Neutral Citation Number: [2024] EAT 186

Case No: EA-2023-000798-AT

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22 November 2024

Before :

SARAH CROWTHER KC, DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

MS MARINA SAVEKA **Appellant**

- and –

GENERAL MILLS UK LTD **Respondent**

- -
- -

BOTH PARTIES RELYING ON WRITTEN SUBMISSIONS ONLY

APPEAL FROM REGISTRAR'S ORDER
In Chambers: 22 November 2024

- -

JUDGMENT

REVISED VERSION

SUMMARY

JURISDICTIONAL/TIME POINTS & PRACTICE AND PROCEDURE

The Claimant failed to present her appeal to the EAT within the time limit and applied for an extension of time on the basis that the Respondent's alleged conduct of the tribunal proceedings had caused her to suffer poor mental health which in turn meant she was impaired in her ability to meet the time limit.

The Claimant's appeals against the following decisions of the Registrar are dismissed:

1. A refusal of an extension of time to appeal case management decisions including refusal to grant an anonymity order and other restrictions on open justice pursuant to rule 50 Employment Tribunal Rules.
2. Directions regarding which party should prepare a paper bundle and which documents ought to be included.

The Claimant's application for restrictions on open justice in respect of this decision is refused.

SARAH, CROWTHER KC, DEPUTY JUDGE OF THE HIGH COURT:

INTRODUCTION

1. On 23 January 2024, the Registrar of the EAT refused an application by the Appellant for an extension of time in which to present her Notice of Appeal against the orders of EJ Anstis (sitting alone by CVP) on 27 March 2023 in which he refused her application under rule 50 ET Rules. That application comprised two different orders which she sought:

    a. To 'forbid any employee, director, shareholder, affiliate, agent and/or business associate of Leatherhead Food Research/Science Group plc or affiliates (excluding the Respondent) from being present at the hearing or having access to particular materials'; and

    b. For an anonymity order/or order that any references to the Claimant's mental health being excluded from the public register.

2. In her grounds of appeal, she made additional reference to appeal also against a refusal to extend time for the Claimant to apply for specific disclosure and written answers from the Respondent, which was a decision also taken by EJ Anstis at the hearing on 27 March 2023.

3. By emails dated 12 April 2024 and 28 August 2024, the Claimant applied for the appeal to be expedited, in order that her substantive appeal (in the event her extension of time appeal is successful) can be heard together with another appeal she has before the EAT in case EA-2023-001354. She also applied for this appeal to be 'conducted on the papers'. The application for expedition was allowed on 30 September 2024. On 17 October 2024, notwithstanding that the usual practice of the EAT is to list this kind of appeal for oral hearing, in circumstances where the Respondent had consented to the appeal being dealt with on the papers, this application was also permitted by HHJ Tayler.

4. On 22 October 2024, the Registrar gave directions for the management of the appeal, including detailed directions as to the form and contents of the appeal bundle. The

Claimant has made the following further appeals on 29 October 2024 against those directions of the Registrar and subsequent correspondence regarding the bundle for this hearing objecting to:

a. The requirement to provide the agreed bundle in hard copy; and
b. The inclusion of the ET1 claim form and ET3 response.
c. The request made by the Registrar to the Respondent to put together a hard copy bundle.
d. The provision of a supplemental bundle by the Respondent including the ET1 claim form and ET3 response together with other documents, including the written reasons of the Respondent's successful strike out application of the Claimant's claims also of EJ Anstis sent to the parties on 11 October 2023 which it considers relevant to the extension of time appeal.

5. Additionally, the Claimant has at 16.36 on by email on 15 November 2024 applied for an order under paragraph 8.7 of the Practice Direction of the EAT 2023 for a restriction to the open justice principle that she should have anonymity in this appeal on grounds of Articles 2, 3, 6 and 8 of the ECHR, section 32A of the Employment Tribunals Act 1996 and rule 23A of the EAT Rules on the basis that consideration of her appeal involves sensitive personal data, namely evidence of her mental ill-health. This application is not signed by the Claimant but is said to be presented, 'for and on behalf' of her. As I have refused that application for reasons set out below, I have not anonymised these reasons.

FACTUAL BACKGROUND

6. In December 2021, on the Claimant's case, she was offered and accepted a job with the Respondent. The Respondent denies this, stating that the parties were engaged in negotiations with a view to the Claimant becoming an employee, but they foundered. The Claimant says that she was dismissed in January 2022 having made protected disclosures about the actions of her previous employer. She brought a wide range of claims in a claim form dated 24 June 2022, supported by detailed grounds of

complaint. None of these claims were for disability discrimination, although she claims damages for personal injury and injury to feelings damages.

