle that the Appellant's ability to make allegations of sexual misconduct were constrained by the Tribunal's order. This was a breach of her right to freedom of expression under Art 10. The Appellant was entitled to repeat her allegations; if they were false, the Respondent had a remedy in defamation. She had successfully defended herself in the costs application, and she was entitled to be able to report this to third parties, without constraint. Similarly, the Appellant was entitled to raise concerns about the Respondent with the FCA.

79. Mr Platts-Mills submitted that, if the appeal succeeded, it was not necessary to remit the issue to the same or a different Tribunal. The EAT should lift the anonymity order.

The submissions on behalf of the Respondent

80. On behalf of the Respondent, Ms Banerjee emphasised that the appellate courts have made it clear that the decision whether to make a permanent anonymity order rests with the ET and that the EAT should only intervene if the ET had misdirected itself in law or had reached a decision which no reasonable tribunal could have reached. She submitted that the Appellant cannot surmount that high hurdle in the present appeal. She further said that some of the submissions that were made on

behalf of the Appellant by Mr Platts-Mills went further than the grounds for which permission to appeal had been granted.

81. Ms Banerjee said that the judge correctly directed herself on the authorities and the legal principles, and plainly had them well in mind when she took her decision to grant the permanent anonymity order. Each case depends on its own facts. The ET had before it bundles of documents, including a statement from the Respondent and statutory declarations from third parties, which the EAT has not seen.

82. Ms Banerjee accepted that the principles of open justice apply even if claims are withdrawn or settled, but submitted that the EJ did not fall into the trap of thinking that they did not. She said that the fact that a claim was never tested on the merits was relevant to the balancing exercise. Indeed, the balance is entirely different where, as here, a claim is not tested in law because the Claimant withdrew it. The test should be the same as it is for interim anonymity orders whilst proceedings are ongoing. It is not safe to assume that the public can distinguish between unproven allegations and facts, especially where a claimant has misreported the facts.

83. The fact that the Respondent elected to apply for costs is not a reason to deny him a permanent anonymity order, especially where the ET had found the Appellant's behaviour to be unreasonable (even though the ET had also found the Respondent's behaviour to be unreasonable in certain respects).

84. Ms Banerjee submitted that the EJ should not be criticised for dealing with the RRO and the first permanent anonymity order relatively briefly, given that it was not opposed by the Appellant. In any event, there was discussion about whether such orders were appropriate and the EJ did not simply rubber-stamp them because (at the time) the Respondent's applications were unopposed by the Appellant, who was legally represented. Still further, Ms Banerjee submitted that the appeal is

against the permanent anonymity order which was made at the Reconsideration Hearing and so, even if there were any procedural defects at any earlier stage, this is not relevant to the appeal. Detailed reasons are given in the judgment following the Reconsideration Hearing for the making of the permanent anonymity order.

85. Ms Banerjee further submitted that, in light of the way that the Appellant had behaved in this case, it was plainly appropriate for the EJ to make a permanent anonymity order. The claim against the Respondent did not really have anything to do with employment. The Appellant had threatened from the start that she wanted to make this the most highly publicised sexual harassment case in the City. She wrote to the Respondent's partner, employer and friends, making false statements that were designed to damage his reputation. The most egregious was the email that she sent to the Respondent's new employer on 21 March 2023, headed "Sexual harassment verdict against your employee", in which she falsely stated that "I won a sexual harassment lawsuit against [naming the Respondent and his role]" The Appellant has also reported the Respondent to the FCA (even though, Ms Banerjee said, he is not regulated by the FCA). She is engaged in a campaign of harassment against the Respondent and has been using the ET proceedings to pursue her own agenda. There is no Article 10 interest in making libellous or slanderous allegations.

Did the submissions made on behalf of the Appellant go beyond the grounds for which permission to appeal was granted?

86. Though the submissions advanced by Mr Platts-Mills ranged widely, and included detailed submissions that were not specifically set out in the Appellant's Notice, I do not consider that his submissions went beyond what was permissible. The main thrust of the grounds of appeal, as set out in the Appellant's Notice, was that the EJ had failed to appreciate that the principle of open justice applied to the case at all, and/or had failed to carry out a proper balancing exercise when imposing the permanent anonymity order and/or had placed too much weight on certain factors and too little weight on others. This was also the main thrust of the submissions at the appeal hearing on behalf

of the Appellant. Ms Banerjee, on behalf of the Respondent, was able to address and respond to each of the specific points that was put on behalf of the Appellant, and so there is no unfairness or prejudice in permitting the Appellant to rely upon all of the points that were made on her behalf.

The test to be applied by the appellate court to appeals such as this

87. It was common ground between the parties that the appellate court should not intervene unless the judge has erred in principle or reached a conclusion which was plainly wrong or outside the ambit of conclusions that a judge could reasonably reach. I agree that this is the test.

88. The test was set out by Simler P, as she then was, in **Fallows v News Group Newspapers Ltd** [2016] IRLR 827, at paragraphs 51 and 52, as follows:

> 51. Finally before turning to the arguments advanced by Mr Tomlinson, both sides agree that the scope for this Appeal Tribunal to interfere with the employment judge's decision depends on a finding that there was an error of principle or that he reached a decision that was plainly wrong or outside the ambit of conclusions reasonably open to him. In **AAA v Associated Newspapers Ltd** [2013] EWCA Civ 554, [2013] All ER (D) 224 (May) the Court of Appeal identified the approach as follows:
>
> > '[8] It is now clearly established that a balancing exercise between arts 8 and 10 of the European Convention on Human Rights ("the ECHR") conducted by a first instance judge is treated as analogous to the exercise of a discretion. Accordingly, an appellate court should not intervene unless the judge has erred in principle or reached a conclusion which was plainly wrong or outside the ambit of conclusions that a judge could reasonably reach: see, for example, **Lord Browne of Madingly v Associated Newspapers Limited** [2007] EWCA Civ 295, [2008] QB 103 at para 45, [2007] 3 WLR 289. In **JIH v News Group Newspapers Ltd** [2011] EMLR 15 at para 26, Lord Neuberger MR said: "While [the decision of the lower court] did not involve the exercise of a discretion, it involved a balancing exercise, with which, at least as a matter of general principle, an appellate court should be slow to interfere."
> >
> > [9] In sensitive privacy cases such as the present, but particularly where there are cogent public interest arguments in play, there is a difficult judgement to be made by the court in balancing the competing rights.

