Neutral Citation Number: [2019] EWCA Civ 1417

Case No: A2/2019/1759

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE EMPLOYMENT APPEAL TRIBUNAL
THE HONOURABLE MRS JUSTICE SLADE
UKEAT/0209/18/BA

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/08/2019

Before :

LORD JUSTICE BEAN
and
LADY JUSTICE ROSE

- -

Between :

L	**Appellant**
- and -	
Q Ltd	**Respondent**

- -
- -

Anya Palmer (instructed by **Morrish Solicitors LLP, Leeds**) for the **Appellant**
Safia Tharoo (instructed by **Womble Bond Dickinson (UK) LLP, Southampton**) for the **Respondent**

Hearing date: 7 August 2019

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Approved Judgment

Lord Justice Bean :

1. Mr L brought claims of direct and indirect discrimination, discrimination arising from disability, harassment and victimisation against his employers Q Ltd in the London Central Employment Tribunal. Shortly before the hearing was due to take place his solicitors applied to the Tribunal for a number of adjustments and special orders in relation to the hearing, none of which had been sought at earlier preliminary hearings. The most important was that the entire hearing should be held in private; that the names of the parties and the witnesses should be anonymised; and that the judgment should not be placed on the Register. All these applications were granted.

2. There were also some adjustments sought relating to the conduct of the hearing. For example, the Claimant sought a direction that only one of the Respondents' witnesses should be permitted to be in the tribunal room at any one time; a compromise was agreed by which two of the six witnesses would remain in the room. The Claimant applied to be told in advance the questions he would be asked in cross-examination: it was agreed that he would be given an indication of the order of topics about which he would be asked. These and other adjustments concerning who sat where in the room and what breaks should be taken are not in issue on this appeal.

3. The hearing took place over seven days beginning on 23 April 2018 before Employment Judge Lewis and two lay members. Both parties were represented by counsel. In a reserved judgment sent to parties on 21 May 2018 the tribunal upheld some of the substantive claims and dismissed others. Their decision, which runs to 44 pages, anonymises the parties and other individuals mentioned.

4. Q Ltd appealed to the EAT against the substantive decision of the ET insofar as it upheld the claim that the company had discriminated against the Claimant by failing to make reasonable adjustments to his work. The company also appealed from the orders made by the ET that the judgment would not go on the Register; that the case was to be referred to as L v Q and the witnesses by their initials; and that any report of the proceedings would not identify the parties nor any of the witnesses.

5. The appeal was heard by Slade J (sitting alone) in open court at the EAT on 20th December 2018. She circulated a draft judgment in which, on the substantive matters, she dismissed one ground of appeal but allowed a second and remitted the reasonable adjustments claim to a differently constituted ET for determination. We are not concerned today with the correctness or otherwise of the substantive decisions of the ET or the EAT.

6. Slade J upheld the orders of the ET preventing identification of the parties and witnesses and granting anonymisation. Her own judgment maintains that anonymisation. However, she set aside the order of the ET directing that their judgment was not to be entered on the Register. She directed that "some of the initials used in anonymisation will be changed and passages in the judgment of the ET redacted to the extent reasonably necessary to preserve the anonymity of the parties and witnesses."

7. Shortly before the EAT judgment was to be handed down, in addition to making agreed redactions to preserve the anonymity of parties and witnesses, counsel for the Claimant indicated that she would seek permission to appeal to this court against the

order of Slade J to allow the judgment of the ET to be entered on the Register. She applied for orders that neither the judgment of the ET nor that of the EAT should be published until any appeal to this court had been disposed of; and that in any event Slade J should make an order (both in respect of her own judgment and that of the ET) that the two disabilities which form the basis of the claims be anonymised (that is to say only referred to as Condition A and Condition B) and that the judgments be further redacted so as to remove descriptions of the direct effect of those conditions on the Claimant and of an incident of which he spoke of "two disturbing matters said to be related to his disabilities". Counsel also sought an order that the EAT give the Claimant the option of withdrawing his claim rather than having the judgments made public and time to consider that option. All these orders were sought on the basis that they consisted of "reasonable adjustments for the EAT to make".

