

Neutral Citation Number: [2025] EAT 167

Case No: EA-2024-000440-RS and EA-2024-000504-RS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 13 November 2025

Before

HIS HONOUR JUDGE JAMES TAYLER

Between :

A

Appellant

- and -

(1) B, the Organisation

(2) C

(3) D

Respondents

A the Appellant in person
Paul Michell (instructed by Eversheds Sutherland (International) LLP) for the **Respondents**

Hearing date: 28 August 2025

JUDGMENT

SUMMARY

Practice and Procedure

The Employment Tribunal did not err in law in refusing to vary or set aside a Restricted Reporting and Anonymisation Order.

HIS HONOUR JUDGE JAMES TAYLER:**The issues**

1. The issues in these appeals are whether an Employment Judge erred in law in refusing to set aside or vary a permanent Restricted Reporting and Anonymisation Order (“the original RRO”) and in refusing to “review” that decision.
2. The application to set aside or vary the original RRO was refused by Employment Judge Hutchinson, after a hearing on 18 January 2024, by an Order with reasons sent to the parties on 29 February 2024 (“the refusal of revocation Order”). An application for “reconsideration” was refused by letter dated 5 April 2024 (“the refusal of review letter”).

The claims and Orders

3. The parties are referred to as the claimant and respondents as they were before the Employment Tribunal. I shall use the term RRO to refer to Orders that derogate from the open justice principle, including by limiting reporting and requiring anonymisation.
4. I take the background to the application to set aside or vary the original RRO from the reasons of Employment Judge Hutchinson.
5. The claimant submitted a first claim to the Employment Tribunal that was received on 4 March 2020: 2600798/2020 (“the first claim”). In broad terms the claimant contended that he had made protected disclosures about the manner in which animal testing was being conducted by the respondents, pursuant to a Home Office licence, which included limitation on the food provided to rats. He contended that he had been subject to detriments as a result.
6. On 6 April 2020, the respondents applied for a RRO in the first claim.
7. On 5 August 2020, Employment Judge Butler made the original RRO:

RESTRICTED REPORTING AND ANONYMISATION ORDER

Pursuant to rules 50(1) and 29 of the Employment Tribunals Rules of Procedure 2013, it being in the interest of justice to do so, **THIS ORDER PROHIBITS** the publication in Great Britain, in respect of the above proceedings, of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain. ‘Identifying matter’ in relation to a person means ‘any matter likely to lead members of the public to identify the complainant or such other

persons (if any) as may be named in the Order ’

The following persons may not be so identified and must be anonymised as follows: ...

The Order remains in force indefinitely unless revoked earlier.

The publication of any identifying matter or its inclusion in a relevant programme 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
[text in bold Employment Judge’s emphasis, test underline emphasis added]

8. Employment Judge Butler struck out the complaint against one respondent and made deposit orders of £250 in respect of two allegations that had little reasonable prospect of success.

9. The claimant appealed against the original RRO. Mr Justice Bourne was of the opinion that there were no reasonable grounds for bringing the appeal for the purposes of Rule 3(7) of the **Employment Appeal Tribunal Rules 1993** (as amended) (“**EAT Rules**”). The claimant challenged the opinion of Bourne J pursuant to Rule 3(10) **EAT Rules**. The claimant was represented by Thomas Kibling of Counsel at the Rule 3(10) hearing pursuant to the ELAAS scheme. The Rule 3(10) application was dismissed by His Honour Judge Barklem. The claimant sought permission to appeal to the Court of Appeal. Permission was refused by Lady Justice Simler, as she then was. Bourne J made an RRO in the EAT to hold the ring in respect of the original RRO.

10. Accordingly, the background to the application made in the Employment Tribunal to vary or revoke the original RRO was that it was a permanent Order, challenges to which had been held to be unarguable by the EAT and Court of Appeal.

11. The claimant submitted a second claim to the Employment Tribunal that was received on 7 May 2022: 2601150/2022 (“the second claim”). On 25 May 2022, Employment Judge Heap made a further RRO in respect of the second claim on substantively the same terms as the original RRO (“the second RRO”). The second RRO is not challenged in this appeal.

12. The claimant submitted a third claim to the Employment Tribunal that was received on 4 September 2022: 2602104/2022 (“the third claim”). On 11 November 2022, Employment Judge Michael Butler made a further RRO in respect of the first three claims, again in similar terms to the

original RRO (“the third RRO”). The third RRO is not challenged in this appeal.