> The balancing exercise requires a detailed appreciation of the evidence that was before the trial judge. She was in the best position to undertake the balancing exercise and had the advantage denied to this court of seeing and hearing the witnesses and making an assessment of them.

> 52. To that extent, the view I expressed in **Roden v BBC** [2015] IRLR 627 is wrong and not to be followed. The approach in **AAA** was applied recently by the Court of Appeal in **PJS v NGN** [2016] EWCA Civ 100, [2016] All ER (D) 248 (Jan) and as Mr Tomlinson emphasises, the Court was prepared to overturn the decision of the first instance judge if it concluded that the judge got the balancing exercise wrong."

89. The passage from the **AAA** case which was referred to by Simler J was dealing with Convention Rights, rather the common law principle of open justice, but, in my view, the same approach must apply if the appeal is also concerned with the ET's decision on the common law issue which, as Warby LJ said in **Millicom**, must be the first stage in the analysis. Simler J in **Fallows** did not suggest otherwise, and the reasoning of the EAT and the Court of Appeal in **Millicom** suggests that those courts adopted this approach: see the Court of Appeal judgment at paragraph 36, and Eady J in the EAT at [2022] ICR 1204, at paragraph 35. In **A v X** [2019] IRLR 620, at paragraph 10, Soole J accepted (as was common ground between the parties) that the decision on an appeal against an order under rule 50 involves a balancing exercise akin to the exercise of a discretion, and that the Appeal Tribunal should not intervene unless the Judge has erred in principle or reached a conclusion which was plainly wrong or outside the ambit of conclusions that a Judge could reasonably reach. That was a case in which the appeal included challenges on common law and on human rights grounds, and Soole J did not say that the approach was different at the common law stage in the analysis. Soole J pointed out that this permits interference where the Judge has, in the course of the balancing exercise, taken into account irrelevant factors and/or failed to take account of relevant factors.

90. In my judgment, it makes sense that the same approach should apply to both stages of the analysis. Both the common law stage and the human rights stage involves a similar kind of fact-

specific evaluative judgment, involving, mostly, the same considerations, and so it is not easy to see why the approach on appeal to one stage in the analysis should be different from the approach to the other stage in the analysis. It is true that the **Master of the Rolls' Practice Guidance (Interim Non-Disclosure Orders)** [2012] 1 WLR 1003 states that "The grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test." However, this statement is derived from paragraphs 34 and 35 of the judgment of Tugendhat J in **AMM v HXW** [2010] EWHC 2457 (QB), and that case, a Convention case, was decided before the Court of Appeal judgment in **AAA.** In my view, it no longer reflects the law.

91. In light of this guidance, I must bear two things firmly in mind. First, in many cases, there will be no absolute, or binary, right or wrong answer to the question whether a permanent anonymity order should be made in a particular case. There will be cases in which different judges, correctly directing themselves in law, might reach different conclusions as to whether the order should be made, without falling into error. Second, it is not the role of the appellate judge to substitute his or her view as to whether a permanent anonymity order should be made for the view of the first instance judge. The appellate court should only interfere if the first instance judge made an error of principle or reached a decision that was plainly wrong or which was outside the ambit of conclusions reasonably open to him or her.

92. When considering the matter, the appellate judge should bear in mind that the first instance judge was best placed to undertake the balancing exercise (see, eg, **Fallows** at 66). That is certainly the position here. The EJ presided over a number of hearings; she saw how the parties behaved; and, particularly at the hearing on 2 October 2023, she saw and considered a large bundle of documents, and witness statements, that were not placed before me. In March 2023, she had seen the Appellant give evidence and be cross-examined.

The relevant legal principles

93. The EJ referred in the Reconsideration Reasons of 21 December 2023 to the principles to be derived from the leading authorities of **Millicom Services UK Ltd and others v Clifford** (Court of Appeal) and **Dring v Cape Intermediate Holdings Ltd** (Supreme Court). I have set out the EJ's summary of the guidance provided by these authorities at paragraph 66, above, and so I will not repeat it here. In short summary, the Court of Appeal in **Millicom** made clear that, when considering whether to make a permanent anonymity order or any other order restricting open justice under rule 50, a Tribunal must consider the matter in two stages. The first stage is to consider whether the derogations sought were justified by the common law exception to open justice, as rule 50 was designed to reflect the common law. The second stage is to check the conclusions reached by application of the common law principles against relevant human rights, that is, in this case, the rights laid down in Articles 6, 8 and 10 of the European Convention on Human Rights. The **Millicom** judgment, having been handed down in 2023, is relatively recent, and no useful purpose would be served by extensive citation of earlier authorities in this judgment about the general principles to be applied to derogations from the open justice principle. It is sufficient to refer to the guidance that was given by Simler J in **British Broadcasting Corporation v Roden** [2015] ICR 985. At paragraphs 21-26 of **Roden**, Simler J said that:

> "21. An order under rule 50 interferes both with the principle of open justice and the right to freedom of expression. The principle of open justice was considered recently by the Supreme Court in **A v British Broadcasting Corpn (Secretary of State for the Home Department intervening)** [2015] AC 588 , in which Lord Reed JSC said, at para 23: 'It is a general principle of our constitutional law that justice is administered by the courts in public, and is therefore open to public scrutiny. The principle is an aspect of the rule of law in a democracy. As Toulson LJ explained in **In re Guardian News and Media Ltd v City of Westminster Magistrates' Court** [2013] QB 618 , para 1, 'society depends on the courts to act as guardians of the rule of law … In a democracy, where the exercise of public authority depends on the consent of the people governed, the answer must lie in the openness of the courts to public scrutiny'.

