

Neutral Citation Number: [2026] EAT 35

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

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 04 March 2026

Before:

HIS HONOUR JUDGE JAMES TAYLER

Between:

A

Appellant

- and -

(1) B, the Organisation

(2) C

(3) D

Respondents

REVIEW JUDGMENT

HIS HONOUR JUDGE JAMES TAYLER:

The EAT review application and the procedure adopted in considering it

1. In an attachment to an email dated 20 November 2025, the claimant applied for review of my Order handed down on 13 November 2025, dismissing his appeals against decisions in the Employment Tribunal refusing to set aside or vary an RRO and refusing to “review” that decision. The Judgment handed down with the Order (“the EAT RRO Judgment”) should be read with this Judgment. I shall adopt the terminology used in the EAT RRO Judgment.

2. On my direction a letter was sent to the parties on 26 November 2025. I stated that:

Having carefully read the application for review and my notes from the hearing I have concluded that there may be arguable grounds to consider reviewing my judgment on the basis that I have mistakenly failed to consider and determine an argument that the appellant clarified at the hearing; namely that he relied in his application [to vary or revoke the RRO] in the Employment Tribunal on two material changes in circumstances in addition to a reduction in risk to the respondents; namely “heightened need for freedom of expression” and “greater evidence of public interest”. The assertion is that on a proper reading the three matters raised at paragraph 11 of Ground 2 of the Notice of Appeal are separate, even if interrelated, material changes of circumstance.

3. I asked the parties for their submissions on how the application should be determined, whether at a hearing or on the papers. Having considered the parties’ submissions, I set out a timetable for the application to be considered on the papers, in an Order sealed on 9 December 2025:

1. The application for review of the judgment sealed on 13 November 2025 will be determined on the papers.

2. On or before 20 December 2025 the claimant is to provide a **concise** final submission in support of the application for review that must include each example of “heightened need for freedom of expression” and “greater evidence of public interest” that were referred to when he applied for reconsideration in the Employment Tribunal with a reference to where in the bundles for the EAT hearing the example that was put to the Employment Tribunal is to be found.

3. On or before 16 January 2026 the respondent is to provide a response to the application for review.

4. On or before 23 January 2026 the claimant is to provide any concise reply. [original emphasis]

4. The claimant provided a final submission on 21 December 2025, and a corrected version on 23 January 2026, the respondent sent a response on 16 January 2026 and the claimant a reply on 23

January 2026. I have considered those documents (including the respondent's attachments), the original application for review and the documents before me at the original hearing.

The omission in the EAT RRO Judgment

5. I determined the 4 remaining live Grounds of Appeal in the EAT RRO Judgment: Ground 1, Ground 2 paragraphs 9-11, Ground 7 and Ground 8.

6. The review application relates to Ground 2, at paragraphs 9-11. In the EAT RRO Judgment I held:

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.

7. The parties agree that for the RRO to be varied or set aside it is necessary for there to be a material change in circumstances. I analysed the matter on the basis that the material change in circumstances relied on by the claimant was only “an asserted reduction in the risk to the respondents if they were named”.

8. I accept that I was mistaken in so doing and that I overlooked the claimant's assertion that there were further material changes in circumstances that he relied on in the Employment Tribunal being “greater evidence of public interest” and “heightened need for freedom of expression”. I apologise for my mistake. The claimant has produced very large amounts of material and multiple submissions that at times I have struggled to follow. However, on re-reading the material, I accept that this argument clearly was advanced by the claimant in the EAT. I failed to deal with those assertions. That is an error in the EAT RRO Judgment.

9. Paragraphs 9 to 11 of the Grounds of Appeal asserted:

9. Ground 2. It was an error in law to not assess freedom of expression and public interest in balance.

This was a stealth adoption of the respondents skeleton argument to ignore my original application that there was a material difference in the balance of rights of the original RRO, but instead only consider whether there was a material difference in the risks.

10. It is not the case that I relied solely on the material change of circumstances being the risk from animal activists as stated in paragraph 4. In fact both the skeleton argument and reconsideration point out robustly that the respondents were attempting to redefine the application made (and who went further by claiming these elements shouldn't even be considered with the additional material change of circumstances of the withdrawal of the claim).

11. My submission was there was evidence of reduction of the risk to the respondents, heightened need for freedom of expression and greater evidence of public interest.

