



EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

“This has been a remote hearing not objected to by the parties. The form of remote hearing was sent on 23 July 2021. A face-to-face hearing was not held because it was not practicable and no-one requested the same.”

Claimant
Ms Lillian Towu

v

Respondent
Whitfield School

Heard at: Watford by Cloud Video Link

On: 26 July 2021

Before: Employment Judge Bedeau

Appearances

For the Claimant: In person

For the Respondent: Ms H Broughton, Solicitor

JUDGMENT

1. The claimant’s application to amend by adding a failure to make reasonable adjustments claim, is refused.
2. The claimant’s application to amend by adding claims of public interest disclosure detriments and dismissal, are refused.
3. The claimant’s application to add breach of contract, in that the respondent failed to provide her with a statement of initial employment particulars, is an aspect of remedy under section 38, schedule 5, Employment Act 2020 and does not need to be pleaded.
4. The claimant’s application for a rule 50 anonymity order, is refused.
5. The claimant’s application for the hearings to be conducted in private, is refused.

REASONS

1. The claimant was employed by the respondent as a Mathematics Teacher from 1 July 2013 to 3 July 2019, when she tendered her resignation on notice and was put on garden leave. She issued three claim forms before this tribunal on 23 February 2020, claim no. 3302680/2020, in which she claims constructive unfair dismissal, race discrimination on the basis that she is of Ghanaian and Nigerian descent, as well as other unspecified payments. In section 8.2 of the form, she refers to pension misadministration, harassment, and victimisation. The claims of harassment and victimisation are not clearly set out. A month later, on 6 March 2020, she presented a further claim, number 3302981/2020, in which she repeats the narrative in her earlier claim form, but this time added arrears of pay. She also claims indirect discrimination, not particularised, and repeated the other claims of pension misadministration, harassment, and victimisation. A further claim was presented, number 3302055/2020, which was withdrawn by her and dismissed by me on 12 March 2020.
2. There was a preliminary hearing held on 3 February 2021, before Employment Judge Laidler, at which the Judge considered the claimant's application for a rule 50 anonymity order and her that proceedings to be conducted in private. Those two matters were eventually adjourned to be determined by me today. The Judge identified the claims at the time, in general terms, as being pension contributions, race discrimination, and victimisation, the alleged protected act being the claimant's grievance in or around July 2017.
3. The following day after the hearing, the claimant made a formal application to amend, and it is that document that has been the subject of much discussion this morning.
4. On 20 May 2021, Employment Judge Ord listed the rule 50 and the application that hearings be conducted in private, to be determined by me today in accordance with EJ Laidler's order.
5. I spent some time going through the claimant's application to amend. She was able to tell me whether or not those matters listed in her application are new claims or form part of her existing claims before this tribunal. Two claims stand out as separate and distinct. The first being the failure to make reasonable adjustments. In that regard the claimant referred me to events in 2018. She was diagnosed as having an injury to her back, an intervertebral disc, and an injury to her neck. She said that she had asked the respondent for a suitable chair with lumbar support and an ergonomic and adjustable desk, but they were not provided.
6. The second claim is public interest disclosure detriments and public interest disclosure dismissal. Here the claimant said that the respondent was in breach of a legal obligation, in that between 2017 and 2019, she raised with it the fact that her pension contributions were not paid correctly into her pension fund and the response from Ms Christine McGhan, Human

Resources, was that it had nothing to do with her and that she should refer the matter to the Pension Service. She contacted and made disclosures to the Pensions Ombudsman in July 2019, a few days before she resigned.

7. She invited me to allow her application as she was not medically fit to make a timeous application and that she had been the victim of domestic violence by her ex-boyfriend leading to her having been granted a non-molestation order by the Family Court at Edmonton on 2 November 2020.
8. The application was opposed by Ms Broughton, solicitor on behalf of the respondent, who relied on the test to be followed in Selkent v Bus Co Ltd v Moore [1996] ICR 183, a judgment of the Employment Appeal Tribunal.