22. The principle of open justice is accordingly of paramount importance and derogations from it can only be justified when strictly necessary as measured to secure the proper administration of justice.

23. Where anonymity orders are made, three Convention rights are engaged and have to be reconciled. First, article 6 which guarantees the right to a fair hearing in public with a publicly pronounced judgment except where to the extent strictly necessary publicity would prejudice the interests of justice. Secondly, article 8 which provides the qualified right to respect for private and family life. Thirdly, article 10 which provides the right to freedom of expression, and again is qualified.

24. Lord Steyn described the balancing exercise to be conducted in a case involving these conflicting rights in **In re S (A Child) (Identification: Restrictions on Publication)** [2005] 1 AC 593 , para 17, as follows: 'What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, 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. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience, I will call this the ultimate balancing test.'

25. The paramountcy of the common law principle of open justice was emphasised and explained in **Global Torch Ltd v Apex Global Management Ltd** [2013] 1 WLR 2993 , where Maurice Kay LJ referred to **R v Legal Aid Board, Ex p Kaim Todner** [1999] QB 966, 977 and Lord Woolf MR's holding that the object of securing that justice is administered impartially, fairly and in a way that maintains public confidence is put in jeopardy if secrecy is ordered because (among other things): 'It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely … Any interference with the public nature of court proceedings is therefore to be avoided unless justice requires it.'

26. Having referred to the question to be asked when seeking to reconcile these different rights as affirmed by the Supreme Court in **In re Guardian News and Media Ltd** [2010] 2 AC 697 , para 52, per Lord Rodger of Earlsferry JSC, as 'whether there is sufficient general, public interest in publishing a report of the proceedings which identifies M to justify any resulting curtailment of his right and his family's right to respect for their private and family life', Maurice Kay LJ set out the relevant passages from the **Practice Guidance (Interim Non-disclosure Orders)** [2012] 1 WLR 1003 , given by Lord Neuberger of Abbotsbury MR including at para 11: 'The grant of derogations is not a question of discretion. It is a matter of obligation …' and, at para 13: 'The burden of establishing any derogation from

> the general principle lies on the person seeking it. It must be established by clear and cogent evidence …'"

94. As I said in **X v Y** [2021] ICR 147, the approach set out in the Roden case is consistent with the approach taken by the appeal tribunal in earlier cases such as **F v G** [2012] ICR 246 (Underhill J) and **X v Comr of Police of the Metropolis** [2003] ICR 1031 (Burton J), and with the guidance given more recently by Judge Eady QC, as she then was, in **Ameyaw v PricewaterhouseCoopers Services Ltd** [2019] ICR 976, paragraphs 30–45. In **F v G**, at paragraph 49 of his judgment, Underhill J rejected the suggestion that a different approach to open justice should be taken in employment tribunal cases on the basis that individual employment claims do not raise matters of general public interest. I should add that in **A v X** [2019] IRLR 620, Soole J said that, "r 50(1) imposes a less onerous test than the strict necessity test of the general rule, namely necessity 'in the interests of justice or in order to protect the Convention rights of any person'". In my judgment, in light of the Court of Appeal ruling in **Millicom**, that observation cannot be regarded as an accurate statement of the law: **Millicom** makes clear (at paragraph 31 of Warby LJ's judgment) that rule 50 was intended to and does, require the application of the same principles relating to derogation from open justice as apply to other types of proceedings.

95. The question whether there should be a derogation from the principle of open justice in a particular case is fact-specific. In **A v British Broadcasting Corpn (Secretary of State for the Home Department intervening)** [2014] UKSC 25; [2015] AC 588, at paragraph 41, Lord Reed JSC said that the court has to carry out a balancing exercise which is fact-specific (adopting similar observations that were made in **Kennedy v Information Commissioner (Secretary of State for Justice Intervening)** [2014] UKSC 20; [2015] AC 455 and **R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court (Article 19 intervening)** [2012] EWCA Civ 420; [2013] KB 618.

96. There is some guidance in the authorities which is of particular relevance to the present case.

97. In **R v Legal Aid Board ex p Kaim Todner** [1999] QB 966, the Court of Appeal said, at paragraphs 7 and 8:

> "7. The nature of the proceedings is also relevant. If the application relates to an interlocutory application this is a less significant intrusion into the general rule than interfering with the public nature of the trial. Interlocutory hearings are normally of no interest to anyone other than the parties. The position can be the same in the case of financial and other family disputes. If proceedings are ex parte and involve serious allegations being made against another party who has no notice of those allegations, the interests of justice may require non-disclosure until such a time as a party against whom the allegations are made can be heard.
>
> 8. A distinction can also be made depending on whether what is being sought is anonymity for a plaintiff, a defendant or a third party. It is not unreasonable to regard the person who initiates the proceedings as having accepted the normal incidence of the public nature of court proceedings. If you are a defendant you may have an interest equal to that of the plaintiff in the outcome of the proceedings but you have not chosen to initiate court proceedings which are normally conducted in public. A witness who has no interest in the proceedings has the strongest claim to be protected by the court if he or she will be prejudiced by publicity, since the courts and parties may depend on their co-operation. In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule."

98. In **Fallows**, at paragraph 57 and 68, Simler J said:

> "57. Like the employment judge, I do not accept Mr Tomlinson's second point, that the principle of open justice can have no application to this case in light of the settlement and the fact that all earlier hearings had been preliminary hearings in private and none of the documents in the case were (or ought to have been) on the public record.
>
> ….
>
> 68. It is also right to recognise that the fact of settlement and withdrawal of the claim means that allegations originally made remain untested and have not been adjudicated on. However, the public is to

> be trusted to understand that unproven allegations made and then withdrawn, are no more than that."

99. A different view was expressed by Soole J in **A v X**. He said, at paragraph 64, that:

> I do not agree that a Tribunal is required to proceed on the basis that distress and damage to reputation from the report of unproven allegations of sexual offences have to be ignored; nor that the public must be taken to understand the difference between such allegations and their proof."