7. On 3 February 2023, there was a case management hearing before EJ Skehan at which both sides indicated an intention to strike out the other's case. EJ Skehan set a deadline of 6 March 2023 for applications to be made.

8. The Claimant wrote to the Respondent on 13 February 2023 and notified them that it was their 'responsibility for the hearing bundle' and that she wanted to receive it the next day. She chased for the bundle against her own deadline on 16 February 2023. There was then significant correspondence regarding the deadline for the bundle, driven by the Claimant.

9. Disclosure took place in February 2023. The Claimant immediately corresponded to indicate that she was unhappy with the disclosure from the Respondent.

10. The Claimant in fact missed the deadline which had been set by the tribunal for applications and instead made an application on 13 March 2023 for specific disclosure and the orders I have set out above under rule 50 of the Employment Tribunal rules. Indeed, her application for strike out was only made on 24 March 2023, and was lengthy (some 27 pages), and was sent to the Respondent the Friday before the hearing.

11. The applications which the Claimant had made were heard by EJ Anstis on 27 March 2023. The resulting order was sent to the parties on 21 April 2023.

12. On 22 April 2023, the Claimant wrote to the tribunal to ask for written reasons in respect of the refusal of her rule 50 applications. That request was referred to EJ Anstis on 22 May 2023 and he provided reasons on 26 May 2023 which were sent to the parties on 5 June 2023.

13. In respect of the first limb of her rule 50 application, the EJ dealt with it as follows:

> "As I discussed with the claimant, it is impossible to see how an order forbidding such a general category of people could take effect. I can imagine an order excluding everyone or an order excluding named individuals, but an order that excludes any "agent" of Science Group plc or its affiliates simply seems to me to be unenforceable. The claimant said she would know if someone was an employee or them, or they could be asked, but I do not see that as any practical answer to the problem. The only way I can practically address this is as an application to exclude the public from the hearing."

14. He refused the applications, giving the following reasons (paragraph 11 and 12),

> "What I have is an assertion by the claimant that Leatherhead Food Research and/or Science Group plc present a 'present danger to my life, health and safety' and her GP saying they are a danger to her health and safety. These are startling allegations which I would expect the claimant to provide detailed evidence of in support of her application. She has not done this. I will not make an order excluding the public from the hearing on the basis simply of assertions that the claimant is in danger. If there is anything at the eventual hearing which concerns the tribunal hearing the case, it can deal with them at that hearing.
>
> The claimant's concerns about matters in relation to her health being on a public record are understandable but are not unusual or exceptional. There will be many cases in which an individual's health condition has to be discussed and referred to in a judgment. The claimant's health condition does not seem to me to be a central feature of the case. The claimant has said that she is readily identifiable from her name. That may be the case, but it is also not unusual. I will not make an anonymity order nor any restriction on mention of the claimant's health condition. Whether to mention it at all, and if so on what terms, will be a matter for the tribunal hearing her claim, and may well depend on what (if any) significance is to its decision."

15. The GP letter which she had provided in support of her anonymity application was one of those which are now presented by her to me in support of her application for an extension of time. It is on headed paper from a GP surgery and dated 17 March 2023. It is addressed Dear Sir or Madam and 'TO WHOM IT MAY CONCERN' and

is signed 'PP' on behalf of Dr Kate Hughes. It is heavily redacted in the header and footer for reasons which are entirely unexplained. It states as follows,

> "Please find below information regarding Marina Saveka, which will hopefully help to manage the current situation with, what I understand, is an employment tribunal with her previous employer. Marina has been diagnosed with anxiety, depression and complex PTSD as a result of the horrific experiences she had to survive because of the respondent's actions. Some of the symptoms of Marina's medical conditions include problems with memory and concentration, low energy, trouble sleeping, brain fog and inability to formulate her thoughts clearly. She requires longer time to process information and formulate her thoughts. Whilst she has been trying to best manage her symptoms with the help of medication and therapy, the inappropriate behaviour of the other party in the tribunal has put Marina under undue stress and pressure, which only exacerbated her debilitating conditions.
>
> Unfortunately, inappropriate behaviour of the respondent, best described as bullying and harassment, has been significantly worsening Marina's mental health. In the last couple of months, due to stress Marina's dosage of medication had to be increased twice, she has had multiple consultations with GP and even had to be urgently referred to our Community Mental Health Team as a result of the respondent's conduct. She is struggling to cope with the current situation, concentrate and formulate her thoughts. I would be grateful if you could urgently address this situation and put a stop to the respondent's inappropriate conduct.
>
> Given the nature of Marina's mental health, I would be grateful if you could also allow Marina the reasonable adjustments, she requires due to her medical conditions. For example, the extensions to deadlines for any orders for applications that have been placed on her as she is certainly taking longer to accomplish tasks and permitting her to record the hearings to help alleviate her anxiety, memory and concentration problems.