The law

9. A party can apply to amend the claim or response at any time in proceedings, Selkent Bus Co Ltd v Moore 1996 ICR 836 and rule 29, schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
10. Whether an amendment is required will depend on whether the claim form or response provides, in sufficient detail, the complaint or defence the party seeks to make. The mere fact that a box is ticked indicating a specific claim such as direct race discrimination does not mean that it raises a complaint of indirect race discrimination and victimisation. In considering whether the claim form contains a particular complaint that the claimant is seeking to raise, the claim form must be considered as a whole. The mere fact that a box is ticked indicating that a certain claim is being made may not be conclusive in determining whether it sets out the basis for such a complaint, Ali v office of National Statistics 2005 IRLR 201, Court of Appeal.
11. Sir John Donaldson, in Cocking v Sandhurst (Stationers) Ltd and Another, 1974 ICR, in the National Industrial Relations Court, set down, generally, the procedure when considering whether to allow an amendment. He stated that Tribunals must have regard to all the circumstances, in particular, any hardship which would result from either granting or refusing the amendment. This judgment was approved in Selkent.
12. In Selkent, Mr Justice Mummery, President, held that in determining whether to grant the amendment application, the Tribunal must always carry out a balancing exercise of all relevant factors, having regard to the interests of justice and to the relative hardship cause to the parties if the application is either granted or refused. The relevant factors are: the nature of the amendment; the applicability of time limits; and the timing and manner of the application.
13. Whether the claim would be in time if the amendment is a new claim, is not determinative of the application to amend.

14. In the case of New Star Asset Management Ltd v Evershed [2010] EWCA Civ 870, the Court of Appeal allowed the claimant to add public interest disclosure to a constructive unfair dismissal claim as the amendment did not raise new factual allegations.
15. In Ahuja v Inghams [2002] ICR 1485, the CA held, Mummery LJ, that Employment Tribunals have the power to allow an amendment even at a late stage based on the evidence given at the hearing. They have a wide jurisdiction to do justice in the case and "...should not be discouraged in appropriate cases from allowing applicants to amend their applications, if the evidence comes out somewhat differently from was originally pleaded. If there is no injustice to the respondent in allowing such an amendment, then it would be appropriate for the Employment Tribunal to allow it rather than allow what might otherwise be a good claim to be defeated.", paragraph 43.
16. It may be appropriate to consider, as another factor, whether the claim, as amended, has any reasonable prospects of success, but the Tribunal should proceed with caution as evidence will be required in support of the amendment, Cooper v Chief Constable of West Yorkshire Police and Another UKEAT0035/06; and Woodhouse v Hampshire Hospitals NHS Trust EAT0132/12.
17. The parties must clearly set out their case of the practical consequences of allowing or refusing the amendment, and the Selkent factors should not be treated as if they are a list to be checked off, Vaughan v Modality Partnership UKEAT/0147/20/BA, HHJ Tayler.
18. In the Presidential Guidance – General Case Management, issued on 22 January 2018, amending a claim or response falls within rule 29 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the power of the Tribunal to issue case management orders. "In deciding whether the proposed amendment is within the scope of an existing claim or whether it constitutes an entirely new claim, the entirety of the claim form must be considered.", paragraph 7.

"The fact that the relevant time limit for presenting the new claim has expired will not exclude the discretion to allow the amendment", sub-paragraph 11.1.

Conclusion

19. Dealing with the failure to make reasonable adjustments, I looked to see what was the reason for the delay. I bear in mind that the claimant resigned in July 2019. The application to amend is dated 4 February 2021, over one and a half years later. She said that she was taking medication at the relevant time, that is the time between her resignation and the application to amend. She further stated that she had been the victim of domestic violence and had successfully sought a non-molestation order against her ex-boyfriend in November 2020 for one year.
20. While I do not dispute that the claimant has several medical conditions for which she is treated, there is no medical evidence before me in support of

her contention that because of the medication severely impacted on her and was not thinking clearly, she was taking she was unable to present her application earlier. She was, however, able to present 3 claim forms in early 2020.

