EMPLOYMENT TRIBUNALS

Claimant: Mr S Stepchuk
Respondent: Merrill Lynch International

Heard at: London Central (by CVP) in private **On:** 3 June 2025

Before: Employment Judge McCooey

REPRESENTATION:

Claimant: Talia Barsam, Counsel
Respondent: Claire Darwin KC, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Anonymisation of Third Party:

1. The relevant Third Party who is not a party or witness in these proceedings, shall be anonymised pursuant to Rule 49(1) and (3)(b) and (c) of the Employment Tribunals Rules of Procedure 2024. That individual shall hereafter be referred to only as "Colleague A" in all documents, during all public hearings, in any information which may identify her during the course of any public hearing in these proceedings, and in any judgments or orders in this case, or in any documents entered on the Register or otherwise forming part of the public record.

2. Restricted Reporting Order: Pursuant to Rule 49(1) and (3)(b) and (c) of the Employment Tribunals Rules of Procedure 2024 and section 11(1)(b) of the Employment Tribunals Act 1996, no person shall directly or indirectly publish or disclose the name, or any identifying details of the individual known as "Colleague A" in any report, publication, or account of these proceedings. The following are particular matters of which publication is prohibited as likely to lead to Colleague A's identification:

    a. Her true name, or any other used name.

b. Her nationality.
c. The team she worked in.
d. The names of her line managers.

3. These Orders shall remain in effect until the conclusion of the proceedings of the Employment Tribunal, unless varied or revoked by further order.

Anonymisation of the Claimant:

4. The Claimant's application for anonymisation and/or a Reporting Restriction Order pursuant to Rule 49(1) and (3)(b) and (c) of the Employment Tribunals Rules of Procedure 2024 and section 11(1)(b) of the Employment Tribunals Act 1996 is refused.

5. These Orders relate to these proceedings only.

REASONS

Introduction

1. This closed preliminary hearing was before me with a one-day time estimate to consider the respondent's application dated 6 May 2025 for the anonymisation of a third party, its former worker, hereafter called "Colleague A", and a reporting restriction order to give effect to that.

2. This application was listed by EJ Walker at a case management hearing on 2 August 2024. Some nine months later, the claimant made his own application for anonymisation. He made that application in writing on 27 May 2025, five working days before this hearing.

3. When asked why he had not made the application at an earlier stage he said it was only upon reading Colleague A's application that he "became particularly upset in the asymmetry" realising, that Colleague A may be granted anonymity but he and (by association with him) his family would not be. He apologised for the delay which was "unfortunate".

4. I was invited to consider both parties' applications for anonymisation and Reporting Restriction Orders under s.11 ERA and/or Rule 49 today, and I did, bearing in mind the approaching date of the final hearing commencing on 16 July 2025.

5. Submissions concluded at 3pm so there was insufficient time to give judgment, which was therefore reserved.

Procedure

6. I had before me helpful skeleton arguments from both Counsel, including draft wording of the orders sought; a bundle of 304 pages; a supplementary bundle from the claimant of 15 pages dealing with medical matters; and a joint authorities

bundle of 271 pages containing relevant statutory provisions; White Book extracts and eleven case authorities.

7. I heard detailed oral submissions from both parties Counsel who did not propose to call anyone for oral evidence; they relied instead on witnesses statements which I had from Colleague A, the claimant and the claimant's wife.

8. The respondent was neutral regarding the claimant's application. The claimant opposed the respondent's application for anonymisation/RRO in respect of Colleague A.

9. In terms of the case's history, the claimant withdrew his claim of victimisation on 6 August 2024.

10. On 31 January 2025, Deposit Orders were made in respect of the claimant's claims for harassment by Colleague A; indirect sex discrimination; and indirect age discrimination.

11. Following that decision, the claimant also withdrew claims for race discrimination on 7 February 2025; indirect sex and indirect age discrimination on 3 March 2025. He has paid the deposit in respect of harassment by Colleague A,

12. The claimant appealed the decision to make a deposit order in respect of his harassment claim on 21 March 2025, which is pending.

Legal framework

13. Under r.49, the Employment Tribunal (ET) has wide powers to make orders preventing or restricting public disclosure of any aspect of its proceedings at any time whether on the application of a party or on its own initiative. The provisos are that the tribunal must consider the restriction to be necessary: in the interests of justice; or to protect convention rights; or to protect confidential information as defined in s10A ETA (the latter is not relevant here).