13. By an order of Employment Judge Heap dated 22 of April 2023, complaints of indirect discrimination and victimisation/detriment in the first, second and third claims were struck out. The only complaints that remained were of breach of contract and one complaint that a variation of the claimant’s contract on 1 April 2022 amounted to a whistleblowing detriment.

14. On 25 August 2023, the claimant applied to set aside or vary the original RRO.

15. A Preliminary Hearing for Case Management was conducted by telephone by Employment Judge Clark on 1 September 2023. Employment Judge Clark explained to the claimant that a case management Order of an Employment Tribunal can only be varied or revoked by another Employment Tribunal if there has been a material change in circumstances or on representations by an affected party who had not previously had an opportunity to make representations. Employment Judge Clark noted that the claimant referred to unspecified hardship to him from the continuation of the original RRO, and asserted that the level of risk presented to the safety of the individuals protected by the original RRO had decreased substantially since the order was made. Employment Judge Clark stated that cogent evidence would be required to answer the following two questions:

Whether the risk had decreased from that evidenced before EJ Butler at the time of the original order so as to amount to a material change in circumstances and, secondly, to be able to then determine whether any decrease in the level of risk was such as to alter the balance between the competing article rights and the principle of open justice engaged in the decision

16. The claimant submitted a fourth claim to the Employment Tribunal that was received on 16 November 2023: 6002371/2023 (“the fourth claim”).

17. All four claims were settled on 1 December 2023 on confidential terms. The claims were dismissed on withdrawal. The fourth claim had not been served when it was withdrawn.

18. The respondents were asked to comment on the application to vary or revoke the original RRO on 5 December 2023. By an email dated 20 December 2023, the respondents indicated that they would not object to lifting the anonymity aspect of the original RRO in relation to the claimant and the first respondent, the organisation.

19. The application to vary or revoke the original RRO was heard at a Preliminary Hearing held before Employment Judge Hutchinson on 18 January 2024.

20. Witness statements were produced by the claimant and the first respondent's Head of Security Services. The respondents resiled from the indication that they did not object to the lifting of the anonymity aspect of the original RRO in relation to the claimant and the organisation, raising concerns about jigsaw identification.

21. Employment Judge Hutchinson rejected the application:

34. I note in this case that the Claimant has only sought to vary the order made on 5 August 2020. I have listened at length to his submissions at this hearing and to what he said in his witness statement, but **he has produced no cogent evidence to suggest that there has been any material reduction in risk since the previous orders were made. His real case to me is that there was never any risk and there certainly is no risk now.**

35. **His arguments fly in the face of the rationale for making the order on 5 August 2020. A rationale approved not only by the Employment Appeal Tribunal but also by Simler LJ in The Court of Appeal. ...**

38. **I have also considered whether the settlement of the claims itself amounts to a material change. As Mr Michell points out the settlement means there is no final hearing and any Article 6 considerations can be removed from the equation.**

39. Furthermore, settlement does not dispose of the risk to the parties which the anonymisation was intended to minimise. Article 8 issues therefore remain in play.

40. In this case Article 10 issues cannot outweigh those Article 8 issues.

41. [The claimant] has not won his case and as Mr Michell says there is no public interest in him disseminating a finding by the Tribunal that the Respondents have mistreated animals and wronged the Claimant for asserting mistreatment.

42. In his witness statement, [the claimant] asserts that a paper of his was stolen by at least one of the named individual Respondents. He goes on to say:

“There is literally no reason I can see in which I would want to use the primary features of R1 to R4's identity (like their name) in relation to any other matter”.

43. It is therefore the Claimant's case that public interest in the facts of the case ought to compel exposure of the name of the Respondents.

44. I have considered whether it would be appropriate to consider the removal of an anonymity for either:

a. Just the Claimant.

b. Just the Claimant and the [Organisation].

45. I am satisfied in all the circumstances of this case that the Claimant's application should be dismissed. **I am satisfied that settlement of the case makes no difference to the risks that were in play when the original order was made and that the original order should continue indefinitely.**

46. **This order should not only continue in respect of the three earlier cases but also in respect of his fourth case under case number 6002371/2023. Whilst an application has not been made in respect of that I exercise my power under rule 50 of the Employment Tribunal Rules of Procedure to make such an order as I am satisfied it is in the interests of justice to do so.** [emphasis added]

22. Employment Judge Hutchinson held that the claimant had not established that there had been a material reduction in the risks to those protected by the original RRO.