21. In relation to the non-molestation order, it was granted on 2 November 2020 for one year against her ex-partner, but in February and March of that year, some nine months earlier, she was able to pursue claims before the tribunal. There was no external evidence corroborating the claimant's assertion that in some way because of the physical abuse by her ex-boyfriend, which I do not deny had occurred, she was severely impacted in terms of her ability to put in an application to amend much earlier than when she did. I consider that the delay between her resignation and the application in February 2021 as considerably long. I was not persuaded by the reasons she gave for the delay.
22. In relation to the time limit, she had three months from the date she was refused reasonable adjustments which has long since expired. The issue is whether it would be just and equitable to grant an extension of time, section 123(1)(b) Equality Act 2010? This is just a factor to be considered in the balancing exercise.
23. Tie limits are strictly applied and the exercise of the tribunal's discretion on just and equitable grounds is the exception rather than the rule, Robertson v Bexley Community Centre [2003] IRLR 434, a judgment of the Court of Appeal.
24. The delay is long. There is no medical evidence in support of her medical conditions adversely impacted on her ability to put in her claim much before 4 February 2021. The same applies to the non-molestation order. I was satisfied with the reasons given for the delay. She only made the application after the preliminary hearing on 3 February 2021. Having regard to these facts, I would not extend time on just and equitable grounds.
25. I also take into account that if I was to grant the application, the cogency of the evidence is likely to be affected. The respondent's witnesses' recollection of events relevant to the claim may not be clear and concise so long after the events relied on by the claimant.
26. In relation to the prejudice the claimant is likely to suffer if I was to refuse her application, she has several claims against the respondent she will pursue to a final hearing.
27. If I allowed the claim the respondent will now have to look for evidence in support of rebutting it which may present problems as staff do come and go. Ms Ng has left.
28. Having considered the above matters, I do not exercise my discretion in favour of the claimant. I, therefore, refuse the application to add failure to make reasonable adjustments.

29. In relation to the public interest disclosure detriments, dismissal, and breach of contract claims, I bear in mind that there is the three months' time limit and the test of reasonable practicability, section 48(3), detriments, and section 111, unfair dismissal, Employment Rights Act 1996. I repeat what I stated about the length of the delay, and the reasons given by the claimant.
30. In relation to the extension of time, the test of reasonable practicability is what is reasonably feasible. There is very little evidence to support her alleged difficulties over the period of time from her resignation and her application preventing her from issuing her claims much earlier. She presented further claims in early 2020. She was able to write a very detailed witness statement, together with documents totalling 227 pages in February of this year. The limitation provisions in relation to reasonably practicable is more strictly applied than just and equitable test. It was reasonably feasible for the claimant to have presented these additional claims in early 2020.
31. The cogency of the evidence is likely to be affected for the reasons already given above. There is also the prejudice to the respondent in having to gather evidence to address the additional claims.
32. Accordingly, I have come to the conclusion, taking into account the above factors, that the balance is in favour of not granting the application to amend public interest disclosure detriments and dismissal.
33. Breach of contract claim is not legally such a claim. The claimant relies on the failure of the respondent to comply with section 1 ERA 1996. If there was such a failure, and if a claim falls with section 38, schedule 5, Employment Act 2002, the tribunal must award compensation of between 2 to 4 weeks' pay, section 38(4). This will be the subject of compensation if the claimant is successful.
34. What about the constructive unfair dismissal claim? That has always been a claim in the claimant's first claim form but not clearly set out. Before me she was able to tell me of those matters which form her constructive unfair dismissal claim. I do take the view that the respondent is likely to be prejudiced but not seriously so. It had always been aware that the claimant had resigned and brought a constructive unfair dismissal claim and responded to it by denying that she was entitled to resign and put in the claim. I am satisfied that the respondent would be able to provide documentary evidence from witnesses to rebut these additional acts the claimant will be relying on in support of her constructive unfair dismissal.
35. I will allow the claimant to add the additional factual assertions which she has referred me to in her application to amend as part of her constructive unfair dismissal claim.
36. In relation to pension contributions, again she referred to it in her claim forms in which she described the claim as pension misadministration. The matter was discussed by Employment Judge Laidler in February. I do not take the view that it is an unauthorised deduction from wages claim, but a

breach of contract claim. This does not require a formal application to amend but a change to the label given.