> **49.— Privacy and restrictions on disclosure**
>
> (1) The Tribunal may, on its own initiative or on the application of a party, make an order with a view to preventing or restricting the public disclosure of any aspect of proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person.
>
> (2) In considering whether to make an order under this rule, the Tribunal must give full weight to the principle of open justice and to the Convention right to freedom of expression.
>
> (3) Any order made under this rule may require—
> a) that a hearing that would otherwise be held in public be conducted, in whole or in part, in private;

(b) 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) that measures are to be taken to prevent witnesses at a public hearing being identifiable by members of the public;

(d) that a restricted reporting order is in place within the terms of section 11 (restriction of publicity in cases involving sexual misconduct) or 12 (restriction of publicity in disability cases) of the Employment Tribunals Act;
(e) that the name, address or other information of, or relating to, any person be redacted from a claim form, response form, witness statement or any other document in the proceedings.

14. Rule 49(2) of the 2024 ET Rules requires the ET to give full weight to open justice and freedom of expression under Article 10 ECHR when considering whether to make an order under Rule 49.

15. Rule 49(4) of the 2024 ET Rules contains illustrative examples of orders that can be made under the rules.

16. Section 11(1)(b) of the Employment Tribunals Act 1996 outlines the ET's jurisdiction to impose restrictions on publicity in cases involving sexual misconduct, as defined in section 11(6).

11.— Restriction of publicity in cases involving sexual misconduct.

(1) [Procedure Rules]1 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.

(6) In this section—
"identifying matter" , in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation,
"relevant programme" has the same meaning as in the Sexual Offences (Amendment) Act 1992,
"restricted reporting order" means an order—
(a) made in exercise of a power conferred by [Procedure Rules of the kind mentioned in subsection (1)(b)]3 , 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,
"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,
"sexual offence" means any offence to which section 4 of the Sexual Offences (Amendment) Act 1976, the Sexual Offences (Amendment) Act 1992 or section 274(2) of the Criminal Procedure (Scotland) Act 1995 applies (offences under the Sexual Offences Act 1956, Part I of the Criminal Law (Consolidation) (Scotland) Act 1995 and certain other enactments), and
"written publication" has the same meaning as in the Sexual Offences (Amendment) Act 1992.

17. The reference to "adverse conduct (of whatever nature) related to sex" gives a broad definition to sexual misconduct. The provision can include protection of both the person making an allegation and the perpetrator of alleged misconduct.

European Convention on Human Rights (ECHR)

18. Article 6(1) contains the right to a fair and public hearing with judgment pronounced publicly. The requirement for a public hearing is at odds with a private hearing or reporting restrictions. The Article qualifies the right, however, at least in respect of the trial itself: it says as follows:

> 1. In the determination of his civil rights and obligations …. 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 interest 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.

19. The ET is also obliged by s.6 of the Human Rights Act 1996 to act compatibly with the ECHR. This includes a positive obligation to conduct proceedings in a manner which ensures compliance with the ECHR rights of anyone affected, including third parties, **CVB v MGN Ltd [2012] EMLR 29**.

20. The relevant convention rights in this case are:

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 well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
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.

21. Section 12 of the HRA applies where granting of an application may affect the exercise of the Convention right to freedom of expression:

> 12(1)This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
> (2)If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—
> (a)that the applicant has taken all practicable steps to notify the respondent; or
> (b)that there are compelling reasons why the respondent should not be notified.
> (3)No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
> (4)The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
> (a)the extent to which—
> (i)the material has, or is about to, become available to the public; or
> (ii)it is, or would be, in the public interest for the material to be published;
> (b)any relevant privacy code.
> (5)In this section—
> - "court" includes a tribunal; and
> - "relief" includes any remedy or order (other than in criminal proceedings).

Open justice

22. The principle of open justice is of paramount importance and derogations from it can only be justified in exceptional circumstances and then no more than strictly necessary, **British Broadcasting Corporation v Roden [2015] IRLR 627 at [21]-[26]).**

23. The burden of establishing any derogation from the fundamental principle of open justice or full reporting lies on the person seeking that derogation. It must be

established by clear and cogent evidence that harm will be done by reporting to the privacy rights of the person seeking the restriction so as to make it necessary to derogate from the principle of open justice.

24. The open justice principle is grounded in the public interest, irrespective of any particular public interest the facts of the case give rise to, **Fallows v News Group Newspapers Ltd [2016] IRLR 827** at [48]).