> I must also ask that Marina's application for anonymity order and restricting of certain individuals from Leatherhead Food Research & Science Group PLC to participate in any hearing can be reviewed and approved. Those people / companies present a danger to her health and safety. With the stress imposed on her by this current situation, her mental health may certainly deteriorate further, if the requests above are not satisfied.
>
> Finally, I can confirm that Marina is certainly struggling to cope with the current unreasonable demands placed upon her and has had multiple consultations with her GP along with the mental health team to try and manage this as best as possible. We would be grateful if you could please review the behaviour of the other party and her case to try to prevent this from deteriorating further and supporting her where possible."

16. On 3 June 2023, the Claimant sent a long letter to the tribunal by email, in which she asked for an extension of the time to prepare her witness statement (which was directed to be provided by 26 June 2023) for some 2 months to 26 August 2023. She stated in that application that the reasons for the extension were her ill-health, the unforeseen and sudden loss of her home and consequences exacerbating her mental health and the 'continued obstructive and uncooperative conduct of the Respondent'. She pointed to the previous correspondence regarding production of an agreed bundle for the hearing in March 2023 and accused the Respondent's representatives of 'maliciously' excluding relevant material and including irrelevant material which hindered her preparation of her statement.

17. In this application, she included a letter from Dr Wan Fang Woon, SHO to the associated specialist at an NHS Trust. Again, the letter is heavily redacted in its header and footer, for reasons which are not explained by the Claimant, and which do not obviously appear to be justified redactions. As a result of the redactions it is not possible discern the treating clinician's qualifications, department or expertise, but I have assumed that he is a mental health specialist from the community mental health team. The letter provides,

> "Dear Sir/Madam

> I am writing on behalf of Ms Marina Saveka to request a deadline extension for submission of witness statement. Marina is under the care of [REDACTED] Community Mental Health Team, with a diagnosis of Complex Post-Traumatic Stress Disorder (ICD-11 code 6B41). Unfortunately, her current situation has been exacerbated due to eviction. She is currently homeless and struggling to find suitable accommodation for herself and her dependents for which she is the carer of. We would be very grateful if you could consider Marina's extenuating circumstances and permit a deadline extension."

18. On 24 July 2023, the Claimant submitted a notice of appeal to the EAT in respect of the order sent to the parties on 21 April 2023.

19. On 22 August 2023, the Respondent applied to strike out the Claimant's claims in the ET on the basis that she had failed to provide the witness statement which had been agreed to be provided by 21 August 2023. That application was directed to be heard on the first morning of the final hearing.

20. On 30 August 2023, the Registrar invited the Claimant to apply for an extension of time for the appeal which the Claimant did on 14 September 2023. That application was also prepared online and sent by email and signed marked as 'for and on behalf of' Marina Saveka, although it does not state who the author of the application is. In that application she included her previous application to the tribunal of 3 June 2023 including the letter of 17 March 2023 set out above.

21. She further said that she is the 'primary carer of her two physically disabled dependents [sic] with over 60+ hours per week of extensive caring responsibilities'. No additional details were provided in respect of the alleged caring responsibilities.

22. The Claimant then accused the Respondent of being responsible for her poor mental health, stating, "the Respondent has gained the detailed knowledge about the Appellant's mental health impairments and deployed tailored vicious psychological

abuse specifically targeted on Appellant's mental health vulnerabilities to trigger mental as a part of their unreasonable defence."

23. She alleged that the Respondent's solicitor, 'has been variously abusing, harassing and bullying the Appellant, subjecting vulnerable Appellant with already existing Complex PTSD to severe emotional and psychologically abuse with intent to bludgeon the Appellant to the state of mental incapacity and make her unable to pursue her claims (sic).'

24. She complained that the tribunal ought to have put in place 'ground rules or protective measures…to put the parties on an equal footing or protect the vulnerable Claimant's (Appellant's) health from the continued harassment by the Respondent's solicitor'.

