

Neutral Citation Number: [2025] EAT 147

Case No: EA-2024-SCO-000036-JP

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street Edinburgh EH3 7HF

Date: 13 October 2025

Before :

JUDGE BARRY CLARKE

Between :

DBP

Appellant

- and -

SCOTTISH AMBULANCE SERVICE

Respondent

Mr Rad Kohanzad (instructed by direct access), for the **Appellant**
Mr Kenneth McGuire (instructed by NHS Central Legal Office), for the **Respondent**

Hearing date: 24 July 2025

JUDGMENT

SUMMARY

Practice and Procedure

Many months after a hearing had concluded, at which an Employment Tribunal had dismissed all her complaints, a claimant applied for permanent anonymity. Now a mother, her application cited (among her reasons) her concerns about a public judgment on the Register recounting her evidence of previous self-harming and a suicide attempt. It also asserted that the continued publication of the judgment created a risk of further self-harming and suicidal thoughts. The claimant's application included information on the steps she was willing to take to fund an expert psychological report to confirm and quantify that risk, and she sought an oral hearing where she could explain matters. It was an error of law for the Employment Judge – by a case management decision that was plainly wrong – to refuse that application on the papers, on the basis that it was unsupported by medical evidence. Fairness demanded that the claimant be given a reasonable opportunity to gather the medical evidence she said she could obtain, rather than to dismiss her application on the basis that she had yet to obtain it. The matter was remitted for the application to be considered again. Observations also made about the Register and the increase in post-hearing applications for anonymity.

Judge Barry Clarke:

Introduction

1. I shall refer to the parties as claimant and respondent, as they were before the Employment Tribunal (ET). This has been the full hearing of an appeal brought by the claimant in respect of the refusal of Employment Judge Sutherland to grant her request for permanent anonymity. The appeal raises a narrow issue, which is not related to the substance of the judge’s refusal to grant anonymity but alleges, more fundamentally, that she reached her decision unfairly.

2. I will say at the outset that I have upheld the appeal and remitted the application for anonymisation to be considered afresh by a different judge. To “hold the ring”, I have temporarily anonymised the claimant’s name in the published version of this judgment and agreed the terms of an order with the parties’ representatives by which that order will be revisited once the ET has reached its own decision. I have been sparing about the information I have provided about the case that was before the ET, saying no more than needs to be said in order to explain the appeal and the reasons for my decision.

3. The claimant represented herself before the ET. She had previously applied to the ET for an order that she be anonymised permanently in public documents. The ET refused that application. After the judgment was promulgated, she renewed her application. It was refused a second time. She applied again, expressing it as an application for reconsideration of the second refusal. It was refused a third time. All refusals were made by EJ Sutherland. The third refusal is the subject of this appeal.

4. I am grateful to both counsel for their assistance in this appeal: Mr Kohanzad for the appellant and Mr McGuire for the respondent. Neither of them appeared before the ET.

Background

5. I start with some background comments about the privacy orders available under the ET's procedure rules and the Register.

6. ETs have the power to make a privacy order in various forms. This power is now contained in rule 49 of the **ET Procedure Rules 2024** (the "**2024 Rules**") but, at the time of the decision under appeal, it was contained in rule 50 of the **ET Rules of Procedure 2013** ("the **2013 Rules**"). The old rule 50(1) empowered a tribunal, at any stage of the proceedings or upon an application, to "*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*".

7. When a tribunal was considering whether to make an order under rule 50(1) of the **2013 Rules**, rule 50(2) required it to give "*full weight to the principle of open justice and to the Convention right to freedom of expression*". At rule 50(3), there was a non-exhaustive list of the orders available:

- (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.*

8. In the **2024 Rules**, rule 49 is cast in much the same terms, although the non-exhaustive list now includes express confirmation that a privacy order may be made requiring 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*".

9. In the ETs, there are generally five practical effects of an anonymity order made in favour of a party, at least until such time as that order has been discharged or varied.