25. The naming of names is an important aspect of the Art 10 right to freedom of expression. There is particular press interest in reporting names as this is of more interest to readers and so ensures information is passed on to the public, **TYU v ILA [2022] ICR 287 at [21]-[22]).**

26. A proportionality test must be applied as identified by the Supreme Court in **Bank Mellat v Her Majesty's Treasury (No. 2) [2014] AC 700**,

27. Regarding Rule 49, Warby LJ in **Clifford v Millicom Services UK Limited [2023] ICR 663 at paragraph 8**, "identifies three grounds on which a derogation from open and public justice may be made: the interests of justice, the protection of a person's Convention rights, and the protection of confidentiality. Clearly, more than one could apply in a particular case."

Factual background

28. The claimant was employed by the respondent, a financial institution, most recently as a Director from 15 March 2018 until the termination of his employment on 30 January 2024. He brings claims of direct sex and age discrimination, sex-related harassment, and unfair dismissal against the respondent.

29. Central to the claimant's claims are allegations concerning a sexual relationship with Colleague A, a former junior colleague. Colleague A no longer works for the respondent but remains in the financial services sector. The claimant seeks to rely upon Colleague A as his sole actual comparator.

30. From January 2023, sexually explicit and highly personal WhatsApp messages were exchanged between parties, including an intimate photograph taken by the claimant of himself sent four days into the exchange to Colleague A. During those messages, Colleague A disclosed that she was a virgin and lacked any sexual experience.

31. The claimant and Colleague A say that they met on two occasions and were sexually intimate.

32. The claimant was married at the time and during the course of the relationship, learned his wife was pregnant. He says he later sought to sought to withdraw from the relationship and that, *"Colleague A responded with hostility, taunts and on 3 and 4 August 2023 threatened the Claimant, including by suggesting that a disclosure of their relationship to the Respondent would have consequences for*

his wife, the continuation of her pregnancy, his child, and his parents and that his life may be in danger". He says he reported this to HR on 4 August 2023.

33. The respondent denies the claimant's narrative and says that its HR team were already in communication with Colleague A from March 2023 about sexual harassment by the claimant, though he was as yet unnamed at that point, as Colleague A wanted to focus on resolving concerns with her mental health.

34. Colleague A raised a formal grievance about the claimant, on 8 August 2023, in which she said the claimant had sexually harassed her and threatened her when she said she would be informing HR about her concerns. Whilst disclosing events, she shared the Whatsapp messages, including the intimate photo the claimant had sent her to an individual in HR.

35. A disciplinary procedure took place in which the respondent dismissed the claimant for misconduct on the basis that he had acted inappropriately in pursuing sexual relations with Colleague A and had threatened her with retaliatory conduct for complaining to HR. The respondent did not uphold Colleague A's complaint of sexual harassment, finding the relationship had been consensual.

36. The claimant says the respondent discriminated against him, failing to investigate or consider the claimant's grievance against Colleague A, and its approach was 'tainted' by discriminatory assumptions that because he was more senior and male, he was a perpetrator of sexual misconduct.

37. The respondent refutes this and says dismissal of the claimant in the circumstances was wholly proper.

Respondent's submissions

38. Regarding this application, the respondent relies on the fact that Colleague A is not a party to these proceedings and will not be called as a witness. She no longer works for the respondent and has no interest in the proceedings. Nevertheless, her private life, including:

    32.1 Her romantic and sexual past;
    32.2 Details of her sexual relationship with the Claimant;
    32.3 Details about her health; and
    32.4 Her grievance alleging sexual harassment by the Claimant;

39. will all be scrutinised in open court and referenced in the final judgment, which is likely to be published online.

40. Colleague A says she is very concerned and distressed about the impact of public disclosure of her identity in connection with these proceedings and has produced a witness statement to that effect.

41. Colleague A is concerned "*that the public's only interest in this information would be crude curiosity and sensationalist publicity*." The respondent argues her identity is not necessary to determine the legal issues between the claimant and

respondent and that she is in a distinct category as a third-party witness, rather than a party herself to proceedings, which authorities such as **R v Legal Aid Board ex p Kaim Todner [1999] QB 966 at 978** (cited with approval in **Aziz v Aziz [2007] EWCA Civ 712 at [110]** suggests affords her greater protection.

42. The ET's order needs to be wider than an anonymity order, to include a RRO, as publication of identifying matters (nationality, team line managers) would likely to lead to Colleague A being identified.