10. I believe that I initially misread paragraph 11 as asserting that the material change in circumstances was the reduction of the risk to the respondents which heightened the need for freedom of expression and resulted in greater evidence of public interest. Reading the paragraphs as a whole and focusing on the wording of paragraph 11, I accept that the claimant was asserting that there were three material changes of circumstances being the asserted reduction of the risk to the respondents, heightened need for freedom of expression and greater evidence of public interest.

11. I have re-read the Rule 3(10) reasons of Bruce Carr KC, Deputy Judge Of The High Court and note that he stated:

2. I also gave permission on Ground 2 on the basis that it was arguable that the ET had not sufficiently considered the variation application by reference to the Appellant's argument that, in addition to the reduction in the risk to health and safety, there was now an increased level of public interest in the order being varied.

12. Although Judge Carr only referred to increased level of public interest, the ground he permitted to proceed also included the assertion of a heightened need for freedom of expression.

13. Having re-read my notes of the hearing, I accept that the claimant did state in terms that he had sought to rely on heightened need for freedom of expression and increased public interest as material changes of circumstances in his application in the Employment Tribunal. The claimant took me to a considerable amount of material that he asserted demonstrated a coverup by the respondents and related to the increasingly serious consequences that he asserted the RRO was having on him. I

found much of the material and the related submissions hard to follow, but accept that it was advanced in an attempt to assert, in particular, that there was a heightened need for the claimant to be able to exercise his freedom of expression.

Review in the EAT

14. Rule 33 of the **Employment Appeal Tribunal Rules 1993 (as amended)** (“EAT Rules”) provides:

(1) The Appeal Tribunal may, either of its own motion or on application, review any order made by it and may, on such review, revoke or vary that order on the grounds that—
...

(c) the interests of justice require such review.

15. While, on the face of it, the power is broad, the relevant EAT authorities demonstrate that the power is limited and to be exercised sparingly. An application for review does not provide an opportunity for cases to be re-argued or re-heard: **Blockleys plc v Miller** [1992] ICR 749. It is not an opportunity to correct errors of law that should be the subject of an appeal to the Court of Appeal: **Stannard & Co (1969) Ltd v Wilson** [1983] ICR 86.

16. I have concluded that this is a case in which it is appropriate to proceed with a review. The issue is not whether there was an error of law in my judgment, which would require an appeal. There are two specific elements of Ground 2 that I failed to determine. They are self-contained, substantive and were subject of argument before me.

17. It is not necessary to refer to every subsidiary argument in a judgment and a failure to do so will not be sufficient grounds for review or appeal. This is not such a case. I consider that the interests of justice require that I now determine these two specific sub-grounds of Ground 2 that I failed to determine in the EAT RRO Judgment.

Were heightened need for freedom of expression and increased public interest asserted as material changes of circumstances in the Employment Tribunal?

18. The claimant applied to set aside or vary the RRO on 25 August 2023. The application was lengthy and not particularly easy to follow. The claimant did assert that the “balance in regard to the restriction of convention rights” had shifted and suggested that he had evidence that the respondent

organisation was breaching its research obligations and that the proceedings were having an increasingly severe “psychological impact” on him. He asserted that the respondent organisation was covering up its wrongdoing. He suggested that the RRO had “a disproportionate effect on general public interest”. In amongst the many points made in the lengthy submission, in effect he asserted that there was a heightened need for freedom of expression and increased public interest in the asserted wrongdoing being in the public domain. The claimant did not only rely on a reduction in risk to the respondents.

19. At a telephone Preliminary Hearing for Case Management on 1 September 2023, Employment Judge Clark stated of the application to vary or revoke the RRO:

17) I was able to consider [the claimant’s] request that the restricted reporting order be varied albeit he had indicated that this matter may not be dealt with today.

18) The application is more precisely to vary to the anonymisation element on three alternative levels.

a) To lift all anonymisation.

b) To lift the anonymisation of himself and the [Organisation].

c) To lift the anonymisation of just himself.

19) The application is **made on the basis of the real, but unspecified, hardship the claimant asserts he will experience** as a result of the tribunal’s order. It is also said that the tribunal’s order furthers the respondent **organisation’s aim of covering up its wrongdoing.**

20) I explained the basis on which one Judge’s case management order can be varied by another judge at the same level and the limitations to that. In brief, that focused on the need for a material change in circumstances or on representations by an affected party who had not had opportunity to make the representations at the time.