23. The claimant applied for "reconsideration" of the refusal of revocation Order on 14 March 2024. The application was refused by Employment Judge Hutchinson by letter dated 5 April 2024:

The matters raised by the claimant in his application were all considered at the hearing on 18 January 2024. At that hearing the claimant was given every opportunity to call evidence and raise matters and these were all considered by myself at the hearing and I determined that the anonymisation orders should continue. Nothing in the claimant's application for reconsideration gives me any cause to doubt the decision that I made in this case.

There needs to be finality in litigation and this is certainly the case here. These proceedings have continued now for four years and although the claimant has withdrawn his complaints, he still pursues this application which has no merit at all. The respondents have been put to enormous expense in defending these proceedings and the Tribunal has spent far too much time in respect of these proceedings at considerable cost to the public purse. As far as I am concerned that is the end of the matter.

The appeal

24. The claimant submitted an appeal to the EAT on 11 April 2024. The appeal has been treated as being against both the refusal of revocation Order and the refusal of review letter, although the EAT1 form only specifically refers to the former. The claimant raised 8 grounds of appeal. The matter was considered pursuant to Rule 3(7) of the **Employment Appeal Tribunal Rules 1993** (as amended) ("**EAT Rules**") by John Bowers KC who permitted ground 7 to proceed but set out his opinion that there were no reasonable grounds for bringing the other grounds of appeal in a letter

dated 10 July 2024.

25. By an Order sealed on 19 November 2024, HHJ Auerbach made an RRO in the EAT, primarily to hold the line so that the orders made in the Employment Tribunal would not be undermined.

26. The claimant challenged the opinion of Judge Bowers pursuant to Rule 3(10) **EAT Rules**. On 2 July 2025, Bruce Carr KC permitted Grounds 1, 2 (paras 9-11 only) and 8 to proceed.

Relevant legal principles

27. Rule 50 **Employment Tribunal Rules 2013** (“**ET Rules**”) (now Rule 49 **Employment Tribunal Rules 2024**) provided:

50.— Privacy and restrictions on disclosure

(1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings **so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person** or in the circumstances identified in section 10A of the Employment Tribunals Act.

(2) In considering whether to make an order under this rule, the Tribunal **shall give full weight to the principle of open justice and to the Convention right to freedom of expression**.

(3) Such orders may include—

(a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;

(b) **an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;**

(c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;

(d) **a restricted reporting order** 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.

28. Any order made under Rule 50 involves a derogation from the open justice principle. In **Dring v Cape Intermediate Holdings Ltd** [2019] UKSC 38, [2020] AC 629 Baroness Hale of Richmond PSC emphasised the fundamental importance of the open justice principle:

As Lord Hewart CJ famously declared, in *R v Sussex Justices, Ex p McCarthy* [1924] 1 KB 256, 259, 'it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done'. That was in the context of an appearance of bias, but the principle is of broader application. With only a few exceptions, our courts sit in public, not only that justice be done but that justice may be seen to be done.

29. Baroness Hale set out the main purposes of the open justice principle:

42 The principal purposes of the open justice principle are two-fold and there may well be others. The first is 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. In *A v British Broadcasting Corp* [2015] AC 588, Lord Reed JSC reminded us of the comment of Lord Shaw of Dunfermline, in *Scott v Scott* [1913] AC 417, 475, that the two Acts of the Scottish Parliament passed in 1693 requiring that both civil and criminal cases be heard "with open doors", "bore testimony to a determination to secure civil liberties against the judges as well as against the Crown" (para 24).

43 But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases. In the olden days, as has often been said, the general practice was that all the argument and the evidence was placed before the court orally. Documents would be read out. The modern practice is quite different. Much more of the argument and evidence is

reduced into writing before the hearing takes place. Often, documents are not read out. It is difficult, if not impossible, in many cases, especially complicated civil cases, to know what is going on unless you have access to the written material.

30. Lord Summers stated in **A v Burke and Hare** [2022] IRLR 139:

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.

31. It may be necessary to make an Order preventing the identification of one person because it is likely to lead to identification of another person who requires protection, in the sense that there is a real risk, danger, or chance of identification occurring: **Attorney General for England and Wales v British Broadcasting Corporation** [2022] EWHC 1189.

32. In **XY v AB** [2025] EAT 66 Mr Justice Cavanagh summarised the core principle relevant to making RROs:

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*).

33. It is important to note that the balancing exercise, that Cavanagh J described as best conducted by the Employment Tribunal rather than the EAT, had been conducted when the original RRO was made. Attempts to challenge the original RRO were found to be unarguable by the EAT and Court of Appeal. This appeal challenges the refusal of revocation Order and the refusal of review letter. It is not for the EAT to conduct the balancing exercise afresh but to consider whether there was any error of law in the decision of the Employment Tribunal in refusing to vary or set aside the original RRO and/or the refusal of review letter.