Claimant's submissions

43. The claimant opposed any anonymity order or RRO being made in respect of Colleague A for reasons including:

41.1 Interference with Colleague A's Article 8 rights are overstated and not outweighed by the principle of open justice and Article 10 ECHR;
41.2 her role in proceedings is "not involuntary and peripheral as suggested by the respondent"; the respondent's "failure to call her as a witness should not be used to shield her from public scrutiny of her conduct."
41.3 "It should have been entirely foreseeable to her that she may become embroiled in public litigation should she threaten the Claimant and choose to bring false allegations against him."
41.4 Her medical evidence is not particularly sensitive or revealing.
41.5 While ordinarily, the Whatsapp messages would attract the protection of Article 8, where the complainant has relied on those communications to make false allegations against the claimant, Article 8 is not engaged.
41.6 There is a public interest in the reporting of names. The full and open exploration of Colleague A's relationship with the claimant is central to the case and may aid understanding;
41.7 Anonymisation of Colleague A and not the claimant perpetuates the idea that the claimant was the perpetrator and she the victim.
41.8 Colleague A's nationality is relevant to threats levelled at the claimant.

44. In respect of himself, he seeks anonymity orders on the basis of:

35.1 The significant harm to his wife and child's Article 8 rights in disclosing the extra-marital affair;
35.2 The claimant's Article 8 rights, as the Whatsapp messages include details about is sexual relationship with his wife and descriptions of his genitalia; he had a reasonable expectation those would remain private.
35.3 Disclosure of the same goes beyond mere embarrassment;
35.4 Details of his medical information and past, such as his sex addiction and suicidal ideation would harm his reputation.

Discussion

i. Section 11(1)(b) ETA 1996

45. I find that s.11(1)(b) ETA is engaged in relation to both the claimant and Colleague A's applications. Both have alleged sexual harassment by the other, the facts of which amount to allegations of sexual misconduct for the purposes of s.11(6).

46. Colleague A also asserts sexual misconduct by the claimant in i. pursuing a sexual relationship with a junior colleague and ii. discouraging her, by way of threats, not to report her concerns to HR. These latter points have been adopted by the respondent.

47. Rule 11(1)(b) does not require any allegations to be proven. I therefore find I have jurisdiction in principle to make orders under both s.11(1)(b) and/or Rule 49, provided I consider them necessary, having conducted the analysis and balancing exercise outlined below.

ii. Colleague A's application

48. The starting point is that the principle of open justice is of fundamental importance and encompasses employment law proceedings. Any derogation must be necessary: either in the interests of justice and/or to protect a relevant convention right. I must balance the conflicting rights and interests. An intense focus on the comparative importance of the rights claims is necessary.

49. I first examine the nature and extent of the restriction sought. Colleague A wants to be anonymised and to restrict the reporting of any identifying information about her indefinitely. The respondent's counsel acknowledges this indefinite duration is a more serious derogation from open justice and Article 10 than one limited to promulgation, acknowledging that the latter would be a less restrictive approach, as the matter can be revisited at the end of the final hearing if appropriate.

50. I next consider the reason for the proposed interference with Article 10 and open justice, namely Colleague A's Article 8 right to private and family life and whether that is engaged.

51. It is common ground between parties that the entirety of the Whatsapp messages in this bundle will need to be before the Tribunal at the final hearing, along with health and medical information regarding both parties. I accept that full ventilation of what happened between them will be necessary in determining the claims notwithstanding that the dispute lies between the claimant and respondent.

52. I do consider the material contained in the Whatsapp messages regarding Colleague A to engage her Article 8 rights. In particular, it mentions her virginity and lack of sexual experience which is of a highly personal and intimate nature. I ask whether she had a reasonable expectation of privacy in this context. I consider

the expectation of privacy lower in an extra-marital affair at work, where the risk of discovery is acknowledged by the claimant and Colleague A in the Whatsapp messages. However, as a third-party to these proceedings, I do not find it foreseeable that discussion of her sexual inexperience would be before a public employment tribunal.

53. I also reject the claimant's argument that Collague A has no expectation of privacy because she disclosed the Whatsapp messages to HR when raising her grievance. HR is confidential to the extent necessary to determine complaints; it is not analogous to bringing proceedings.