- 9.1 First, at the risk of stating the obvious, the order does what it says on the tin: it requires all to comply with its terms. This includes the parties themselves and any non-parties attending from the press or public. It includes the tribunal panel and the tribunal's administrative staff. Where members of the public are in attendance, either attending in person or observing remotely, the judge must impose discipline during the hearing to ensure that an anonymity order is respected throughout.
- 9.2 Second, the name of the anonymised party will be removed from the published daily cause lists and the weekly press lists, replaced by an appropriate cipher.
- 9.3 Third, two versions of the subsequent judgment are produced: a "normal" version of the judgment, containing the parties' names, which is sent only to the parties and to Acas; and an anonymised version that is entered in the public Register. It is not just the "heading" of the public judgment that is anonymised; if it is accompanied by reasons, the reasons must be composed judiciously so as to comply with the order. That may necessitate redaction of other details in the reasons so that "jigsaw" methods of identification do not frustrate its terms.
- 9.4 Fourth, where a non-party has requested a transcript of the recording of a hearing, that transcript will be reviewed by a member of HMCTS administrative staff or a legal officer and, where necessary, it will be amended to ensure that it complies with the anonymity order (see paragraph 23 of the joint Presidential Practice Direction on the recording of ET hearings and the transcription of recordings).
- 9.5 Fifth, where a judge has agreed that a member of the public may inspect documents used during the hearing or which are otherwise held on the ET file (such as case management orders which are not published on the Register), those documents will also require appropriate redaction prior to disclosure.

10. The Register is maintained by the Lord Chancellor under Regulation 14(1) of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013** (the “**2013 Regulations**”). It has existed in one form or another since the establishment of the Industrial Tribunals in 1965. By rule 67 of the **2013 Rules**, now rule 65 of the **2024 Rules**, copies of judgments and written reasons must be entered into the Register. This is stated to be “*subject to*” any privacy order that has been made. This does not mean that the ET has a discretion to decide that a judgment should not be entered in the Register at all; see paragraph 49 of **Amevaw v PriceWaterhouseCoopers Services Ltd** (EAT/0244/18) and paragraph 26 of **L v Q Ltd** [2019] EWCA Civ 1417. Instead, as noted above, the version placed on the Register is the one that has been appropriately anonymised.

11. When then **2013 Regulations** were brought into effect on 27 July 2013, a new Regulation 14(2) required the Lord Chancellor to delete any entry in the Register six years from the date of the judgment. However, this requirement was removed with effect from 6 April 2014, pursuant to the **Employment Tribunals (Constitution and Rules of Procedure) (Amendment) (No. 2) Regulations 2014**.

12. Previous iterations of the ET constitution regulations had provided that the Register would be “*open to the inspection of any person without charge at all reasonable hours*” (see, for example, Regulation 17(1) of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004**, Regulation 12(1) of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001**, and Regulation 9 of the **Industrial Tribunals (Constitution and Rules of Procedure) Regulations 1993**). Accordingly, a person could inspect the Register by attending the venue (one in Scotland and one in England and Wales) where it was physically housed. Such a requirement is now largely otiose. This is because, in respect of ET decisions made since February 2017, the Register has been hosted online in a searchable form on the gov.uk website. It currently contains over 125,000 decisions made since that date.

13. Before the emergence of the internet, in days when representatives of the regional press might

be more often seen in the corridors and hearing rooms of ET venues throughout Great Britain, parties seeking anonymity were more likely to be troubled at the appearance of their names in public cause lists pinned to notice boards. Few members of the press were interested enough to visit the Register in its physical location in Glasgow or Bury St Edmunds, scouring through the archive boxes for cases worthy of attention. Those cases were concluded, and were old news. But, since the emergence of the internet, and especially since the relocation of the Register online, it has become an easy resource to inspect, facilitated through the provision of search fields. Consequently, parties seeking anonymity are nowadays much more likely to be troubled at the appearance of their names in judgments that (since 2014) are no longer deleted and (since 2017) remain online in perpetuity.

14. This has given rise to a trend: an increase in post-hearing applications by parties (and sometimes witnesses) who consider that the contents of a judgment published on a searchable online database has saddled them with the risk of personal and reputational harm or, in the case of individuals, damages their prospects of future employment. Many ET users, especially those who are professionally represented, will be aware that the judgment will appear on the online Register; that consideration will feature in the assessment of litigation risk. Yet the Register's existence still comes as a surprise to some.

15. There is no bar to applications being made after a case has concluded, and no temporal limit on when they can be made; see paragraph 38 of **Fallows & Ors v News Group Newspapers** [2016] ICR 801 and paragraphs 46 and 48 of **X v Y** (EAT/0302/18). Thus post-hearing applications often refer to changed personal circumstances that are said to justify anonymisation. Sometimes, an oral hearing will be necessary to test the veracity of the assertions being made.