25. She further alleged that in April 2023 the Respondent 'tracked down her physical location and exerted influence on her former landlord to achieve the Claimant's eviction.' There is no further corroborative evidence adduced before me in support of that allegation.

26. The Claimant included a further statement of fitness for work, dated 26 July 2023, which was again materially redacted, and which contained in the comments box, the following:

> "We are extremely concerned about the detrimental impact of Marina's former employer's oppressive conduct on her mental and physical health. Due to the reported bullying, Marina's health has rapidly declined in the past months and she is in a very poor state. The recent incidents of employer's solicitor's harassment have been particularly damaging. Marina is very upset and feels threatened by respondent's cyber-stalking. She is objectively and subjectively very depressed, very tearful, she cannot concentrate and cope with situation.
>
> We request to urgently introduce "no contact" rule with the other party and/or remove them entirely from the process to protect Marina's

> health. Following recent incidents, we also do not think Marina would be able to recover and feel sufficiently well to be able to participate in the hearing in September 2023."

27. The final hearing was listed to take place starting on 25 September 2023 (EJ Anstis, siting with Mrs A E Brown and Ms H T Edwards) at Reading ET in person. On that day, the Claimant attended, saying she did so contrary to medical advice, and later submitted (at 8.30 am on 26 September 2023), a lengthy application of 165 paragraphs together with 9 supporting documents, which included a strike out application in respect of the Respondent's case. She also applied to adjourn the hearing and to vary the previous directions of the tribunal, with supporting documents for that application which included two further 'medical evidence' letters, one from Dr Judith Lindsay of the GP practice, dated 13 September 2023 and another dated 15 September 2023 'electronically signed' by Dr Dominique Calilung of the NHS Foundation Trust. Both letters were partially redacted in the same form as the others and were directed at the question of whether the Claimant would be able to attend and cope with the hearing.

28. During the hearing, the Respondent's application to strike out was developed beyond its written application and made instead on the basis that the Claimant had conducted herself unreasonably by bringing a vexatious strike out application.

29. The Tribunal rejected all the Claimant's allegations regarding the Respondent's conduct. It held that there was no evidence that the Respondent had intervened with her landlord to secure her eviction and that there was no explanation why the Claimant's supporting documents were heavily redacted. It was an improbable allegation and the Claimant's evidence was not sufficient to establish it.

30. It rejected the Claimant's contention that the Respondent's solicitors had harassed her with excessive correspondence or unreasonable demands, finding rather that the Claimant was making unsubstantiated complaints and there was no evidence to support any suggestion that either the quantity or the tone of the correspondence from the Respondent's legal representatives was anything other than entirely proper.

In fact, according to the Tribunal's findings, it was the Claimant who wrote at length and who raised accusations.

31. Similarly, the tribunal rejected the suggestion that the Respondent had redacted documents in the bundle for the purpose of 'spiting' the Claimant. It also rejected her suggestion that the Respondent's solicitor had hacked into the Claimant's LinkedIn account and that it concealed relevant evidence. It also rejected her complaints about inclusion of subject access request documents in the bundle and her suggestion that this had precluded her from preparing her witness statement.

32. As to the medical evidence, the Tribunal described it as 'remarkable' and gave its opinion that in its collective experience, it was unique in the extent to which the medical experts seemed prepared to express views about the conduct of the other party to litigation. It then set out the medical evidence in detail and found, following a thorough review of its contents, that

> "To the extent that this medical evidence is relied upon by the claimant as showing that the respondent (or its legal representatives) have been harassing or otherwise misbehaving towards her, we do not accept it. The doctors give no source of their information, and no explanation as to exactly what behaviour on the part of the respondent or their solicitor has given rise to these difficulties. As set out above, having been through the underlying evidence relied upon by the claimant, we do not see that there has been any improper behaviour by the respondent or its solicitor."

33. The Tribunal proceeded to strike out the Claimant's claims on the basis that there was no proper basis for such accusations and that even making allowance for the fact that she is a litigant in person and 'may not know the norms or typical practices encountered in preparing an employment tribunal claim' there was no justification for her accusations and that in the circumstances it was unreasonable, scandalous and vexatious behaviour of which there was no prospect of improvement and therefore she had rendered a fair trial impossible.