8. Slade J refused to order any further redaction either of her judgment or of the ET's judgment in the event of it being placed on the Register. She suspended execution of the order allowing the judgment of the ET to be placed on the Register for 21 days and thereafter, if an application were made to this court, until determination of the appeal. She said that the EAT had no power to make an order giving the Claimant the option of withdrawing his claim rather than have the claims made public. This was clearly right: a party shown a draft judgment cannot prevent its publication by withdrawing the claim.

9. She granted a 48 hour stay on publication of the EAT's judgment to enable an application to be made to this court. By the time I was persuaded that a short stay was warranted the EAT had perfectly properly published the judgment, although it was later removed from the website.

10. It seemed to me that the issues about publication of the judgments, in particular that of the ET, should be dealt with very promptly at a rolled-up hearing before this court irrespective of whether permission is to be granted against Slade J's decision on the substantive discrimination claims, or indeed of whether Q Ltd may apply for permission to cross-appeal against those aspects of the substantive decision of Slade J which were unfavourable to them. Accordingly, the issues before us today are (a) whether the judgment of the ET should be entered on the Register, (b) if so, whether it should be further redacted so as to remove references to the Claimant's disabilities and their consequences, and whether any further redaction should be made to the judgment of the EAT on the same lines.

11. I should make it clear that I for my part have very serious doubts about the decision of the ET to conduct this hearing in private. However, that is not formally before us on this appeal. The orders anonymising the parties and the witnesses, upheld by Slade J, are likewise not in issue on this appeal: Ms Tharoo indicated that, although her clients did not agree with them, "given where we are now" Q Ltd would not seek permission to appeal against them. It is also common ground that any anonymisation should extend to all the individuals referred to in the judgment of the ET, whether or not they were called as witnesses.

Should the ET's judgment be published?

12. There are specific statutory powers under the Employment Tribunals Act 1996 and the 2013 Rules of Procedure dealing with restrictions on publication and on public

access to hearings. There are limited special categories of cases. The first and most obvious is national security. Section 10 of the 1996 Act gives sweeping powers to Ministers and the ET itself in such cases: to direct a tribunal to sit in private, to exclude even the claimant from all or part of the proceedings, and so forth. Section 10B reinforces these powers with criminal sanctions. Rule 94 makes further provision applicable to national security cases. I need say no more about that type of case.

13. National security cases apart, the provisions of the 1996 Act which deal with this topic are the following:-

i) *Confidential information*

Section 10A states that ET procedure regulations may enable an employment tribunal to sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of

a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment;

b) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person or

c) information the disclosure of which would… cause substantial injury to any undertaking of his or in which he works.

ii) *Allegations of sexual offences or sexual misconduct*

Section 11(1)(a) enables rules to be made in cases "involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation." I do not read this provision as enabling the tribunal to say that the whole judgment should be kept secret, but plainly it allows anonymisation in appropriate cases, and Rule 49 of the ET Rules accordingly permits the deletion from the judgment of any matter likely to identify any person affected by or making the allegation.

Section 11(1)(b) enables an ET, in cases involving allegations of sexual misconduct, to make a restricted reporting order, having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

iii) *Section 12*

Section 12 is headed "Restriction of publicity in disability cases". It provides-:

(1) this section applies to proceedings on a complaint under s 120 of the Equality Act 2010, where the complaint relates to disability in which evidence of a personal nature is likely to be heard by the employment tribunal hearing the complaint.

> Evidence of a personal nature is defined by s 12(7) as "any evidence of a medical, or other intimate nature which might reasonably be assumed to be likely to cause significant embarrassment to the claimant if reported"
>
> Section 12(2)(a) states that ET procedure regulations may enable an ET "to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal."

