Neutral Citation Number: [2025] EAT 91

Case No: [withheld]

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 8 July 2025

Before :

MR JUSTICE CAVANAGH

- -

Between :

AYZ

Appellant

- and –

BZA

Respondent

- -
- -

Hearing date: [Withheld]

- -

JUDGMENT

SUMMARY

Practice and Procedure

The EAT grants permanent anonymity to the Appellant, the Claimant below, both in relation to the ET proceedings and the EAT proceedings, in accordance with the requirements of section 1 of the Sexual Offences (Amendment) Act 1992.

MR JUSTICE CAVANAGH:

1. This is an unusual judgment. It is concerned with the question whether the Appellant, who was the Claimant in the Employment Tribunal ("ET") proceedings, should be granted anonymity in relation the ET and EAT proceedings. For the reasons set out below, I have concluded that she should be granted such anonymity. However, the grant of such anonymity would be undermined, or perhaps rendered nugatory, if the Appellant could be identified by an examination of the contents of this judgment. It is not simply, of course, that the Appellant could be identified if she, or the Respondent, is named in the judgment. There is also the risk of "jigsaw" identification, that is the risk that a reader, or an informed reader, would be able to work out the Appellant's identity by piecing together disparate pieces of information to be found in this judgment and in the separate main judgment in the appeal. In this case, for reasons that will become obvious, it would not be in the interests of the Appellant or (in my view) the Respondent that the Appellant be identified: as in many cases, the identification of the Appellant might well lead to identification of the Respondent.

2. I have, therefore, taken the following steps to minimise the risk that the Appellant, or the Respondent, will be identifiable from this judgment:

(1) This judgment is separate from the judgment that I have handed down in the main appeal;
(2) It makes no reference to the subject-matter of the main appeal;
(3) The heading to the judgment does not name the parties and uses a random combination of initials to refer to them;
(4) I do not refer to the case number of the date of the appeal hearing;
(5) I do not refer to the names of counsel or those who instruct them;
(6) I have not named the Employment Judge ("EJ") who dealt with this case, or the EAT judge who made an interim order for anonymity; and
(7) This judgment will be handed down on a different date from the hand-down of the judgment in the main appeal. They will be separated by a significant period of time.

3. There was some disagreement between the parties as regards whether a second and separate judgment was necessary in this case. Counsel for the Appellant, who was the party seeking anonymity in this application, contended that it was not necessary for there to be two separate judgments. Counsel for the Respondent, who opposed the Applicant's application for anonymity, submitted that, if I decided to grant anonymity to the Appellant, then this was indeed necessary, to protect the interests of the Respondent. I have wavered in my view on this issue. At one stage, I circulated a draft composite judgment, dealing with all of the issues in the appeal in one place. However, on further reflection, I have been persuaded by counsel for the Respondent that this separate judgment is necessary in order to protect the interests of both parties in this case. As counsel for the Respondent pointed out, the reason why I am granting permanent anonymity to the Appellant in the ET and EAT proceedings is not connected with the subject matter of her complaints in the ET proceedings. It is possible, and, indeed, preferable, in my view to deal with the reasons why I am granting permanent anonymity to the Appellant in a separate judgment.

4. Accordingly, whilst I have acceded to the Appellant's application to be granted permanent anonymity, I have sought to promote and to ensure that outcome by issuing two judgments. In my view, the Appellant is not disadvantaged by this course of action. Both the Appellant and the Respondent will benefit from these special measures that give the greatest prospect of preserving anonymity of them both in relation to the proceedings. Through this judgment, the parties will receive an explanation as to why the EAT has made this ruling on the Appellant's application for permanent anonymity. This judgment was provided to the parties in draft at the same time as they were provided with the draft judgment in the main appeal.

The reasons why I have decided to grant permanent anonymity to the Appellant

5. In the ET proceedings, the Appellant applied for a permanent anonymity order in her favour. The EJ declined to grant such an order and gave written reasons for this decision. The EJ correctly set out the relevant legal principles, as summarised in **Millicom Services UK Ltd and others v**

Clifford [2023] EWCA Civ 50; [2023] IRLR 295. The EJ decided that there was no necessity in the interests of justice to derogate from open justice by granting anonymity. The EJ then checked this conclusion against the relevant Convention rights. The EJ recognised that the Appellant has a right to privacy under Art 8, but decided that this did not outweigh the public rights to open justice under Articles 6 and 10.

6. In my judgment, there are no valid grounds for contending that the EJ erred in law or was plainly wrong in deciding not to grant permanent anonymity to the Appellant, in the circumstances of the case as they then stood. Since I am going to grant permanent anonymity to the Appellant for a reason relating to a matter that was not before the EJ, I need say no more about this.