100. The difference in the views expressed by Simler J and Soole J can perhaps be explained on the basis that their observations were made in cases that dealt with very different sets of facts. In my judgment, there is no hard-and-fast rule on this issue. Whilst account can be taken of the common sense of the public, it is not necessary to ignore that there is always the risk of some sections of the public assuming that there is "no smoke without fire", and so the fact that the claim has been settled or withdrawn is relevant to the rule 50 balancing exercise(s) amongst other considerations.

101. In the case of **A v Burke and Hare** [2022] IRLR 142, a claimant, who worked as a stripper and who sought arrears of pay from her employer applied for an order that her name would not be made public if she proceeded with her claim. The ET declined to make such an order, and the EAT dismissed her appeal against the ET's ruling. At paragraphs 31-43 of his judgment, Lord Summers set out a very helpful review of the authorities which explain why the principle of open justice requires, in the vast majority of cases, that the names of the parties to proceedings are made public. It is not necessary to set out these paragraphs in full in this judgment. However, it is worth quoting the following passages.

102. At paragraph 32, Lord Summers pointed out that:

> "In **Scott (orse Morgan) v Scott** [1913] AC 417 at 463 Lord Atkinson stated –

> '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 a 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.'

103. At paragraph 34, Lord Summers said:

> "**R v Legal Aid Board ex p Kaim Todner** [1999] QB 966 (at p 978 E-G) is authority for the proposition that parties and in particular claimants should expect their names to be made public, while witnesses have a greater claim to anonymity."

104. Notwithstanding that he rejected the appeal against the decision to refuse anonymity in the proceedings, Lord Summers granted anonymity to the claimant in relation to her application for anonymity, both in the ET and the EAT. He said:

> "69. The public interest in open justice is at its strongest when it restricts or interferes with reporting or publishing the merits of the case. That will usually be at the point when evidence is led, though it may be when submissions are made on legal issues that are in dispute. At that stage the identities will usually be disclosed and may be published. I am not persuaded that the principle of open justice has the same weight at the stage of a preliminary application designed to establish whether an order under r 50 should be made. In effect the Claimant has asked whether she would be entitled to anonymity if she pressed on with her case. It does not seem proper to publish a judgment in the Claimant's name merely because she has asked for anonymity. As I have indicated I am satisfied that art 8 is engaged. In that situation I consider I should grant an order in relation to the present application."

105. In the **PMC** case, Nicklin J summarised the law about naming the parties as follows:

> "27. Consistent with the open justice principle, the general rule is that the names of the parties to the proceedings will be made public; in the documents from the Court's records that are required to be open to public, in the hearings that take place in open court and in the orders and judgments of the Court. There is no general exception for cases where private matters are in issue, or where a party would prefer that his/her name or details of the proceedings were not revealed: **Scott -v- Scott** [1913] AC 417, 463 per Lord Atkinson; **R -v- Evesham Justices**

ex parte McDonagh [1988] QB 553 , 562A-C; **R -v- Legal Aid Board, ex parte Kaim Todner (A Firm)** [1999] QB 966 , 978g. Ordinarily, "the collateral impact that [the Court] process has on those affected is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public ": **Khuja -v- Times Newspapers Ltd** [2019] AC 161 [34(2)] per Lord Sumption."

….

29. Any order the effect of which is to withhold the name of a party in court proceedings (or otherwise restricts the publication of what would be the normally reportable details of a case) is a derogation from the principle of open justice and an interference with the Article 10 rights of the public at large: **JIH -v- News Group Newspapers Ltd** [2011] 1 WLR 1645 [21] ; **In re Guardian and Media Ltd** [2010] 2 AC 697 [63] .

30. Any derogation from, or restriction upon, open justice is exceptional and must be based on necessity. Any restriction on the public's right to attend court proceedings, and the corresponding ability to report them, must be shown, by " clear and cogent evidence " to fulfil a legitimate aim, be necessary and proportionate: **R (Marandi) -v- Westminster Magistrates Court** [2023] 2 Cr App R 15 [16] ; **R -v- Sarker** [2018] 1 WLR 6023 [29] ; JIH [21]. These principles apply "across the board " (i.e. in all Courts and Tribunals), including in cases where rights under Article 8 of the Convention are engaged: **Marandi** [17]. In civil proceedings, except in cases where statute grants automatic restrictions, there is no presumption of anonymity for any category of case or litigant; in each case the order must be shown to be necessary.

31. In cases where the derogation from open justice is sought on the basis of an argued interference with another qualified Convention right, the task of the Court was stated by Lord Steyn in **In re S** [2005] 1 AC 593 [17] :

> "First, neither article has ***as such*** precedence over the other. Secondly, 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. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test…" (emphasis in original)

32. When deciding whether the applicant has satisfied the burden of demonstrating that the relevant derogation from open justice is necessary, the Court must carefully scrutinise the evidence and

> ascertain the facts (if necessary, by resolving any relevant factual dispute).

106. The particular issue under consideration in the **PMC** case was whether there should be a blanket and effectively automatic practice of granting anonymity to claimants in High Court approvals of personal injury/professional negligence settlements in cases in which the claimant lacks capacity. This is a very different issue from that which arises in the present case. In my view, and with respect, the summary of the law which was given by Nicklin J in **PMC** is an accurate and helpful one, and can be relied upon, notwithstanding that the appeal to the Court of Appeal in **PMC** has not yet been heard and determined..