The ET Rules

14. I turn to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 to which contains what are generally referred to as the ET Rules. Regulation 14(1) requires the Lord Chancellor to maintain a register containing "a copy of all judgments and written reasons issued by a Tribunal which are required to be entered in the Register under Schedules 1 to 3."

15. Rule 67 states that "subject to rules 50 and 94, a copy shall be entered in the Register of any judgment and of any written reasons for a judgment". Rule 94, is, as already mentioned, confined to national security cases.

16. Rule 50, which is headed "Privacy and restrictions on disclosure", provides as follows:-

> "50.—(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.
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> (3) Such orders may include—
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> > (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.
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> (5) Where an order is made under paragraph (3)(d) above—
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> > (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;
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> > (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.
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> (6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998."

Publication of the judgment in the Register

17. In the present case the ET justified their orders for a private hearing, anonymity and a direction that the judgment would not go on the Register in the following two paragraphs, which Ms Palmer for the Appellant accepted do not amount to adequate reasoning :-

> "We have carefully considered the very high premium placed on the principle of open justice. However, this is one of those rare cases where we consider the balance to fall in favour of the orders we have made. We have taken account of the medical evidence, including from a clinical psychologist, which explains that the claimant is experiencing adjustment disorder, on top of his other disabilities, as a result of anxiety about the Tribunal claim. He has expressed thoughts of not wanting to wake up, though no intent to harm himself at present.
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> We were told the Claimant was also anxious about other people being in the room. He is a self-conscious and embarrassed about the manifestations of his disabilities in the hearing. … we are concerned that his added worries about a public hearing will interfere with his concentration and stress levels and effect his ability to give evidence adequately. Indeed, we are told by his

> counsel that he is wondering whether or not he would feel able to go ahead if such orders were not made."

18. In the EAT Slade J referred to what she rightly described as the helpful analysis of Judge Eady QC in *Ameyaw v PriceWaterhouseCoopers Services Ltd* UKEAT/0244/18/LA, 4 January 2019. Judge Eady cited the leading authorities on the common law principle of open justice such as *R (Guardian News & Media Ltd) v Westminster Magistrates Court* [2012] EWCA Civ 420, [2013] QB 618, CA, *Scott v Scott* [1913] AC 417, HL, *Pretto v Italy* [1984] 6 EHRR 182, ECtHR, *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 2) (Guardian News & Media Ltd and others intervening)* [2011] QB 218, CA); and *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, HL. After referring to provisions of the 1996 Act and the Rules, Judge Eady continued:

> 43. As well as allowing for a restriction in cases concerning confidential information (as provided by section 10A ETA), Rule 50 thus provides that restrictions on publicity may be imposed both in the cases expressly referenced at sections 11 and 12 ETA (sexual misconduct allegations; disability cases) but also more generally. This wider ability to restrict publicity derives from the Secretary of State's general power to make procedural regulations for ETs, under section 7 ETA, whether read by itself or construed in accordance with section 3 of the Human Rights Act 1998 (see *Fallows v News Group Newspapers,* per Simler P at paragraph 43). It is apparent, however, that the Secretary of State has chosen to exercise that power in a different way to that allowed in national security cases.
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> 44. Taken at face value, the power to restrict publicity, whether for reasons of national security or otherwise, stands in contrast to the transparency that would otherwise be required by the principle of open justice. As already stated, it is a power, however, that acknowledges the fact that other competing rights and interests may sometimes require that transparency is curtailed. The rights provided by both Articles 6 and 10 ECHR are qualified and allow that interests of national security or other Convention rights (including the right to respect for a private life under Article 8) may outweigh the requirement for public access to judicial proceedings or pronouncements. In proceedings before the ET, the balancing out of these competing interests or rights is governed by the 2013 Regulations and the ET Rules, which provide (to summarise):
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> > 44.1 That the Lord Chancellor is required to maintain a public Register of all ET Judgments and Written Reasons (Regulation 14 2013 Regulations).
> >
> > 44.2 Subject to Rules 50 and 94, the ET is required to enter on to the Register a copy of every Judgment and document