16. In this appeal there is no need to analyse the principle of open justice; both parties accept that it carries very significant weight and that the burden of establishing any derogation from that principle lies on the person seeking it. The 25 key points of law and principle were recently set out by Cavanagh J at paragraph 107 of **XY v AB** [2025] EAT 66.

Previous applications for anonymity in these proceedings

17. The claimant's first application to the ET for an anonymity order was made in March 2022, significantly before the full hearing of her claim took place but after the ET had issued an earlier decision dealing with an application to amend. The claimant's application for anonymity was made on the grounds of her poor mental health. It referred to her prior self-harming behaviour and an attempted suicide, and mentioned that, at the time of her application, she had recently given birth. Her application made clear that she was worried about her family learning that she had overdosed to the point of unconsciousness.

18. EJ Sutherland made a temporary order for anonymity pending fuller consideration of the matter. By a decision dated 10 March 2022, the judge discharged the temporary anonymity order and refused to issue a permanent anonymity order. The judge observed that, while the amendment judgment referred to the claimant's suicidal thoughts, it did not state that she had in fact overdosed. The judge concluded that there was no clear or cogent evidence that the claimant's privacy rights justified a derogation from the open justice principle in the form of anonymising her name. The decision made clear that the claimant was entitled to renew her application in respect of subsequent hearings and judgments in the case.

19. The ten-day full hearing took place in October and November 2022, with no order for anonymisation in place. The ET panel, chaired by EJ Sutherland, dismissed the claimant's complaints of unfair constructive dismissal, protected disclosure detriment and disability-related harassment. The judgment referred to the claimant's suicidal thoughts and, unlike the earlier decision, it *did* recount her evidence of her overdose. The judgment, without any anonymisation, was entered in the Register.

20. On 8 January 2024, about 13 months after receiving the judgment, the claimant renewed her application for a permanent anonymity order. Her application exemplified the trend to which I referred to above; although her case had long ago finished, she remained troubled by the continuing publication of the judgment on the online Register. Her application referred to ongoing concerns she had about persons who had formerly worked for the respondent. She was worried that these persons,

one of whom was said to have engaged in stalking behaviour leading to criminal offences, would identify and locate her through this judgment. She was concerned that, without the protection of anonymity, her fear of these individuals would discourage her from continuing to raise her concerns about her workplace experiences. She said she was worried about her career prospects with other public bodies. On 1 February 2024, before her application had been decided, she clarified that she wished her application to be decided at an oral hearing rather than on the papers, and she provided dates to avoid due to imminent childbirth.

21. The respondent opposed the application, describing the claimant's "*continued requests for additional hearings [as] an abuse of process and/or vexatious*", saying that it was entitled to "*finality in litigation*".

22. EJ Sutherland refused the claimant's application on 5 February 2024. The judge did so on the papers, stating that the lack of clear and cogent evidence from the claimant as to the risk of harm meant that it would be contrary to the overriding objective to hold a hearing. The judge was unpersuaded that the claimant was at risk of violence from the individuals mentioned, or that (without anonymity) she would be discouraged from raising her concerns with others, or that her career prospects with public bodies had been significantly affected.

23. The claimant, still unrepresented, continued her correspondence with the ET. She said that, if her application was not considered coherent because of her status as a party litigant, she wanted a hearing to explain her position better. EJ Sutherland replied on 9 February 2024 in these terms:

The Claimant advises she had not answered all of the questions because she thought she would have the opportunity to provide additional information at a hearing.

It is open to the Claimant to apply to the Tribunal for reconsideration of the decision on these grounds and to provide that additional information in writing support of her application.

If the Claimant seeks for that reconsideration to take place at a hearing by way of a reasonable adjustment the Claimant must set describe why it is not reasonably practicable for her to provide that additional information in writing.

24. The claimant, via her husband, wrote again to the ET on 18 March 2024. This was described

as an application for reconsideration. Given the terms of the ET's earlier letter, which confirmed that a further or more evidenced request for anonymity should take the form of an application for reconsideration, it is unsurprising that it was described as such. Like the claimant's original request for anonymity in March 2022, this application focused on her poor mental health. It consisted of seven pages.