21) **[The claimant] relies on a material change in circumstances. That is said to be that the level of risk presented to the safety of the individuals protected by the anonymisation has decreased substantially** since the order was made in late 2020.

22) I did not regard that assertion as being something I could simply take notice of or infer from [the claimant’s] documentation provided previously. It appeared to me to be of such substance and significance as to require evidence of both the nature and level of risk. The individual respondents may also want to make representations on this. Jigsaw identification will also be a factor to keep in mind even if, say, [the claimant] was content to forego the protection of anonymisation for himself. **Cogent evidence would be needed for the tribunal to be able to determine 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. ... [emphasis added]

20. Employment Judge Clark identified reduction of risk to the safety of the individuals protected by the RRO as the only asserted material change in circumstances. However, this was in the context of the claimant having alleged that there was a coverup that the RRO was preventing him from challenging, which was also asserted to be a material change in circumstances.

21. In the Order section of the Record of the Preliminary Hearing, Employment Judge Clark fixed a Preliminary Hearing to consider the application to set aside or vary the RRO:

3.5. The purpose of the hearing is to consider varying an existing case management order. The specific issues to be determined are: -

3.5.1. **Whether there has been a change in circumstance** from when the Rule 50 order was made to justify varying the order, **in particular whether the level of risk to the individuals concerned has decreased.**

3.5.2. **If it has, whether the reduced level of risk alters the balance to be struck between any individual's article rights and the principal of open justice** for the tribunal to vary the order in any of the three ways sought. [emphasis added]

22. The Order section also included provision for any challenge to its accuracy:

1.1. This document will be relied on by the parties and future Judges and tribunals dealing with the case. The parties must inform each other and the Tribunal in writing within 14 days of the date this is sent to them, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

23. The Order was sent to the parties on 11 September 2023.

24. On 23 September 2023, within the 14 day period set by Employment Judge Clark, the claimant sent an email to the Employment Tribunal. Along with a number of other submissions, the claimant stated:

I have attached the original application ... and would point to the following

1. Firstly the application will not rest on merely that the evidence is significantly worse for an RRO, or detriment to me, but the evidence of the public interest has been heightened. Those arguments are extensively covered by the linked evidence (the term used as evidence of the claim of public interest rather than to indicate it is submitted evidence), the respondents are fully aware of the wrong-doing I am claiming. [emphasis added]

25. The claimant again stated that he was not only relying on a reduction in the risk to the individuals protected by the RRO, but also heightened public interest.

Documentation produced for the Preliminary Hearing to consider the application to vary or set aside the RRO

26. The claimant submitted a statement for the Preliminary Hearing dated 23 October 2023. It was very lengthy and covered a wide range of subjects. The statement included assertions about alleged non-compliance with animal testing requirements and that investigations undertaken by the respondent were an attempt to cover up the respondents' wrongdoing. The claimant also asserted that his input to an academic paper had been understated but that he could not challenge his unfair treatment because of the RRO. I should stress that these were the claimant's assertions and are not accepted by the respondent.

Withdrawal of the claims

27. The claimant withdrew all of his claims on 1 December 2023.

28. On 5 December 2023, a letter was sent on behalf of Employment Judge Clark stating that the Preliminary Hearing listed on 18 January 2024 would proceed notwithstanding that the claims had been withdrawn. The respondents were asked to state whether they would agree to any level of variation to the RRO requested by the claimant. 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.

The Preliminary hearing

29. The claimant submitted a skeleton argument for the Preliminary Hearing. Once again it was very lengthy and structured in a manner that did not make it easy to follow. The claimant, in amongst the large number of numbered points he made, again asserted that there was evidence of a coverup and that there was increased public interest in alleged research misconduct being made public.

30. The claimant suggested that the RRO prevented him from challenging those he asserted were stealing his work. He stated that he was aware of libel law, presumably accepting that if the RRO was lifted and he made false statements he might be the subject of a libel claim. He stressed the public

interest in him being able to write about what he asserted had happened.