> containing Written Reasons for a Judgment (Rule 67 ET Rules).
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> 44.3 In national security cases, Rule 94 ET Rules permits the ET to make certain redactions from the Judgment and Written Reasons and - significantly - to determine that the Written Reasons will not be entered on to the Register in some cases.
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> 44.4 In cases involving confidential information or where required by the interests of justice or in order to protect rights under the ECHR, Rule 50 ET Rules permits the ET to make certain redactions from the Judgment and Written Reasons (including the anonymisation of the parties) but makes no provision for the ET to do other than enter the Judgment and Written Reasons on to the Register.

45. Although an ET's power to restrict the publication of Judgments and Written Reasons is thus not unlimited, there is a broad discretion vested in the ET under Rule 50, which is not limited in time (see *Fallows* per Simler P at paragraphs 38 to 44). That said, it is likely to be a rare case where other rights (including those derived from Article 8 ECHR) are so strong as to grant an indefinite restriction on publicity (*Fallows*, paragraph 42): the requisite balancing exercise in each case is for the ET (see the discussion of this exercise and the respective roles of the first instance and appellate tribunals in *Fallows* at paragraphs 49 to 52).

46. Thus far in this analysis, I have assumed that a competing right (relevantly, under Article 8 of the ECHR) is engaged. In determining whether that is in fact so, the ET will, however, first need to determine:

> "… is the information private in the sense that it is in principle protected by Article 8? If no, that is the end of the case. …"

See *McKennitt v Ash* [2008] QB 73 per Buxton LJ at paragraph 11.

47. Where information is revealed in the course of discussion in a public trial, there can be no expectation of privacy (see the observation made by Lord Sumption at paragraph 34(1), *Khuja v Times Newspapers Ltd* [2017] UKSC 49). As for what the ET should take to be the record of what took place in a public judicial hearing, an earlier judgment provides conclusive evidence of its own existence (as distinguished from the accuracy of the decision rendered)…

> 48. Should the ET be satisfied that an Article 8 right is engaged, however, in exercising its discretion under Rule 50 it will need to consider whether the interests of the owner of that right should yield to the broader interests established by the rights afforded by Articles 6 and 10. In carrying out the balancing exercise thus required, the ET will be guided by the following principles derived from the case-law (helpfully summarised by Simler P at paragraph 48, Fallows): (i) the burden of establishing any derogation from the fundamental principle of open justice or full reporting lies on the person seeking that derogation; (ii) it must be established by clear and cogent evidence that harm will be done by reporting to the privacy rights of the person seeking the restriction on full reporting so as to make it necessary to derogate from the principle of open justice; (iii) where full reporting of proceedings is unlikely to indicate whether a damaging allegation is true or false, the ET should credit the public with the ability to understand that unproven allegations are no more than that; and (iv) where such a case proceeds to judgment, the ET can mitigate the risk of misunderstanding by making clear it has not adjudicated on the truth or otherwise of the damaging allegations."

19. In *R(C) v Secretary of State for Justice* [2016] 1 WLR 444 Baroness Hale of Richmond DPSC said:-

> "16. The rationale for a general rule that hearings should be held in public was trenchantly stated by Lord Shaw of Dunfermline in the leading case of *Scott v Scott* [1913] AC 417, at 477. He quoted first from Jeremy Bentham:
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> > "'In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice.' 'Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.' 'The security of securities is publicity.'"
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> He also quoted the historian Henry Hallam:
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> > "Civil liberty in this kingdom has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of any state be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise."