25. The following points are notable. The claimant wanted a hearing to consider her application. The application referred to her previous physical and mental health vulnerabilities, some of which arose from her recent motherhood. There was significant reference to the fact that the judgment referred publicly to her previous suicide attempt by overdose, which came up in a "Google search" of her name. She was said to be at further risk of self-harm and suicide, and a detailed account was given of her obsessive and compulsive behaviour. The application made reference to the EAT's judgment in **LOP v City of York Council** [2022] EAT 196, a case where the EAT overturned a judge's refusal to make an anonymity order in a claimant's favour where there was medical evidence that the absence of one was aggravating his mental health and giving rise to a risk of self-harm and suicide. The application made clear that the claimant was aware of the need for medical evidence. The application said that she and her husband had located a psychology expert, who had quoted the sum of £2,000 to review her health records and assess her for the risk of harm, and that they were willing to sell their car to fund it.

26. On 2 April 2024, EJ Sutherland refused the application for reconsideration. She refused the claimant's request for a hearing in these terms:

The Claimant sought for that reconsideration to take place at a hearing by way of a reasonable adjustment but despite being asked to do so the Claimant has not described why such a hearing is necessary. It appears reasonably practicable for her to provide the additional information in writing and she has proceeded to do so.

27. The judge was plainly unimpressed by the claimant's delay in making the initial application for anonymity on 8 January 2024, as is clear from the list she provided:

The Claimant has now explained that she did not make her application for anonymity

at the time the judgments were issued or in the year or more thereafter because she was pregnant, had major surgery, had coronavirus, had no permanent address, had lyme disease, and had issues with her mental health.

28. As for the reference to her mental health, the judge said this:

The application for reconsideration does not provide any medical evidence from her GP or otherwise (e.g. by way of her medical records) that she has engaged in or considered self-harm or suicide as a consequence of continuing publication of the judgment.

29. This is the decision under appeal.

Appeal

30. For the claimant, Mr Kohanzad drafted two grounds of appeal, both of which were allowed through to a full hearing. In the event, at the hearing itself, he focused sensibly and exclusively on the claimant's first ground of appeal, withdrawing the second ground. This was to the effect that the judge did not properly consider the application before her. In short, if medical evidence was likely to be germane to the claimant's application, in circumstances where the claimant had made clear that she was prepared to sell her car to fund a psychological report that might show a risk of self-harm and suicide, then the only reasonable course of action was for the judge to give her an opportunity to provide that evidence. It was improper to reject her application on the papers. Instead, the matter should have been listed for a hearing, with the claimant being informed that medical evidence would be important material for the judge to consider.

31. The respondent resisted the appeal. Its answer said that this was the first time the claimant had asserted her mental health as a reason for anonymity. (This is not correct; as I noted above, this was the basis for her first application in March 2022.) It otherwise contended that the judge was correct to dismiss the application in circumstances where the claimant had provided no supporting medical evidence and where her husband's lay assessment of her mental health could not be considered reliable. At the hearing, Mr McGuire's central contention was that the judge's analysis could not properly be characterised as one that was perverse or plainly wrong. The claimant had not offered to give medical evidence; she had simply asked whether the judge would find it helpful if she did. This

was therefore different to the situation in the **LQP** case, where such evidence had been before the tribunal but was not properly considered.

32. Pausing there, both parties accepted that it was technically erroneous for the judge to inform the claimant that she could apply for reconsideration of her earlier refusal to make an anonymity order. A decision on whether to order anonymity is a case management order and not a judgment; see rule 1(3) of the **2013 Rules**, now rules 2(1) and 2(2) of the **2024 Rules**. Bruce Carr KC, sitting as a Deputy High Court Judge, analysed the difference, in the context of an anonymity application, at paragraphs 25 to 29 of **AEL v Flight Centre (UK) Ltd** [2024] EAT 116. By contrast, the facility for reconsideration applies only in respect of judgments. If a party wishes the ET to consider afresh the terms of a case management order then, absent an appeal, that party must apply for it to be varied, suspended or set aside on the basis that it is necessary in the interests of justice; see rule 30 of the **2013 Rules**, now rule 29 of the **2024 Rules**. The tribunal will expect to see evidence of a material change in circumstances.

33. Mr Kohanzad and Mr McGuire helpfully agreed that it would be inappropriate to hold against the claimant, as a party litigant, that her third request for anonymity was wrongly expressed as an application for reconsideration when it should have been expressed as either a renewed application for anonymity or as an application to vary the earlier refusal. However, they also agreed that nothing significant turned on the distinction and so I will say no more about it.

Discussion and decision

34. The central issue in this appeal is not whether it was wrong for the judge to decline to make an anonymity order. The crux of the matter can be expressed more narrowly: whether it was wrong to refuse the claimant's application on the basis that she had provided no supporting evidence when she had made clear her intention to do precisely that.