34. In a letter to the EAT dated 27 November 2023, the Respondent made the following submissions regarding the extension of time application (which I summarise) that:

    a. The effect of the judgment striking out the claims was to overtake the substantive appeal, rendering it academic, because no full hearing of the merits of the claims was now going to take place.

    b. The Claimant needed not only an extension of time to appeal but an extension of time to bring her extension of time application itself.

    c. There was no good reason for any delay on the evidence because the Claimant's actual ability to undertake litigation was demonstrated by the steps she had taken during the period when her appeal ought to have been made, particularly her ability to apply for an extension of time in relation to the witness statement direction.

    d. The medical evidence relied on by the Claimant lacked credibility and was insufficient to establish a good reason for her not to bring her appeal in time.

    e. The evidence regarding her caring responsibilities was unparticularised and inconsistent with her ability to bring a substantial application and to attend at the final hearing.

    f. The Claimant's allegations of unreasonable conduct against the Respondent and its legal representatives had been given detailed consideration and comprehensively rejected by the Tribunal in its strike out decision on 26 September 2023.

35. The EAT gave directions for further submissions to be put in by both parties. In the course of those written submissions, the Claimant alleged that EJ Anstis and the solicitor for the Respondent were having or had had in the past a personal relationship and/or that EJ Anstis was biased because he had feelings of personal

attraction towards the Respondent's solicitor. The Respondent's solicitor in a letter dated 25 January 2024 firmly denied any relationship with EJ Anstis, whether professional or personal. She had no knowledge of EJ Anstis prior to his involvement in this litigation. Notwithstanding this and a complete absence of evidence in support, the Claimant has repeated her allegation in her most recent correspondence to the EAT dated 12 November 2024.

THE WRITTEN SUBMISSIONS

36. For the purposes of my determination in addition to the materials above, I have been provided with:
    a. A chronology prepared by the Claimant.
    b. Skeleton arguments from each of the parties dated 8 November 2024.
    c. An updated skeleton argument dated 12 November 2024 from the Claimant.
    d. Correspondence from the parties with the EAT concerning the bundles.

37. Each of the parties' submissions are focussed on whether there was an error of law in the decision of the Registrar in respect of the extension of time application. As, in fact, this appeal takes place by way of re-hearing, not review, I have not been much assisted by these submissions and although I have read them, I do not intend to lengthen this judgment by addressing any of the 'grounds' of appeal or the responses to those grounds.

38. Instead, I have had regard to the evidence and written submissions on the extension of time application which were before the Registrar and of the circumstances of the case generally including the correspondence between the parties and the EAT office and I based my conclusions on the documentary and other evidence presented to me.

THE LEGAL FRAMEWORK

39. I have been directed by the submissions of both parties to numerous cases, many of which are no more than application of the established principles to be applied to

extension of time applications as set out in the leading case of *UAE v Abdelghafar [1995] ICR 65* which was helpfully summarised by Bourne J in *Griffiths v Cetin UKEATPA/1150/19 (24 March 2021)* as follows:

> "1. Given the interest in finality of litigation, especially at appeal stage, compliance with time limits is fundamental.
> 2. Extensions will be granted only in rare and exceptional cases.
> 3. In general, it makes no difference whether the litigant is represented.
> 4. Neither ignorance of the time limit nor failure within the limit to assemble the papers justifies a relaxation.
> 5. The EAT must first be satisfied that it has been given a full, honest and acceptable explanation for the delay.
> 6. The EAT will have regard to the length or shortness of the delay, in this case a few hours, but the crucial issue is the excuse or explanation, and that means an explanation covering the full period from the original decision to late submission.
> 7. The merits of the appeal are rarely relevant.
> 8. Lack of prejudice to the other party is usually not relevant, but any prejudice to them is relevant.
> 9. These guidelines are not to be treated as a fetter. The Registrar, or the Judge re-taking such a decision, must exercise a judicial discretion in the matter."

40. In *J v K [2019] EWCA Civ 5, [2019] IRLR 723,* the following guidance was given by Underhill LJ in respect of the impact of mental ill-health when considering whether to extend a time limit to appeal (paras 39 ff)

> (1) The starting point in a case where an applicant claims that they failed to institute their appeal in time because of mental ill-health must be to decide whether the available evidence shows that he or she was indeed suffering from mental ill-health at the time in question. Such a conclusion cannot usually be safely reached simply on their say-so and will require independent support of some kind. That will preferably be in the form of a medical report directly addressing the question; but in a particular case it may be sufficiently established by less direct forms of evidence, e.g. that the applicant was

receiving treatment at the appropriate time or medical reports produced for other purposes.