> 17. This longstanding principle of the common law is reflected in article 6(1) of the European Convention on Human Rights:
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> > "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."
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> It has been held acceptable to provide that a whole class of hearings, such as those relating to children, should normally be held in private: *B v United Kingdom* (2002) 34 EHRR 19. As the right is that of the litigant, this provision has normally become relevant in cases where the court proposes, in pursuance of one the exceptions to the normal rule, to sit in private, but the litigant wishes the case to be heard in public.
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> 18. However, in many, perhaps most cases, the important safeguards secured by a public hearing can be secured without the press publishing or the public knowing the identities of the people involved."

20. Putting national security cases to one side, there is no explicit power in the Rules to prohibit publication of the judgment altogether. In a sexual offences case (s 11(1)(a) of the Act) the ET can take steps to secure that registration is "so effected as to protect identities". As stated above, I doubt very much whether that provision or the Rule made under it allows judgments to be kept off the Register; and even if it does, there is no equivalent power conferred by s 12 in disability cases.

21. In *Fallows v News Group Newspapers Ltd* [2016] IRLR 827, a case in which allegations of sexual misconduct had been made, Simler P noted that Rule 50 (1) empowers ETs 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…". She continued (at [38-39]):-

> "There is no temporal or other limitation on the type of order that may be made under this Rule. Rule 50 (3) is plainly not exhaustive of the types of orders that may be made, but merely identifies what orders may be included. Parliament has given a wider power in Rule 50(1) notwithstanding the existence of a more restrictive, specific power in Rule 50(3)(d) to make RROs "within the terms of

> section 11 or 12", recognising in light of the authorities referred to above and the Underhill Review, that a wider power was required. The obvious inference, having regard to the genesis of this rule, is that Parliament intended Employment Tribunals to have the power to make RROs in a broad range of circumstances, and to an extent that went wider than the power strictly defined in sections 11 and 12 ETA 1996.
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> Although "restricted reporting order" is a term of art defined by section 11(6) ETA 1996, and there is no reference in Rule 50 to any other kind of RRO, there is no reason (as Underhill J said in F v G) why the abbreviation RRO should not be used when making an order preventing or restricting disclosure of any aspect of proceedings under Rule 50(1) provided that it is understood as applying to a wider order restricting *the reporting of identifying matter* than would otherwise be permitted under section 11 and Rule 50(3)(d) alone." [emphasis added]

22. Assuming, without deciding, that these observations are correct, they deal with the issue of a permanent order, in a case involving allegations of sexual misconduct, preventing the publication of matter which would identify the complainant or an alleged perpetrator or person affected. They cannot be used to support an order keeping an ET judgment off the Register altogether.

23. Rule 50(3) introduces a list of specific powers with the word "include": and Ms Palmer relies on that when arguing that Rule 50 as a whole must be construed so as to allow the ET to keep its judgment secret "to protect the Claimant's Article 8 rights". But that would be the thin end of an enormous wedge, not confined to cases in employment tribunals nor to claims for disability discrimination. The proposition must be that if a claimant – or at least a claimant with a disability - says: "I do not want a public hearing or a public judgment and if you insist on one I would be so embarrassed that I will withdraw my claim: therefore you must keep the judgment secret, otherwise you are depriving me of my Article 8 Convention rights", the judgment must be kept secret. That would go against all the authorities on open justice cited by Lady Hale in *C* and by Judge Eady in *Ameyaw* and which I need not repeat. Indeed, although the ET in the present case mentioned the importance of the open justice principle, they then entirely negated that principle by holding a private hearing followed by the handing down of a judgment which they ordered should not go on the Register.

24. The course followed in this case of attempting to keep the judgment secret was not merely contrary to principle but presents practical difficulties too. The individuals whom the Claimant was alleging had discriminated against him, or harassed or victimised him, must surely be allowed to see the ET judgment as a matter of elementary justice. Ms Palmer, indeed, accepted that those individuals would have to be allowed to see the judgment. We asked Ms Palmer whether they would be in contempt and liable to imprisonment if they told their colleagues of the contents of the judgment: the answer, in my view, is clearly that they would not be and should not be.

(I note that ss 11(2) and 12(3) of the Act creates a summary offence of breach of a restricted reporting order, but this would be far more drastic.)