Summary of the relevant law

107. Drawing these strands together, in my judgment the following points of law and principle can be identified which are of particular relevance to the present case:

The approach that should be taken by a Tribunal

(1) The same approach should be applied to derogations from open justice, including anonymisation, in employment claims in the ET as in any other type of claim (**F v G**);

(2) The principles of open justice still apply, even if a case has been settled and there has been no determination on the merits (**Fallows**);

(3) The burden rests with the party seeking a derogation from open justice to establish that it is necessary (**Roden**);

(4) The ET should first ask itself whether the derogation sought is justified by the common law exception to open justice, and should then go on to check its conclusion against the relevant Convention rights (Rule 50(2) and **Millicom**);

(5) The ET must undertake a balancing exercise (**Kennedy** and **A v BBC**);

(6) The question whether there should be a derogation from the principle of open justice in a particular case is fact-specific (**Kennedy** and **A v BBC**);

(7) An ET is generally better placed than the EAT to carry out the assessment that is required when considering a derogation from open justice (**Fallows**)

The common law stage of the analysis

(8) The open justice principle is paramount and so any derogation from it must be avoided unless justice requires it (**Global Torch**);

(9) A derogation from open justice will, in general, only be justified if it is concerned with the promotion of the interests of justice. This includes circumstances in which justice would otherwise be prevented from being done in the particular case, or where it is necessary to promote the requirements of the due administration of justice in the proceedings. A derogation may also be justified where the derogation is necessary to ensure that justice is done in other proceedings (**Millicom**). The Court of Appeal in **Millicom** did not say, however, these were the only possible justifications;

Considerations that are relevant to the common law stage of the analysis include:

(10) The burden of establishing that a derogation from the general principle of open justice is necessary lies with the person seeking it (**Guardian News and Media**);

(11) The need for the derogation must be established by clear and cogent evidence (**Guardian News and Media**);

(12) The ET should take into account the importance to the case of the information that is sought to be withheld and the harm that the disclosure would cause (**Millicom**);

(13) The ET should also take account of the role of the applicant in the proceedings, i.e. whether they are claimant, defendant, or witness (**Millicom**);

(14) The ET should take account of the purposes of open justice that were identified by Baroness Hale in **Dring**, namely to enable public scrutiny of the courts and tribunals and to promote public confidence in, and understanding of, the courts;

Considerations that are relevant to the check against Convention rights

(15) There must be an intense focus on Convention rights (**Re S**);

(16) In most (though not necessarily all) cases, the relevant Convention rights will be those under Article 6 (fair hearings); Article 8 (right to family life, which includes privacy rights); and Article 10 (freedom of speech);

(17) The Convention Rights should be balanced against each other. The balancing exercise is necessary because, in many cases, considerations relating to Convention rights will point in different directions (especially where, as will usually be the case, Arts 8 and 10 are engaged). No Convention right takes precedence over the others (**Re S**);

(18) A proportionality test must be applied (**Re S**);

Considerations that are of particular relevance in anonymity cases such as this

(19) As a general principle, parties to litigation should expect that their names will be made public (**Kaim Todner** and **PMC**);

(20) A desire for anonymity is not a reason in itself to grant it: publicity is the price to be paid for open justice and the freedom of the press (**Khuja**);

(21) The fact that ventilation of allegations is painful or humiliating is not a reason in itself to grant anonymity (**Scott v Scott** and **A v Burke and Hare**);

(22) The burden of showing that a derogation from open justice is greater where the applicant is seeking indefinite anonymity as compared to when the applicant is seeking anonymity for a limited period, such as until judgment at the end of a trial (cf **Fallows** at 63, and **M v Vincent** [1998] ICR 74, at 76C-E, per Morison J);

(23) A respondent is in a different position from a claimant. A respondent may have an interest equal to the claimant in the outcome of the proceedings, but the respondent has not chosen to initiate court proceedings which are normally conducted in public. In general, though, all parties have to accept the embarrassment and potential damage to their reputation from being involved in litigation (**Kaim Todner**);

(24) Where an allegation is made but is not finally determined, the public can generally be trusted to understand that unproven allegations that were made and then withdrawn are no more than that, but that does not mean that the fact that the truth or falsity of the allegations were never determined after a full hearing is an irrelevant consideration. (**Fallows** and **A v X**); and

(25) Therefore, if an application for a derogation from open justice relates to an interlocutory application, this is a less significant intrusion into the general rule than interfering with the public nature of the trial (**Kaim Todner**). The public interest in open justice is at its strongest when it restricts or interferes with reporting or publishing the merits of the case. This will usually be after evidence has been led (**A v Burke and Hare**).

Discussion

108. I will deal in turn with the six grounds, or six sets of grounds, advanced on behalf of the Appellant.

109. The first ground is that there was no fact-specific assessment by the EJ of the public or other interest in full publication in the present case, and she failed to apply an intense focus upon the comparative importance of the specific rights being claimed, or upon the justifications for interfering with or restricting them.

110. In my judgment, this is not a fair criticism of the EJ's reasoning. At paragraph 14 of the reasons dated 21 December 2023, the judge referred to the emphasis in **Millicom** to the importance of open justice, and to the summary of the main purposes of open justice in **Dring**. It is clear, therefore, that the judge had the public interest in full publication well in mind. At paragraph 17 of the Reconsideration Reasons, she specifically addressed the question of how far, if at all, in this

particular case, the public interest would be adversely affected by the derogation sought. At paragraph 19, the judge dealt with the balance between competing Convention rights.

111. I reject the submission that the judge erred in law in failing to deal with these matters in greater detail. Standing back, and looking at the EJ's reasoning as a whole, she dealt with the application for anonymity for the Respondent carefully, thoroughly, and in accordance with the legal principles that she was required to apply. She directed herself correctly on the law, citing the key passages from **Millicom**. She first considered the position at common law. She identified the interests of justice that made a derogation from open justice necessary. She took account of the purposes of open justice, as set out in **Dring**. She undertook a balancing exercise. She applied the test of necessity. Having come to the conclusion that a derogation from open justice, in the form of permanent anonymity for the Respondent, was justified by reference to common law principles, she then proceeded to check her conclusions by reference to the relevant Convention rights. She applied intense scrutiny to the Convention rights that were engaged and undertook the appropriate balancing exercise. In my judgment, the approach that was taken by the judge to the issue that she had to decide was impeccable.