54. For completeness, whilst I am persuaded that the sexual content of the Whatsapp messages engages her Article 8 rights, I am not persuaded that disclosure of the medical information regarding Colleague A would do so. The link to harm is not sufficiently clear and cogent in that respect; similarly, I was not persuaded that the fact Colleague A raised a grievance of sexual harassment would itself damage her reputation, her future employment prospects or otherwise justify a derogation on that basis.

55. I next consider the extent to which it is in the public interest to name Colleague A and whether the intelligibility of the judgment will be affected by granting her application. I consider it will not be. Colleague A is no longer being called as a witness for the respondent. The claimant's complaints lie with the respondent. I can see no cogent reason as to what the naming of Colleague A will add to the understanding of the judgment or determination of the legal issues in the case.

56. The claimant's opposition has the flavour of wanting to punish Colleague A for her alleged behaviour by 'naming and shaming' her. Most of his submissions require me to accept his account and narrative at this stage, which I am not in a position to do. That is a matter for the final hearing.

57. Furthermore, I considered his specific arguments about the relevance of her identifying information to be weak. For example, that her nationality was relevant to understanding an alleged threat to the claimant about her father being a police officer. The link made to an authoritarian regime and the public's understanding of the judgment in light of that was tenuous.

58. Furthermore, I do not accept the claimant's submission that the anonymisation sought by Colleague A goes beyond what is necessary and proportionate, because he accepts that knowledge of the role and department he worked in with the respondent would be revealing. He mentioned line managers being "anonymised by the backdoor" but the respondent confirmed those two individuals are not being called as witnesses.

59. I now balance the competing rights in allowing or refusing the application. The rationale for and strength of article 10 is that the press and public have an interest in hearing about cases involving sexual discrimination, which is a topical issue. Reporting names adds to the interest of stories and encourages engagement with reported cases. There is a risk that by allowing this application, I am eroding the confidence in the public and press that such cases will be reported without interference and that there may appear to be an apparent immunity from the principles of open justice for those involved in or affected by sexual affairs at work.

60. In light of **TYU**, I place weight on Colleague A's status as a third party in these proceedings. I consider the highly intimate details about her contained in the WhatsApp messages in a context where I consider her identity to be irrelevant to the dispute between the respondent and claimant. I consider the degree of interference to her rights to therefore be high.

61. I find that the orders sought are proportionate, as anonymisation and the RRO will still enable a public hearing to take place but with Colleague A's identifying information, which I consider irrelevant, removed. The claimant and respondent's case can be fully understood and ventilated, and reported upon, with the orders sought.

62. For these reasons, I make the anonymity order sought under Rule 49 and the RRO under s.11 ETA 1996.

Duration

63. I have carefully considered the need to make the least restrictive order. It is my view at this preliminary stage that even if the claimant's case were made out at its highest, the identity of Colleague A remains irrelevant to the legal issues in this case.

64. However, caselaw suggests that permanent anonymisation at this stage will be rare; I consider that a RRO and anonymisation order limited to the promulgation of the judgment, unless otherwise ordered, will achieve the desired outcome of protecting Colleague A's article 8 rights at this stage; she is entitled to make an application for indefinite anonymisation/RRO at the final hearing should she wish, and the Tribunal will be best placed to determine that application.

ii. Claimant's application

65. Consideration of the same principles as discussed apply here. Any orders I make must be necessary to protect the applicant's relevant article right; proportionate to the harm identified and not unduly interfere with the principle of open justice; by that I mean where a less restrictive option is available, I should take it.

66. I must consider engagement of both the claimant's Article 8 rights and the Article 8 rights of his wife and two sons.

67. The relevant information said to engage Article 8 includes:

    a) The Whatsapp messages referred to above;
    b) Reference to the claimant sending an intimate photograph of himself and descriptions of his genitalia;
    c) Discussions about his wife and son, including the fact of her pregnancy at the time of the relationship between Colleague A and the claimant;
    d) Medical information about the claimant, for example referencing suicidal ideation and sex addiction.

68. As evidence to support his application, the claimant provided a witness statement from himself and his wife. His wife cites fear that this case will become known in the academic world in which she works, as well as the shame and embarrassment that comes from such an affair being revealed publicly and the fear this may impact their two sons. The sons may also come to learn of the intimate nature of their father's affair as revealed by the messages themselves should they search for the judgment.

69. Whilst I fully accept that the sexual information contained in the Whatsapp messages is highly sensitive and intimate, I am not persuaded that the claimant had a reasonable expectation of privacy in a context where he chose to begin an extra-marital affair at work and chose to send intimate photos of himself, which were unsolicited, within four days of communicating with Colleague A.