7. The Appellant made a further application for anonymity when she appealed to the EAT. An EAT judge granted an interim order to the effect that the Appellant should be granted anonymity in relation to any public communication from the EAT about this appeal. The EAT judge further ordered that no report is to be made of the full hearing of this appeal which identifies the Appellant or which leads to her identification. The EAT judge said that this order was to be reviewed by the judge who presided at the hearing of the full appeal. Since the EAT judge's order, and until now, the Appellant's name has been anonymised in this appeal, albeit by a different set of initials from those that appear at the top of this judgment.

8. At this stage, therefore, I must decide whether the Appellant's name is to be anonymised for the purpose of the EAT proceedings, and I must also decide, if so, whether the anonymity order should be extended to the ET proceedings.

9. The primary argument advanced on behalf of the Appellant by her counsel (who had not appeared below) was one that had not been raised with the EJ and had formed no part of the EJ's reasoning.

10. This relates to a report that the Appellant made to the police about the Respondent. The Appellant filed a police report with the Metropolitan Police on 12 April 2023, concerning an incident that was alleged to have happened in December 2020. She was given a crime number. Details of the allegation were sent out in an email from the Appellant to the Metropolitan Police dated 29 June 2024, which is included in the EAT bundle. By that stage, the Appellant no longer lived in the United Kingdom. It is not necessary to set out any details of the allegation, save that it consisted of an allegation of a sexual assault by the Respondent, and the allegation was concerned with events that were not the subject of the ET proceedings. The ET claim did not include any allegation of a criminal offence and this allegation was not drawn to the attention of the EJ in the ET proceedings. The Respondent has not been questioned by the police in relation to this allegation and has not been arrested or charged with the alleged offence.

11. The primary submission by counsel for the Appellant is that, in light of the complaint that has been made to the police, I am obliged to grant lifelong anonymity to the Appellant in relation to the entirety of the ET and EAT proceedings, including the Reasons and judgments, because of the requirements of section 1 of the Sexual Offences (Amendment) Act 1992 ("the 1992 Act").

12. Counsel's secondary submission is that, even if they are wrong about that, I should do so on the basis that it is a necessary derogation from the principles of open justice, checked against the relevant Convention rights.

13. Section 1 of the 1992 Act provides, in relevant part:

> "1 **Anonymity of victims of certain offences**
>
> (1)Where an allegation has been made that an offence to which this Act applies has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.
>
> (2)Where a person is accused of an offence to which this Act applies, no matter likely to lead members of the public to identify a person as the person against whom the offence

> is alleged to have been committed ("the complainant") shall during the complainant's lifetime be included in any publication.
>
> …
>
> (3A)The matters relating to a person in relation to which the restrictions imposed by subsection (1) or (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—
>
> (a) the person's name,
>
> (b) the person's address,
>
> (c) the identity of any school or other educational establishment attended by the person,
>
> (d) the identity of any place of work, and
>
> (e) any still or moving picture of the person.
>
> (4)Nothing in this section prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

14. "Publication" is defined in section 6(1) of the Act as follows:

> "publication" includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings"

15. It is a defence to an offence of publishing identifying matter under s.5 Sexual Offences (Amendment) Act 1992 to show that the complainant gave written consent to the publication: see s.5(2).

16. Counsel for the Appellant submitted that the complaint made to the police by the Appellant came within the scope of section 1 of the 1992 Act and so that there is an absolute prohibition upon naming the Appellant in connection with the complaint. This means, counsel submitted, that she must remain anonymised both in relation to the ET proceedings and in relation to the EAT proceedings, because otherwise there is a risk that she might become identifiable by means of jigsaw

identification, that is, by a reader being able, via a reading of the ET or the EAT judgment, to put two and two together and to link the Appellant to the complaint of sexual assault.

17. With some reluctance, I accept this submission. I accept that the complaint made by the Appellant to the police in April 2023, followed up by the emailed report in June 2024 amounts to the making of an allegation for the purposes of section 1(1), and that the allegation was of an offence within the scope of that provision. The protections in section 1(1) apply to a wide range of sexual offences. The fact that the Respondent was not questioned, arrested, or charged and that, so far as I am aware, the police have taken no further action, does not mean that it was not an "allegation" for these purposes. There is no requirement that the allegation is true (and I have no way of knowing whether it was true or not). I also consider that the Appellant has not waived her right to anonymity under section 1(1) by giving written consent to the publication of the allegation in the main EAT judgment. It is true that she has brought the allegation to the EAT's attention, and has done so in written form, but that is not the same thing as making a formal written waiver of her right to anonymity under section 1(1). Similarly, the fact that the Appellant has ventilated, or at least hinted at, the allegations in various blog posts does not amount to a written waiver for the purposes of section 5(2).