34. An RRO is a case management Order. The making, variation or revocation of such Orders is Governed by Rule 29 **ET Rules 2013** (now rule 30 **ET Rules 2024**):

29. Case management orders

The Tribunal may at any stage of the proceedings, on its own initiative or on application, **make a case management order**. Subject to rule 30A(2) and (3) the particular powers identified in the following rules do not restrict that general power. **A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.** [emphasis added]

35. There must generally have been a material change in circumstances if a case management Order is to be varied, suspended or set aside: **Serco Ltd v Wells** [2016] ICR 768. The claimant accepted that a material change of circumstances was required to vary or set aside the original RRO. For ease of expression, I have on occasion used the term “revoke” to refer to setting an order aside under Rule 29 **ET Rules**. I have used the term “the refusal of review letter” although strictly speaking the “reconsideration” application was a further application under rule 29 **ET Rules**.

Grounds of Appeal

Ground 1

36. The claimant contends that it was an error of law to “say open justice was no longer a factor in the test”. At paragraph 38 the Employment Judge stated “any Article 6 considerations can be removed from the equation”. The Employment Judge did not state that open justice was no longer a factor. The Employment Judge did no more than note that there would not be a trial and therefore the Article 6 fair trial right was not in play in relation to any hearing.

37. The claimant had not relied on the settlement of the claims as a material change of circumstances and so is not entitled to rely on it on appeal. In any event, the fact that the claims had settled was not a factor in favour of setting aside the original RRO because it meant that the open justice principle was less in play because there would be no trial, the reporting of which would be in the public interest and at which the behaviour of any judge might be scrutinised. That did not mean that the open justice principle was not engaged at all, but that the factors that weighed against making

the order were lesser than when the original RRO was made. Ground 1 is dismissed.

Ground 2 paragraphs 9-11

38. The claimant asserts that the Employment Tribunal erred in law by not “assessing freedom of expression and public interest in the balance”. This ground appears to be based on the assumption that it was for the Employment Tribunal to carry out the balancing exercise afresh. The original RRO could only be varied or set aside if there was a material change in circumstances. The claimant relied on an asserted reduction in the risk to the respondents if they were named. The Employment Tribunal considered the evidence and rejected that assertion as a matter of fact. That determination was open to the Employment Tribunal.

39. The claimant appears to think that he can require the Employment Tribunal to conduct the balancing exercise afresh every time an application is made. It bears repeating that the balancing exercise had been conducted when the original permanent RRO was made, and that challenges to the original RRO were found to be unarguable by the EAT and Court of Appeal.

Ground 7

40. The claimant asserts that “my convention rights are not engaged in support of keeping the restricted reporting order on myself”. I have found this ground rather hard to follow but have concluded that it is another attempt to go behind the original RRO. As already stated the settlement of the claims was not relied upon by the claimant in seeking to vary or set aside the original RRO and, in any event, settlement of the claims would have weighed in the opposite direction.

Ground 8

41. The claimant contends that there is no RRO in respect of the fourth claim. He contends that it was insufficient for Employment Judge Hutchinson to state in the refusal of revocation Order that the “Restricted Reporting Order and Anonymisation Order also applies to claim number 6002371/2023”. The respondents concede that a separate RRO is required for the fourth claim. I am far from sure that concession is correct, and that Employment Judge Hutchinson’s current Order is insufficient in circumstances in which the claimant asserted matters in the fourth claim that he had previously raised

in the first three claims, and the fourth claim was withdrawn before it was issued. However, in the light of the concession I will remit the issue of a RRO in the fourth claim to Employment Judge Hutchinson unless not available, the EAT RRO holding the line in the meantime.

Overall

42. The appeals against the refusal of revocation Order and the refusal of review letter are rejected.

Campaign Group

43. A campaign has contacted the EAT raising the fact that it has applied for the Employment Tribunal to vary or set aside the original RRO. It is stated that the Employment Tribunal has failed to determine that application. That is a matter to be taken up with the Employment Tribunal which is responsible for the original RRO and can consider such an application. The EAT RRO is only in place so that the purpose of the original RRO is not undermined because the claimant has brought an appeal against it.

EAT RRO

44. Now that appeal has been unsuccessful the EAT RRO will be varied to remain in force for at least as long as any Employment Tribunal RROs remain in force so that they shall not be undermined as a result of this unsuccessful appeal. If the RROs are lifted in the Employment Tribunal any interested party can apply to the EAT for the EAT RRO to be lifted.