25. Ms Palmer submitted that it should be for the ET, not the EAT or this court, to decide in the exercise of a broad discretion under Rule 50 how to protect the Claimant's right to privacy in a manner which upholds the principle of open justice. But that begs the question of how broad the discretion is, and specifically whether it extends to a power to order that the judgment must not be published on the Register.

26. It is unnecessary to go so far as to say that there will *never* be a case (other than one concerning national security) in which an ET judgment can be kept secret by not being entered on the Register. I will only say that as at present advised I find it hard to imagine the circumstances in which it would be right for an ET acting under Rule 50 to withhold publication of a judgment altogether. If there is ever to be such a case, certainly this one is not it.

27. I would therefore refuse permission to appeal from the order of Slade J setting aside the order of the ET that, even in anonymised form, its decision was not to be entered on the Register.

Redaction to "anonymise the disabilities"

28. I have already noted that there is no appeal to us by Q Ltd against the anonymisation of the parties and witnesses and others referred to in the ET judgment. Ms Palmer's second argument was that if the judgment of the ET is indeed to be published, it should only be in a form which describes the Claimant's disabilities as "Condition A" and "Condition B"; that Slade J's own judgment should be similarly redacted; and that details of an embarrassing incident (which is also mentioned in the EAT judgment) should be deleted from the published version of the ET's decision.

29. I would refuse permission to appeal against Slade J's refusal to make any such orders. I agree with her that "to extend redaction to the disabilities and the consequences of them which are the foundation of them would fundamentally undermine understanding of the [ET] judgment". I would add that since the Respondent's witnesses cannot properly be prevented from being told the full judgment and discussing it – see above - the idea that the Claimant is at risk of further embarrassment from someone reading the ET judgment on the Register, or Slade J's judgment (or this one) on BAILII or elsewhere, working out that it refers to him and thus discovering what his disabilities are, if they did not know of them already, seems extremely remote. It is wholly unjustifiable to have judgments censored in this way.

30. Ms Palmer told us that Mr L is still employed by the Respondents and wishes to return to work though he is at present working from home. A further ET claim has apparently been issued recently in respect of that alleged detriment, though it has not yet been served on the Respondents. Ms Palmer complains that it would be unfair to the Claimant, who proceeded with the claim in the ET on being told by them that the hearing would be in private and that the judgment would not be published, now to have details of his disabilities made public even in anonymised form.

31. The course which was taken by the ET cannot, in my judgment, justify any redactions to its judgment beyond what was specified by Slade J, namely anonymisation of the

witnesses and other individuals referred to in the judgment by random initials rather than their true initials, and any other redactions "reasonably necessary to preserve anonymity" of the individuals concerned. Ms Tharoo told us that the Respondents did not object to the job titles of witnesses or others in the Claimant's team (as opposed to those in the Respondents' HR Department) being redacted in the ET's judgment, and were content to interpret Slade J's order in that way. So am I. No further redaction is required to the judgment of Slade J, which can now be published.

32. Counsel should submit to Employment Judge Lewis, within 14 days of this judgment being handed down, a list – I very much hope an agreed list – of the proposed redactions to the ET judgment necessary to give effect to the Order of Slade J as interpreted in the previous paragraph of this judgment. Whether or not the list is agreed I would ask the Judge to make the appropriate redactions, prior to the judgment being entered on the Register as soon as practicable thereafter.

33. The Claimant's application for permission to appeal against the substantive order of Slade J will be determined on paper in the usual way. The Respondents should have 28 days from the handing down of this judgment in which to file a Respondents' Notice and any application for permission to cross-appeal. The Appellant must pay the costs of this application, to be assessed in detail at the conclusion of the appeal to this court if not agreed.

34. Although this was only an application for permission to appeal it raised some points of general interest and I would accordingly give permission for this judgment to be cited in future cases.

Lady Justice Rose:

35. I agree.