70. He, like her, acknowledges that the affair could become known. He also knew that his work policy discouraged relationships with more junior colleagues. Whilst I make no substantive findings about the relationship itself, it does seem at face value that the claimant took a risk by entering the extra marital affair, knowing that the messages could become known to his wife and colleagues. This situation is therefore distinguishable from the CEO and his wife in **EF and another (appellants) v. AB and others [2015] IRLR 619.**

71. The claimant then chose to bring employment proceedings specifically arguing that the full facts of the affair between him and Colleague A must be ventilated at a final hearing.

72. This leads me to conclude that his Article 8 rights are not engaged by the otherwise sensitive Whatsapp messages.

73. Furthermore, I do find not the claimant's wife and sons' Article 8 rights to be engaged simply by virtue of their husband/father being involved in an extra-marital

affair at work. The witness statement from the claimant's wife focuses to a large degree on the damage done by the affair itself and the dismissal itself, rather than publication of the claimant's identity. It therefore seems that much of the harm she speaks of has already been done to the wife.

74. I note the claimant's wife is not specifically named anywhere in the documentation, nor are the sons. The wife's name will not appear for example in a search and there was not cogent evidence to suggest she will be readily identified, save for those who already know her to be married to the claimant.

75. The impact of the claimant's affair on his sons' and their potential knowledge of its details is largely a consequence of the claimant's decision to engage in the affair, accepting the risks involved in that.

76. I also consider again the late stage of the claimant's application and find that, were the harm serious to the claimant's wife and sons, this would have been pressing on the claimant's mind and relief sought prior to seeing Colleague A's application five days ago, particularly in circumstances where the claimant is assisted by very capable lawyers.

77. Regarding medical information pertaining to his sex addiction, attachment disorder and suicidal ideation, I accept in principle this would engage the claimant's Article 8 rights. However, there was not cogent evidence to establish how disclosure of that information would cause harm to the claimant. He has chosen to include much of this information after the disciplinary process concluded. His witness statement did not explain in any detail the damage this information would have on his reputation if publicised and it did not read as a primary concern to him; nor did it feature heavily in his wife's witness statement. I therefore am not satisfied Article 8 is engaged here either.

78. Even if I were wrong about that, and the claimant's Article 8 rights are engaged, I then balance that right against the competing Article 10 rights and principle of open justice. This requires the reporting of cases, including names and sensitive private information.

79. I consider it a significant factor that, unlike Colleague A, the claimant has chosen to bring these proceedings. It is not unreasonable to regard the person who initiates proceedings as having accepted the normal incidence of the public nature of court proceedings.

80. I again bear in mind the late stage at which the claimant makes his application. It is some nine months after anonymisation was first discussed in the context of Colleague A at a case management hearing in August 2024. There was another

opportunity to raise the matter at a hearing on 31 January 2025 which was not taken.

81. Disparity in terms of the application of anonymity orders between individuals in the same case is not a relevant consideration in the balancing exercise. Anonymising Colleague A, and not the claimant, will not adversely impact the case as the claimant says; my decision regarding the granting or not of these orders does not reflect the merits of the claim and rather reflects the application of the legal principles under Rule 49.

82. I appreciate that s.11(1)(b) suggests that a person involved in a case involving sexual misconduct falls within a particular category of cases that Parliament envisioned as attracting an order of this kind. However for the reason outlined, I do not consider the requirements met in the particular circumstances of this case.

83. In balancing the competing interests, I also remind myself that the mere publication of embarrassing or damaging material is not a good reason for anonymity or for restricting the reporting of a judgment.

84. This is an interim stage of proceedings; the determination, and potential vindication, if he is right, of the claimant will come at the final hearing.

85. I note that s.12(3) of the Human Rights Act 1998 requires me, in granting the relief before trial, to be "satisfied that the applicant is likely to establish that publication should not be allowed" at trial. For the avoidance of doubt, I do not consider this to be made out based on the outcome of my balancing exercise above.

Conclusion

86. To conclude, I make the orders sought by Colleague A until the conclusion of proceedings, unless otherwise ordered; her application for indefinite anonymity can be considered following the final hearing. I refuse the claimant's applications for anonymity and/or a RRO.

Approved by:

Employment Judge McCooey

20 June 2025

JUDGMENT SENT TO THE PARTIES ON

20 June 2025
.....
.....
FOR THE TRIBUNAL OFFICE