31. The respondents produced a skeleton argument, dated 8 January 2024, for the Preliminary Hearing. The skeleton argument focussed on the asserted reduction in risk. The respondent Organisation was still prepared to agree to a variation in the RRO suggested in the email of 20 December 2023. I note that there is a partial transcript of the hearing in the supplementary bundle that demonstrates that the respondent Organisation withdrew the concession that the RRO could be varied by lifting the anonymity aspect of the original RRO in relation to the claimant and the respondent Organisation, in response to comments made by Employment Judge Hutchinson.

32. Employment Judge Hutchinson noted that the Claimant has only applied to vary or revoke the RRO made on 5 August 2020, in respect of the first claim. Employment Judge Hutchinson concluded that the claimant had:

... 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.

33. Reading the judgment as a whole, and the brief conclusions, it is clear that Employment Judge Hutchinson determined the application for amendment or revocation of the RRO on the basis that the only material change in circumstances that the claimant asserted was a reduction in the risk from animal rights activists. Although the materials produced by the claimant are very lengthy and, at times, difficult to follow, I accept that the claimant had challenged the case management order of Employment Judge Clark that suggested that the only material change in circumstances he relied on was a reduction in the risk to staff of the respondent organisation. He also asserted that there was an increased need for him to be able to exercise freedom of expression and increased public interest in him being able to challenge what he believed to be a failure to comply with relevant regulations, and what he asserted was a coverup.

34. The claimant contended that further information had come to light since the RRO was made increasing the need for freedom of expression and the public interest in the information being in the public domain.

35. Heightened vigilance is required when considering the possibility of varying or revoking an RRO that is of unlimited duration and impacts significantly on the claimant's freedom of expression. Although the point was not specifically relied upon by the claimant in the appeal, I consider the claimant's application had to be seen in the context of the respondent having been prepared to agree to a variation in the RRO to lift the anonymity aspect in relation to the claimant and the respondent Organisation.

36. I have concluded that the Employment Tribunal erred in law in not considering the claimant's assertion that there was a heightened need for freedom of expression and greater evidence of public interest. Accordingly, I vary my Order to allow Ground 2 in respect of heightened need for freedom of expression and greater evidence of public interest.

Disposal

37. I have concluded that the application to vary or revoke the RRO must be remitted to the Employment Tribunal. That was the claimant's original suggestion, although in his recent submissions in respect of this review application he has suggested that I should make the determination myself. Absent consent from the parties, I can only do so if there is only one possible outcome, which I cannot conclude on the material currently before me.

38. Despite my direction that the claimant provide a concise submission in support of his application for review of my order dismissing the appeal, he was unable to do so. The documentation he produces is extremely lengthy, discursive and often hard to follow. In part this is because of his strength of feeling about what he sees as an unjustified interference with his freedom of expression. If he were able to obtain pro bono legal advice and/or representation he would be much better able to muster his materials and arguments.

39. I also note that the application for reconsideration in the Employment Tribunal related only to the first RRO. If that RRO was varied or set aside he would remain bound by the other RROs. Remission to the Employment Tribunal would allow him to make a reconsideration application that covers the other RROs that could be considered with this matter on remission.

40. The number of claims brought by the claimant and the fact that they were withdrawn, after lengthy case management, without being determined on the merits, may have been somewhat exasperating to the judges of the Employment Tribunal who have dealt with this matter. Employment Judge Hutchinson took the unusual step of, in effect, suggesting that the concession that there could be a variation to the RRO be withdrawn. In the circumstances, I have concluded that the remission should be to a differently constituted Employment Tribunal. The Regional Employment Judge may consider it would be best if the application to vary or revoke the RRO is dealt with by an Employment Judge who has not dealt with the case previously. It is important that the claimant has faith in the process.

41. While the claimant has made multiple applications and presented his arguments and materials in an indigestible format, that has to be seen in the context of the significant effect that a permanent RRO has on freedom of expression. The fact that the order is of unlimited duration means it is more likely that there will be repeated attempts to challenge it on the basis that there has been a material change in circumstances.

42. The RROs remain in force pending determination of the remitted application to revoke or vary the original RRO and any application the claimant may make to vary or revoke the other RROs. While it is a matter for the discretion of the Regional Employment Judge I would be grateful should it be possible to expedite the matter on remission as there has been considerable delay, part of which results from my having to review my original decision dismissing the appeal in its entirety.