35. I have been persuaded by Mr Kohanzad that the judge's approach was wrong and, indeed, plainly wrong such as to merit interference by the EAT.

36. As HHJ Tucker expressed it at paragraph 33 of LQP, an assertion that someone has suicidal tendencies should be treated with “*utmost seriousness*” and not “*too readily dismissed*”. If there is scepticism about that assertion, it is worth taking a step back to reflect upon what has occurred in the past. In this case, the ET’s judgment had recounted the claimant’s evidence of suicidal thoughts and an overdose in 2019. This ought properly to have warranted a suspension of judicial scepticism about whether such suicidal ideation might feasibly have continued into 2024. It ought to have warranted a readiness to consider whether the open justice principle was served by the claimant’s name being associated in perpetuity online with her overdose, including as her young children grew up. Reflecting the observations I made earlier in this judgment, such matters can properly form the basis for an application for anonymity even long after the online publication of a non-anonymised judgment.

37. In many cases it will be a proper exercise of judicial discretion to conclude that the medical material available does not demonstrate the clear and cogent evidence needed to establish a departure from the open justice principle. Sometimes a judge may even properly conclude that obtaining medical evidence would be futile. There are many cases where anonymity applications are made with no supporting evidence and they are properly refused.

38. But there is something striking about this case, even apart from the claimant’s previous suicidal attempt. She had been a party litigant throughout, and sought guidance from the tribunal as to what evidence it wanted from her and an opportunity to explain herself at an oral hearing. Her application referred to her recent period of homelessness and yet stated a willingness to sell the family car to fund a medical report that would provide such evidence. As Mr Kohanzad submitted, the figure of £2,000 she mentioned was consistent with the general costs of such reports, giving rise to the inference that it reflected a genuine attempt on her part to find quotes and a genuine intention to take the issue forward.

39. That being so, Mr Kohanzad has persuaded me that it was plainly wrong, and a decision no reasonable tribunal could make, to deal with the matter summarily on the papers. Fairness demanded that the claimant be given a reasonable opportunity to gather the medical evidence she said she could

obtain, rather than to dismiss her application on the basis that she had yet to obtain it. It was plainly wrong for the tribunal not to consider directing a time-limited opportunity for the medical evidence to be obtained and served. If, upon service of that medical evidence, the tribunal had remained sceptical of the truth of what the claimant had told her GP or psychologist, a short oral hearing was likely to be the proportionate next step, especially when dealing with an unrepresented party.

40. I therefore allow the appeal.

Disposal

41. Applying **Sinclair Roche & Temperley v Heard** [2004] IRLR 763 EAT, and while in no way doubting the professionalism of the judge, I consider that the matter should be remitted to a different tribunal. I bear in mind that I have concluded that the judge's approach was plainly wrong and that she has now refused the application for permanent anonymity on three occasions.

42. The new judge should set a realistic timetable for evidence to be served in respect of the claimant's renewed application for a permanent anonymity order and, without formally directing it as part of my remittal, I consider that an oral hearing is likely to be a proportionate and desirable means of disposal. However, it will remain open to the judge, having considered the evidence, whether or not to grant the claimant the anonymity she seeks.

43. Having canvassed the matter with the parties at the time of providing my draft judgment, I further make a temporary anonymity order by which the claimant is replaced with the cipher "**DBP**". The parties are agreed that there is no need to anonymise the respondent's name. This will "hold the ring" until the ET has dealt with the matter upon remittal.

44. Then:

44.1 No later than seven days after the expiry of the 42-day time limit for appealing the ET's decision, the parties should contact the EAT to confirm the ET's decision and to state whether either of them has appealed (and, if so, they should provide a summary of their grounds of appeal).

- 44.2 If the ET has made a permanent anonymity order, then – subject to any further appeal by the respondent – the claimant can apply to the EAT for my temporary order to be made permanent. The application should be copied to the respondent so that it has an opportunity to object.
- 44.3 If the ET has declined to make a permanent anonymity order, then – subject to any further appeal by the claimant – the respondent can apply to the EAT for my temporary order to be discharged. The application should be copied to the claimant so that she has an opportunity to object.
- 44.4 In either case, it is incumbent on the parties to keep the EAT informed so that a final decision can be made on the permanence or otherwise of my anonymity order.
45. I repeat my thanks to Mr Kohanzad and Mr McGuire for their assistance in this appeal.