(2) If that question is answered in the applicant's favour, the next question is whether the condition in question explains or excuses (possibly in combination with other good reasons) the failure to institute the appeal in time. Mental ill-health is of many different kinds and degrees, and the fact that a person is suffering from a particular condition – say, stress or anxiety – does not necessarily mean that their ability to take and implement the relevant decisions is seriously impaired. The EAT in such cases often takes into account evidence that the applicant was able to take other effective action and decisions during the relevant period. That is in principle entirely acceptable and was indeed the basis on which the applicant failed in *O'Cathail v Transport for London [2012] EWCA Civ 1004 [2012] IRLR 1011* (thought it should always be borne in mind that an ability to function effectively in some areas does not necessarily demonstrate an ability to take and implement a decision to appeal). Medical evidence specifically addressing whether the condition in question impaired the applicant's ability to take and implement a decision of the kind in question will of course be helpful, but it is not essential. Is it important, so far as possible, to prevent applications for an extension themselves becoming elaborate forensic exercises, and the EAT is well capable of assessing questions of this kind on the basis of the material available. The primary focus will be on whether there is a good excuse for the delay…"

THE PRELIMINARY OBJECTIONS

41. I am satisfied that it is in accordance with the overriding objective and in the interests of justice for the bundles on this appeal to include the ET1 claim form, particulars of claim and ET3 form as well as the additional documents provided by the Respondent, including the decision and reasons of the tribunal following the Respondent's successful strike out application on 26 September 2023. They are all material to the issues which I must decide. The statements of case are the fundamental parameters of the substantive dispute between the parties and therefore relevant for me to understand the nature of the claimant's claim and the respondent's response to it. The additional documents are relevant to the questions which I must determine, including whether the claimant was suffering from mental ill-health at the

relevant time, such that her ability to take and implement the relevant steps necessary to institute her appeal on time was impaired. Those documents are proportionate and necessary to the fair resolution of the appeal, and I consider them appropriately included in the bundle.

42. I reject the Claimant's contention that the EAT had inappropriately 'delegated' preparation of the hard copy bundle to the Respondent. The request was made by the EAT in circumstances where the Claimant had indicated she was unable to comply with the direction as a reasonable adjustment to allow the Claimant's application to be fairly considered. That was entirely procedurally proper and was designed to assist the Claimant as much as the Respondent. It cannot be said to give rise, at least in the mind of the reasonable observer, to any impression of bias on the part of the EAT towards the Respondent or against the Claimant.

REPORTING RESTRICTION APPLICATION

43. I remind myself of the principles to be applied when considering derogations from open justice in the powers given to this court, as set out in the Practice Direction at paragraph 8.7 and following, to the effect that unless there is a statutory right to anonymity, the EAT will balance the open justice principle and the interests of justice and/or any rights under the ECHR and any order must be designed to minimise the limitation on the open justice principle.

44. I accept that the Claimant's rights under Article 8 are engaged insofar as I am required to give consideration to aspects of her personal and private life are necessary, including medical data and questions regarding the extent and nature of her ill-health. This is clearly substantively relevant to my decision because the Claimant avers that the proceedings affect both her mental and physical health and whether such ill-health has adversely affected her ability to take and implement decisions in relation to her appeal.

45. However, there is no evidence that her rights in this respect are engaged to any greater extent than any litigant who seeks to rely on ill-health as a good reason for

failing to comply with time limits. For example, there is no evidence before me that publication of her identity in connection with these proceedings will have an adverse effect on her health or private life which is out of the ordinary in comparison with any other litigant. There is no evidence to support her contention that she is victim to misuse of the public information by the Respondent or any third parties and I reject the same as being without foundation. Indeed, what is unusual about this case is that the thrust of the extensive medical evidence is designed to support the contention that it is the conduct of the proceedings themselves (and in particular what the Claimant says about the Respondent's alleged conduct) of them, which is the precipitant of her ill-health conditions and intrusion on her article 8 and other rights, rather than anything to do with the wider publicity which might arise from them.

46. Equally, I can see no basis for contending that Articles 2, 3, or 6 are engaged in this case. Whilst it is true that in the letter of Dr Lindsay of 13 September 2023, there is reference to it 'quite literally killing Marina' this comment (which I am bound to observe is expressed in unusually dramatic and not obviously scientific terms) arises in the context of what the Claimant appears to have reported to Dr Lindsay as a course of 'abusive conduct and persistent harassment by the employer's solicitor' and not as a result of any reporting of the proceedings of the fact that they are taking place in public. There is no evidence before me that suggests that the Claimant would be less able to take part in her appeal if her name were published on proceedings. Indeed, the history shows that she has been more than able to take part in the tribunal proceedings and to make applications to the EAT in respect of her appeal and there is no basis for suggesting that the fairness of the proceedings will in any way be affected by normal publication of the details.