18. A more difficult question, in my view, is whether any reference to the allegation of a sexual offence in the EAT's judgment would amount to a "publication" for the purposes of section 1(1). This arises because the definition section in section 6(1) states that ""publication" does not include an indictment or other document prepared for use in particular legal proceedings". My first thought was that this does not apply to a judgment, because a judgment is a document prepared for use in particular legal proceedings, even if it is not prepared by the parties, and the meaning of "legal proceedings" in this context, is not limited to criminal proceedings. However, Counsel for the Appellant has pointed out that, in **A v X** [2019] IRLR 620, Soole J said, at paragraph 70:

> "As to the refusal of the Claimants' application for an Anonymity Order, I am not persuaded that the Judge's decision was flawed. It is routine for Judgments in criminal

> proceedings covered by the 1992 Act to be anonymised accordingly. Tribunal Judgments can be in no different position. A Judgment does not fall within the section 6 exception for "an indictment or other document prepared for use in particular legal proceedings".

19. In my view, there are arguments either way as to whether a judgment is exempted from the scope of the anonymity provisions of the 1992 Act on the basis that it is a document prepared for use in particular legal proceedings. However, there is no need to explore them in any detail, because I have decided that I should follow Soole J's conclusion on this issue, namely that the anonymity provisions do apply to a judgment in a non-criminal matter. It is the recent decision of another EAT on the same point and, as such, it should be followed unless one of the exceptional circumstances set out by Singh J in **Lock v British Gas** [2016] ICR 503 applies. Those exceptional circumstances include where there are inconsistent previous decisions of the EAT, where the decision is per incuriam, or where the earlier decision was manifestly wrong. None of these apply here. Therefore, the Appellant is entitled to anonymity in relation to her complaint of sexual assault against the Respondent.

20. The next issue is whether, as Counsel for the Appellant submits, the fact that the Appellant has made an allegation of sexual assault against the Respondent means that she should be granted permanent anonymity in relation to the entirety of the ET and EAT proceedings or whether there is a less drastic way of proceeding, which does not have such a substantial impact upon the principles of open justice. Counsel for the Respondent submitted that the fact that the Appellant made an allegation of sexual assault which is not related to the subject-matter of the ET proceedings should not justify a permanent anonymity order in her case, especially as the EJ considered and rejected the Appellant's application for a permanent anonymity order, for reasons that are unimpeachable.

21. I have considerable sympathy with this submission on behalf of the Respondent. If anonymity is granted to the Appellant on this basis, it will mean that she obtains the benefit of anonymity in the ET proceedings, effectively by a side-wind, as the result of an allegation that is not part of the ET proceedings, and, moreover, an allegation that has not been made out against the Respondent and,

indeed, one to which he has not even had the opportunity to respond. I have wavered on the question whether it is necessary to grant anonymity to the Appellant in the ET and the EAT proceedings, in order to protect her anonymity in relation to the allegation of sexual assault. However, after further consideration, I have come to the conclusion that there is no other way of ensuring compliance with section 1 of the 1992 Act. If the Appellant's name were to be published in relation to the ET proceedings, or in the EAT main judgment, and a supplementary judgment dealing with this issue were to be published at roughly the same time, then an alert reader of EAT judgments would be able to work out that the person referred to as the Appellant in the supplementary judgment as having made a complaint of sexual assault is the person who is named in the main judgment. There would give rise to an unacceptable risk of jigsaw identification. In my judgment, the only way of providing anonymity for the Appellant in relation to the allegation of sexual assault is if she is given anonymity in the ET and EAT proceedings.

22. There is a second reason why I consider that it is the right course of action to anonymise the Appellant's name in relation to the ET and EAT proceedings. This is because, were she to be named, it would be possible for a significant number of friends and colleagues of the Respondent, present and former, to identify the Respondent as well. Therefore, there would, in my view, be a real and substantial risk of jigsaw identification of the Respondent, and this would undermine the right to anonymity that I have found should be afforded to him in relation to these proceedings. I recognise that this is not a point that the Respondent himself has urged upon me, but it is something that I take into account nevertheless. Though the Respondent opposed the Appellant's application for anonymity, he went on to submit that, if I were to grant anonymity to her, I should give my reasons in a separate anonymised judgment, as I have done.

23. As I have found that the Appellant's name should be permanently anonymised in order to comply with section 1 of the 1992 Act, it is not necessary for me to go on to consider whether anonymisation should be granted on grounds relating to common law principles or Convention rights.

Conclusion

24. For these reasons, and with some reluctance, I have decided that the Appellant's name should be permanently anonymised in relation to the ET proceedings and the EAT proceedings. The only way to do this is by handing down two judgments which have no apparent link to each other. I stress that this does not mean that I have taken the view that the EJ fell into error in declining to grant anonymity to the Appellant in the ET proceedings. The EJ was absolutely right to do so on the basis of the evidence and arguments that were placed before them – the EJ was not told that the Appellant had made a complaint of sexual assault against the Respondent.