112. It is a trite observation that it is not necessary for a Tribunal to deal with every issue that arises in a case in minute and exhaustive detail. To do so would cause inordinate expense and delay and would clog up the administration of justice. It would give rise to the risk that impossible standards are set for ETs to meet. This was reflected in rule 62(4) of the 2013 Rules of Procedure: "The reasons given for any decision shall be proportionate to the significance of the issue and for decisions other than judgments may be very short." (now rule 60(6) of the 2024 Rules). The decision on anonymity in this case was a decision other than a judgment. The main purpose of an ET's reasons are to tell the parties in broad terms why they have won or lost on each point, and to enable the EAT to identify whether there is an error of law giving rise to a ground of appeal (**Meek v City of Birmingham District Council** [1987] IRLR 350 (CA)). The reasons of the EJ on the anonymity point amply met

this standard. Moreover, I have not been shown the skeleton arguments (if any) that were placed before the EJ on this issue. I do not know, therefore, how much assistance the EJ was given by the parties in the form of legal argument on the anonymity issue. I note, however, that, by this stage, the Appellant was representing herself. I suspect, therefore, that the judge did not receive the benefit of the very full argument on these points that I have received, particularly on behalf of the Appellant. If so, then it is somewhat unfair to expect her to have gone in the greater detail than she did.

113. The second ground advanced by Mr Platts-Mills is that the decision to make the anonymity order permanent in October 2023 was tainted by the way in which the previous RRO and anonymity orders had been made at the hearings on 28 February 2022 and 6 March 2023. There is no force in this criticism. As I have said, the judge did invite submissions before making the orders on 28 February 2022 and 6 March 2023. She did not fall into the trap of making orders that derogated from open justice simply because the parties agreed to them. On 28 February 2022, no press were present and no-one spoke up in opposition to the RRO. In those circumstances, it is understandable that the EJ did not consider it necessary to take up time with detailed reasons for the order being made. As for the first permanent anonymity order that was made on 6 March 2023, there is a simple explanation for the absence of detailed reasons. This is that the Respondent requested that the EJ refrain from giving reasons for her decisions on 6 March 2023, out of concern that the Appellant would use them for improper purposes. The EJ did not hear submissions on this point until the hearing in October 2023. She decided at that stage that she should, after all, give written reasons for her decisions on 6 March 2023 but by that point the (uncontested) decision on anonymity on 6 March 2023 had been superseded by her decision on anonymity that was reached at the hearing on 3 October 2023. She gave full reasons for the latter decision and there was simply no point in repeating those reasons in the separate written reason for the earlier decision. Further, and in any event, even if, contrary to my conclusion, the EJ had fallen into error by failing to give reasons for her earlier rule 50 decisions, that

would not taint the decision that she made on 3 October 2023. That decision must stand or fall on its own merits, and on the basis of the reasons that she gave for that decision on 21 December 2023.

114. The remaining four grounds of challenge are inter-related in that they each challenge the judge's process of reasoning and/or her conclusions that a derogation from open justice of this type was necessary and was consistent with the relevant Convention rights. Mr Platts-Mills submitted that the judge had failed, either sufficiently or at all, to take account of relevant considerations, or had placed too much weight on particular considerations.

115. Mr Platts-Mills first submitted that the judge had wrongly held that the open justice principle was not engaged because no substantive decision had been made on the merits. I am unable to accept this submission. There is nothing in the Reconsideration Reasons to suggest that the EJ had directed herself that the open justice principle was not engaged at all, because there had been no substantive hearing on the merits. Rather, it is clear that the EJ proceeded on the footing that the open justice principle was, indeed, engaged.

116. Next, he submitted that the EJ gave too much weight to the fact that there had been no determination of the merits of the case, especially given that there had been a hearing of the application for costs and a reconsideration hearing. In my judgment, the judge was entitled to take account, as a relevant consideration, that there had been no determination on the merits, and that this was because the Appellant had decided unilaterally to withdraw her claim against the Respondent. This was a legitimate consideration for the judge to take into account in the balancing exercise, or exercises, that she had to undertake. It means that the allegations were left lying, so to speak, and that the Respondent has been denied an opportunity to show that they were unjustified. It meant that the anonymity order would not have as serious as impact upon the purpose and rationale of the open justice principle if it would have done after a decision had been made on the merits. This is recognised in the authorities, and specifically **Kaim v Todner** and **A v Burke and Hare** (see

paragraph 107(25), above). In **A v Burke and Hare**, though the EAT did not accept that the Appellant should be granted anonymity for the ET proceedings, the EAT did grant anonymity for the EAT proceedings and judgment. It is true that, as Simler J observed in **Fallows**, where an allegation is made but is not finally determined, the public can be trusted to understand that unproven allegations that were made and then withdrawn are no more than that. However, this does not mean that no weight at all can be placed on the fact that there was no determination on the merits in the balancing exercise(s). It is a relevant consideration and the weight to be placed upon it is a matter for the EJ.

117. A further relevant consideration is whether the applicant for anonymity is the claimant or the respondent. This matters because the claimant chose to bring the claim, and to face the consequences of attendant publicity, whilst the respondent did not. The difference in their positions is all the greater in circumstances in which a claimant makes allegations in a claim form and then withdraws them before a respondent has the opportunity to challenge them at trial. In those circumstances, not only has the claimant chosen to make those allegations in a public forum, but she or he has then chosen to deprive the person against whom they have been made of the opportunity to demonstrate that they are false (if that be the case).

118. The fact that, after the Appellant withdrew her claim, the Respondent made an application for costs and then the EJ, of her own motion, decided that there should be a reconsideration hearing on the costs issue, does not mean that the EJ was prohibited from taking into account that there had been no substantive decision on the merits, when deciding whether to grant permanent anonymity to the Respondent. Nor does the fact that the Respondent was reluctant to settle unless the Appellant accepted his terms as to costs. The fact remains that there was no determination of the merits of the serious allegations that the Appellant made against the Respondent. Those allegations were not tested by evidence.

119. None of this means that, as a matter of course, anonymity should be granted to a respondent in any case in which the case does not proceed to a full hearing, or in any case in which a claimant unilaterally withdraws his or her claims before the claims can be tested in evidence. Far from it. In my judgment, in the great majority of cases, even where this is so, the outcome of the balancing exercise is likely to be that the name of the respondent should not be anonymised. In **Fallows**, at paragraph 42, Simler J said:

> "It is likely to be a rare case where the Article 8 rights at stake are so strong that it is necessary to grant indefinite restrictions as the means of striking the balance between Article 8 rights on the one hand and the principle of open justice and rights of freedom of expression on the other."