47. Against that background, there is little, to my mind, if anything, to weigh in the balance against the starting point principle of open justice. I appreciate that the Claimant may not wish to have her name published, however there needs to be cogent reasons and persuasive evidence in order to displace the starting point that justice must not only be done but be seen to be done. It is important that the wider public can receive reports of what is going on in EAT cases. There is real information value 'in a name' and it is not sufficient for reporting purposes for this case to be anonymised. Without knowing who is involved, there is little point in publication of

this case whatsoever. I am satisfied that the balance here is struck clearly in favour of the usual principles applying and publication and reporting of this case being able to take place in the normal fashion.

THE APPLICATION TO EXTEND TIME

48. It is common ground that the order was sent to the parties on 21 April 2023. It seems to me that on a proper application of the rules, the time for appeal started to run at that point, but for the purposes of this appeal, as she had requested the written reasons the very next day, and accepting that she wished to have the written reasons before appealing, I am just about persuaded that there is a good reason for not bringing her appeal during the period of time which then occurred until the written reasons were sent to the parties on 5 June 2023.

49. Turning then to the question of whether the evidence supports the Claimant's contention that there was a good reason for her not to have brought her appeal from that point until 24 July 2023.

50. In respect of the suggestion that the Claimant has throughout this period had caring responsibilities for disabled dependants which have taken up more than 60 hours of her time each week, I am not satisfied that the Claimant has provided sufficient evidence that such activity would have acted as an impediment to bringing an appeal to the EAT. She has not identified who she provides care for or what care she provides. Nor has she explained how she has been able to continue providing many hours of care to third parties when on her account to the relevant medical experts, she is largely unable to care for herself and is struggling to cope. I consider that there is an internal inconsistency in the Claimant's case here: on the one hand she is too busy providing care to others to appeal, whilst at the same time she is said to be unable to do much, if anything for herself. For example, in the letter of 13 September 2023, Dr Lindsay describes a situation which is wholly incompatible with the Claimant being able to provide care of this nature or extent:

> 'She has been incapacitated *for a few months in a row* and can barely get through the day on a good day.' (emphasis added)

51. I further note that these substantial caring responsibilities do not appear to have precluded the Claimant from carrying out other aspects of this litigation, notably attending the hearing on 25 and 26 September and preparing a very substantial amount of documentation for her strike out application.

52. As to her mental and physical ill-health, I have considered all the materials the Claimant has provided. This case poses a particular challenge, because the Claimant relies on her own account of the Respondent's alleged (mis)conduct of these proceedings as being the cause of her mental ill-health which in turn has led her not to be able to comply with time limits. It means that the medical evidence needs particularly anxious scrutiny.

53. I am troubled by the way each of the medical practitioners has chosen to express their opinions, in particular the trenchant criticism which each of them has seen fit to make of the Respondent's conduct of these proceedings. Those criticisms are not considered in any detail by any of the experts, who cannot have any independent source of knowledge of the Respondent's conduct, but, I find, have been totally reliant on the account provided to each of them by the Claimant. Not one of the experts really acknowledges that the facts as asserted by the Claimant may not be accurate. Dr Calilung comes the closest to recognising that her opinion is predicated on an assumption that the Claimant is a reliable witness, as she records what the Claimant 'reported' but even she in her letter of 15 September 2023 slips over into assumption that the source of the Claimant's alleged problems is the Respondent's conduct.

54. It is not clear to me that, any of these medical practitioners was asked what their opinion was as to the proper diagnosis or the nature and extent of the Claimant's mental ill-health if her reported allegations against the Respondent and its representatives regarding their conduct of these proceedings turned out to be unsubstantiated. Ultimately, psychological and psychiatric diagnosis is often heavily

reliant on the reliability and accuracy of the patient's report. Obviously, these treating practitioners are in a difficult position if they are asked to consider that the Claimant's account may not be reliable, but from the perspective of the EAT considering whether there is ill-health and what its effects on compliance with time limits have been, it would be wrong to simply assume that these diagnoses would be made if the underlying factual assumptions were not correct. This is particularly so in circumstances where the employment tribunal, has had occasion to consider the underlying allegations and has found them to be wholly baseless. For example, Dr Hughes in her letter dated 17 March 2023, is obviously not aware that the tribunal considered the Respondent's conduct to be blameless when she states,

> "Marina has been diagnosed with anxiety, depression and complex PTSD *because of the horrific experiences* she had to survive because of the respondent's actions. (emphasis added)
>
> the inappropriate behaviour of the other party in the tribunal has put Marina under undue stress and pressure, which only exacerbated her debilitating conditions…
>
> Inappropriate behaviour of the respondent, best described as bullying and harassment, has been significantly worsening Marina's mental health…"

55. The other evidence is in similar terms. Dr Lindsay in the 13 September 2023 letter describes it as 'psychological violence at the hands of her former employer's (sic) and their solicitor'.