Reserved Judgment on anonymity order and private hearings

37. I decided to give a reserved judgment on the claimant's rule 50 application for an anonymity order and hearings be held in private.
38. No oral evidence was given.

Submissions

39. Her application dated 4 February 2021, is based on her medical conditions of anxiety and depression, and Post Traumatic Stress Disorder, which she alleges were caused by workplace bullying, victimisation, and harassment. She asserted that if her application was refused, she would be rendered unemployable as her case would be reported and made known to the public thereby aggravating her medical conditions.
40. She also made referred to the non-molestation order granted by Edmonton County Court on 2 November 2020, for one year against her ex-boyfriend who assaulted her in April 2020 and that she did not want him to know where she lives. He has a criminal history. She said that in March of this year he breached the order and is currently the subject of criminal proceedings. She did not want information to be disclosed which may allow him to track her down.
41. In relation to her application for the hearings to be in private, she stated that she is unable to communicate clearly with new people. Her anxiety, depression, and trauma impact on her ability to verbally communicate in new settings which will have an impact on the quality of information she provides and, on her ability, to correctly interpret questions when asked. She then wrote:

“As a result of this ordeal, I assume that there is likely to be prejudice held towards me from all white English and Chinese persons. I assume that I am viewed ‘Poor Black African with mental issues’ which means I have difficulty in a public setting but also a private setting. As a result, I have started developed a fear and phobia of working with White English or Chinese persons in any capacity. I have been educated, employed and socialised in multi-cultural settings through my entire life, as by virtue of being born in London and having travelled internationally. My counsellor has identified that further counselling by way of cognitive behaviour therapy will be required in order to assist my healing from this ordeal.”

42. Upon questioning she told me that her ex-boyfriend lives in the same block of flats as her and is aware of her address. I was unclear to me the relevance of the non-molestation order to hearings in private. Her ex-boyfriend has no connection to the respondent.
43. She told me that she was the victim of a moped mugging, fears for er safety when outside of her home, and would travel by taxi.

44. Ms Broughton submitted that the claimant had challenging personal experiences, but her application must show that there are good reasons for derogating from the principle of open justice. No medical evidence had been produced in relation to the effects on her PTSD or other medical conditions should her application be refused.
45. The claimant has made extremely serious allegations against several of the respondent's employees and former employees. "Many in the school community are aware of the relationship between the claimant and others in the school. In accordance with the principles of open justice, those identified by the claimant are entitled to have it made known that these proceedings flow from that relationship and not from another.", Ms Broughton submitted.
46. It is difficult to see how the domestic violence case and the moped assault could be relevant to her application.
47. In relation to the claimant's request for private hearings, Ms Broughton submitted that the claimant referred to being "unable to communicate clearly with new persons", but there is no evidence in support of this assertion. If any such finding is made against the respondent, it is implausible that it would taint the claimant by association.
48. Ms Broughton's final submission is that it would neither be in the interests of justice nor proportionate to grant the claimant the cloak of anonymity. A private hearing would also be inappropriate. The claimant fails to satisfy the high hurdle for the grant of either order.