120. I respectfully agree. But that does not mean that the considerations taken into account by this EJ are not relevant considerations which an EJ should take into account. They are plainly relevant and the EJ in this case was right to take them into account.

121. A separate question is whether, as the Appellant contends, the EJ placed too much weight on the fact that there had been no hearing on the merits, and the fact that the Appellant had unilaterally withdrawn her claim. This submission must be considered alongside the remaining grounds of appeal advanced by Mr Platts-Mills, all of which contend that the EJ placed too much weight on some considerations, or too little weight on other considerations, for the purposes of the balancing exercise(s). In his submissions, Mr Platts-Mills used phrases such as that the ET had "not properly engaged with" a particular consideration, or "did not take account of" other considerations, alongside submissions that the judge placed too much or too little weight upon a particular consideration. In reality, with respect, these all amount to the same contention, namely that in conducting the balancing exercise(s) the judge placed too much weight on some considerations, and insufficient weight on other considerations.

122. It is important to be clear that this is the essence of the criticisms that are made against the EJ's decision and reasons, because that serves to highlight that the issue for the appellate court is to determine whether (a) the EJ took into account considerations that she should not have taken into account at all, or failed to take into account considerations that she was obliged to take into account; or (b) that she had reached a decision on the derogation from open justice that was plainly wrong or that no reasonable EJ could have reached.

123. The process of reasoning of the EJ can be summarised as follows. First, she decided that, at common law, it was necessary in the interests of justice to grant permanent anonymity to the Respondent because otherwise the interests of justice would be frustrated as the Appellant could maintain her allegations and freely name the Respondent, whilst he was entirely unable to defend himself, due to the decision to withdraw that was entirely within her power. She expressly took account of the following considerations at the common law stage of the analysis: the Respondent did not bring the proceedings; he was named by the Appellant and had little real choice but to defend the claim, given the serious allegations of sexual harassment against him, which he denied; the unilateral withdrawal by the Appellant of her claims meant that he was deprived of the opportunity to put in evidence to refute her claims, and was deprived of the opportunity of obtaining a judgment clearly stating whether the allegations were true or false; the Appellant had continued to make the allegations, notwithstanding the withdrawal, including contacting the Respondent's new employer, friends and current partner; she had gone so far as to tell them, wrongly, that she had won her claim; there was no decision on the merits for which the judge could be held to account, or which could be subject to public scrutiny; and the fact that the claim was withdrawn without any substantive decision being taken on the merits means that the case would not help the public to understand how the system works and why decisions are taken.

124. In addition, though it is not specifically referred to in the part of the reasons which deals with anonymity, there is, in my view, another consideration which plainly informed the judge's reasoning on this issue and which was referred to elsewhere in her reasons dated 19 December 2023. This is that, regardless of the rights or wrongs of the Appellant's complaint about the way that she had been treated by the Respondent, this was very likely not really a matter for the ET at all. As the EJ said at paragraph 38 of her reasons dated 21 December 2023, both parties had sought to use the Tribunal's time and resources to continue their dispute arising primarily out of the breakdown of their personal relationship. Indeed, in my view, whilst a strike-out hearing never took place because the Appellant withdrew her claim first, the reality is that it was highly likely that the claims against this Respondent would have been struck out as having no connection with the Appellant's employment. It follows that, not only had the Appellant made serious allegations of a sexual nature against the Respondent which she withdrew before they could be tested, but she made allegations about a personal relationship which almost certainly were not justiciable in the ET. This was a relevant consideration when considering whether to grant anonymity.

125. As for the check against Convention rights, the judge decided that the derogation was not incompatible with any Convention rights. The naming and shaming of the Respondent would give rise to a real risk to his Article 8 right to privacy. The derogation was strictly necessary for Article 6, because publication of the Respondent's name would undermine faith in the judicial system. As for the Appellant's Article 10 rights to freedom of speech, the EJ took the view that the Appellant's position was undermined by the fact that she had gone out of her way to share her allegations with others, she had threatened to go to the press to make life very difficult for the Respondent, and, even after withdrawing, she had contacted the Respondent's new employer, his friends and his new partner. Though the EJ does not specifically say so, this was in breach of the first permanent anonymity order that had been made in March 2023.

126. In my judgment, every one of the considerations that was taken into account by the EJ was a relevant and legitimate consideration. As for the weight to be placed upon them, and the balance to be struck, that was a matter for her. It cannot be said that the conclusion that she reached, after applying the correct legal test, was plainly wrong or (which, in most cases at least, amounts to the same thing) was one that no reasonable EJ could have reached. It is important to note that the EJ did not decide to grant anonymity to the Respondent solely because the Appellant withdrew her claim and the allegations were never tested at trial. She took this into account, but she also took into account the egregious way that the Appellant had behaved, by bringing proceedings that were almost certainly not within the scope of the ET's jurisdiction at all, by behaving vindictively towards the Respondent, and by continuing to do so, even after she had withdrawn her claim. She was making use of the proceedings for an ulterior motive. It was the cumulative effect of all of the considerations in this unusual case that persuaded the judge to make the anonymity order in favour of the Respondent.

127. Mr Platts-Mills submitted that the EJ did not give sufficient weight to the open justice principle because she relied too much upon the fact that the claim was withdrawn before trial. I do not accept this submission. She was entitled to take account of this consideration and to give it such weight as she thought fit. He submitted that the judge failed to engage with, or to take sufficient account of, the substance of the allegations made against the Respondent, which were not of the most serious kind. Once again, I do not accept this. The judge was well aware of the exact nature of the allegations that were made against the Respondent. Although not of the highest gravity, they were serious allegations, as is demonstrated by the fact that the Appellant plainly believed that wider publicity about them would kill off the Respondent's career in finance and would end his relationship with his new partner. Mr Platts-Mills submitted, correctly, that Rule 50 is not a general privacy charter for the protection of any material which those affected by Tribunal litigation wish to keep hidden, but the EJ did not proceed on the basis that it was.