56. I find that the evidence in effect relies wholly on an acceptance of the Claimant's account of the Respondent's conduct of these proceedings. This places me in great difficulty in attaching any weight to the medical evidence, contrasting sharply as it does with the facts as found by the tribunal in its strike out application in September 2023 and my own assessment of the parties' respective conduct in proceedings as a whole based on what I have seen in this application. I find that the medical evidence

presented in support of this application lacks the requisite independence from the Claimant's account which would allow me in the circumstances of this case to base any findings as to the Claimant's ill-health upon it.

57. Moreover, I find that the only medical evidence which descends to particulars of the impact on the Claimant's functioning in day-to-day activities is that of Dr Calilung of 15 September 2023 in which she records panic attacks, hesitancy in leaving the house, irregular sleep, heart palpitations and an immunological allergy-like reaction due to anxiety, loss of enjoyment in activities and suicidal ideation. However, Dr Calilung does not suggest that any of these features affect the Claimant's ability to take decisions or implement them in relation to the litigation, rather she suggests that the Respondent 'should be removed from proceedings in order to protect' the Claimant's health.

58. Even taking this evidence at its highest, it does not support the Claimant's contention that the effect of her mental ill-health was to impede her ability to take and implement decisions she needed to make to litigate her claim. Indeed, in this respect the steps the Claimant did take are wholly inconsistent with any suggestion that she was unable to litigate or impeded in her litigation: they demonstrate to my mind that there was no such impediment. In the relevant period the Claimant made a substantial application for an extension of time in which to serve her witness statement and prepared a substantial strike out application.

59. It seems to me that, rather than being 'incapacitated' the Claimant has distracted herself from the tasks she needed to do in order to comply with time limits set by the rules (this appeal) or the Tribunal (her witness statement) and allowed herself instead to be led by her obsession with other aspects of the litigation, such as her personal anonymity and her conviction that there is some form of improper conduct on the part of the Respondent or its representatives. She has made substantive extension of time application for her witness evidence to the tribunal in exactly the same period when she says she could not make a similar application to this Tribunal for the time for appealing to be extended or make her appeal itself. I consider that as far as her mental and physical health were concerned, she was more than able to initiate an appeal within time had she chosen to do so.

60. Finally, I must consider the suggestion that the Claimant's 'homelessness' has caused her not to be able to comply with the time limits. There is a paucity of evidence in support of this strand of the application. It is not apparent on the documents when the Claimant was given notice of termination of tenancy or when she started looking for somewhere else to live and when she found another place. There is no evidence whatsoever to support her rather improbable suggestion that the Respondent had engineered the termination of her tenancy as a means of defeating her tribunal proceedings. I have already observed that she was well able to generate documents using a computer and to send them via email in June, July and then again September. There is no evidence before me which supports any contention that during the relevant period of 5 June to 24 July, she was unable to access a computer and internet connection. In circumstances where she has not given any evidence about the identity of those she says are providing intermittent assistance to her, I find that it is more likely that she has in fact been able to access IT equipment and internet throughout the relevant period.

61. In those circumstances, I find that the reasons given for the delay, whether taken separately or cumulatively, are not adequate to explain the delay. I do recognise that this is a case of a delay of a few days and there is no evidence of prejudice to the Respondent, but neither of these factors in my judgment outweigh the absence of a good explanation why the Claimant did not proceed earlier with her appeal.

62. It does also seem to me that this is a case where at least 2 of the grounds of appeal have been overtaken by events. First, the order which the Claimant sought in relation to excluding the public from the final hearing and the direction for specific disclosure and further information have both been overtaken by the subsequent events and this appeal is now academic on these points. I do accept, however, that the question of reporting restrictions for anonymity would have ongoing effect, but this appeal is in my view extremely weak on the merits: it was a case management decision which was well open to EJ Anstis and one, which for the reasons I have given above, I consider was the right one in any event.

63. I do not consider that this is a rare or exceptional case. It is not one which to my eye merits an extension of time limits. Those limits are intended to be met and are generous. For these reasons I refuse the application, and the appeal must be dismissed.