128. Next, Mr Platts-Mills submitted that the EJ placed too much weight on the way that the Appellant had behaved in the litigation, and placed too little weight on the way that the Respondent had behaved. He had declined to settle the proceedings when the Appellant offered to do so, and he then kept the proceedings alive by making an application for costs, which was unsuccessful. This ground of challenge must also fail. The EJ was very well aware of the history of the proceedings and of what each of the parties had done. It was she who had dealt with the costs application and it was she who had decided not to award costs against the Appellant. None of the matters mentioned by Mr Platts-Mills mean that no reasonable Tribunal could have made an anonymity order in favour of the Respondent. None of them detract from the reasons given by the EJ for making the order.

129. Mr Platts-Mills submitted that no weight should have been placed on the fact that the Appellant had breached the anonymity orders, because the orders were plainly invalid. This submission is wholly misconceived. If an ET makes an order, then the parties must comply with it, whether or not they disagree with it, and whether or not they think that the ET was wrong to make it. If they think that an order was plainly invalid, they should appeal it, but they must comply with it in the meantime. It is true that sections 11(2) and (3) of the ETA 1996 make provision for a criminal sanction, in the form of a fine, for breach of an RRO. There is no equivalent express criminal sanction for breach of a permanent anonymity order, but such breach would be a contempt of court. However, that does not mean that an ET is not entitled to take into account conduct in the course of proceedings by a party which may amount to a criminal offence or contempt, when conducting the balancing exercise(s) required by Rule 50. Similarly, whilst it is true that the Respondent could take proceedings against the Appellant for defamation, if she spread lies about him, that does not mean that her behaviour in this regard was not a relevant consideration when the EJ decided whether or not to make the anonymity order in favour of the Respondent.

130. The final point made by Mr Platts-Mills on behalf of the Appellant is that the EJ had failed to give any or any adequate weight to the Appellant's Art 10 rights to freedom of expression. He

submitted that it was wrong in principle that the Appellant's ability to make allegations of sexual misconduct, or to report the Respondent to regulatory bodies, should be constrained by the Tribunal's order and, if the Appellant's allegations were false, the Respondent has a remedy in defamation. I am not persuaded by this submission. Any derogation from open justice in a case involving allegations of sexual misconduct will result in a limitation upon the complainant's right to freedom of expression under Art 10. The EJ was well aware of this and took it into account. She was also entitled to take the view that the strength of the Appellant's argument in reliance upon Art 10 was undermined by the fact that she had provided third parties with false descriptions of the outcome of the ET proceedings. The weight that the EJ placed on these considerations, when taken together with the weight that she placed on the other relevant considerations, did not result in a decision that was plainly wrong or was one that no reasonable EJ could have reached.

131. I conclude this part of the judgment with an observation. As the authorities make clear, the decision as to whether there should be a derogation from open justice is fact-specific. There are only limited grounds upon which an appellate court can set aside the decision of the first instance judge upon such an issue. The facts of this case were unusual and, perhaps, extreme. The EJ directed herself correctly on the law, took account of the right considerations, and reached a decision which was open to a reasonable EJ to reach. Nothing I say is intended to encourage ETs to take a permissive approach towards anonymity orders, even in cases in which the claim is withdrawn and/or the case is never tried on its merits. Even in such cases, the norm should be that the names of the claimant and the respondent should be made public.

Abbasi

132. I agree with Ms Banerjee that the Supreme Court's judgment in **Abbasi** does not say anything that is in conflict with the propositions set out above, or require a different outcome in this appeal. The subject-matter of **Abbasi** was completely different. In that case the Supreme Court was

concerned with the question whether injunctions whose effect was equivalent to Restricted Reporting Orders, and which protected the identities of medical practitioners who were involved in the care of a patient in respect of whom an application to withdraw treatment had been made, should be continued after the patient had died. The Supreme Court said that the High Court has jurisdiction, in proceedings concerned with the withdrawal of life-sustaining treatment of children, to grant injunctions to protect the identity of treating physicians and other members of medical staff. This jurisdiction arises under the court's inherent parens patriae powers to protect those who cannot help themselves, but only exists until at or about the time at which the child dies. The Supreme Court held that injunctions under the parens patriae powers should therefore be of limited duration, until the child dies or until the end of a cooling-off period. After that, the injunction can only be continued on some other basis. The Supreme Court said that any application for a further injunction, after the end of the cooling-off period should be made by the clinicians and medical staff themselves. That had not happened in the case before the Supreme Court. The Supreme Court gave some guidance about when permanent anonymity orders should be made, but the Court's observations were tailored to the circumstances of clinicians and medical staff in cases such as **Abbasi** and do not shed new light on the application of the law to the very difficult factual circumstances that arise in this case (see, for example, judgment, paragraphs 125-132).

Should the Respondent's name be anonymised for the purposes of the EAT proceedings and the EAT's judgment?

133. The answer to this question, in my judgment, is plainly "yes". Such a derogation from open justice is necessary in the interests of justice, because to do otherwise would be to negate the effect of the order made by the EJ. As I have held that this order was properly made, it would be wrong for me to undertake a fresh consideration so as to decide for myself whether there are sufficient grounds for a derogation from open justice. Exactly the same considerations apply at the EAT stage as at the ET stage.

Conclusion

134. For the reasons set out in this judgment, the appeal against the permanent anonymity order made in favour of the Respondent is dismissed, and the anonymity order made in favour of the Respondent in relation to the EAT proceedings, and this judgment, is made permanent. I have also decided to grant permanent anonymity to the Appellant both in relation to the ET proceedings and the EAT proceedings, for reasons which are not connected with the subject-matter of these proceedings. It follows that, in any publication of this judgment or of the ET judgments below, or any public communications from the EAT or the ET, the Appellant's name should be anonymised as "XY", and the Respondent's name should be anonymised as "AB".