The Law

49. Section 12(1) Employment Tribunals Act 1996 states the following:

"12 Restriction of publicity in disability cases

(1) This section applies to proceedings on a complaint under section 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."
50. Section 12(2) provides for regulations in making a restricted reporting order. A restricted reporting order prohibits the publication of any "identifying matter" in Great Britain, 12(7). An "identifying matter" is "any matter likely to lead members of the public to identify the complainant or such other persons (if any) as may be named in the order.", 12(7).
51. Rule 50 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides:

"Privacy and restrictions on disclosure

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.
- (3) Such orders may include—
 - (a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;
 - (b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;
 - (c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;
 - (d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.
- (4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.
- (5) Where an order is made under paragraph (3)(d) above—
 - (a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification;
 - (b) it shall specify the duration of the order;
 - (c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and
 - (d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.
- (6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998(22)."

52. Rule 50(1) provides that there are three situations which can justify the making of a rule 50 order. These are where the tribunal considers an order to be necessary:

- a. In the interests of justice; or
 - b. To protect Convention rights, or
 - c. In any of the section 10A circumstances, such as the evidence is likely to be subject to statutory or other duties of confidentiality or, if disclosed, would cause substantial injury to any undertaking where the person works.
53. Rule 50(3) gives four examples of the kind of orders which a tribunal may make. The list is not exhaustive so a tribunal may make another type of order, if appropriate. A combination of orders, such as an anonymity and restricted reporting order, may be required in some circumstances.
54. Rule 50(3)(a) provides that an order may be made at a hearing that would otherwise be public, should be conducted in private.
55. Rule 50(3)(b) an anonymity order preventing by anonymisation or otherwise, disclosure to the public of the identities specified parties, witnesses, or other persons.
56. In an anonymity order, the tribunal is the guardian of the private information. The information is not disclosed to the public or the media at all. This contrasts with a restricted reporting order where the information is aired but the public and the media have the responsibility of keeping it secret.
57. When making an anonymity order, consideration should be given to:
- a. Who should be specified in the anonymity order? Is it necessary to anonymise the respondent or any other persons to protect, for example, the claimant?
 - b. The points in the process at which a party or other person requires anonymity, for example, during the course of a hearing, or in relation to the listing, the judgment, or other public documents.
 - c. The duration of the protection, including whether the position may need to be reconsidered after promulgation of the judgment. An order for permanent anonymity, or an order permanently restricting reporting, is unlikely to be justified save only in exceptional circumstances, F v G UKEAT/0042/11.
58. Rule 50(3)(c), relates to orders for measures to prevent the identification of witnesses during a hearing.
59. Finally, a restricted reporting order is an order prohibiting the publication in Great Britain of an identifying matter in a written publication made available to the public, rule 50(3)(d).
60. Article 6 is the right to a fair trial. It states:

“.. 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.”

61. Article 8, the right to respect for private and family life, states:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

62. Article 10 on the right of freedom of expression, this provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

63. The above rights were introduced into United Kingdom law by the Human Rights Act 1998.

64. In considering an application for rule 50 order, consideration must be given to open justice as set out in rule 50(2) and article 10 of the European Convention on Human Rights, freedom of expression. The default position is that hearings are in public, and that full decisions with the names of the parties are published and maybe reported. This reflects the general public interest and applies irrespective of the subject matter of the case, even if it does not raise issues of public interest in the wider sense, F v G.

65. Derogations from the principle of open justice will only be justified in exceptional circumstances, if and to the extent that the tribunal is satisfied that they are the minimum strictly necessary to ensure justice is done. The

burden of establishing that a derogation is necessary, is on the person making it.

66. The tribunal must engage in a balancing exercise. A fact-finding proportionality approach must be carried out, with a focus on the importance of each of the specific rights being claimed and the justifications for interfering with or restricting each right. Clear and cogent evidence is required. The proportionality test must be applied. The question to be considered is whether harm will be done by a public hearing or reporting, to the Convention rights of the person seeking the restriction, so as to make it necessary to derogate from the principle of open justice, BBC v Roden UK EAT/0385/14.
67. In relation to article 8, family and privacy rights, the mere publication of embarrassing or damaging material is not a good reason for anonymity or for restricting the reporting of the judgment, BBC v Roden. Tribunals can mitigate the risks of misunderstanding by making clear in a written judgment that they have adjudicated on the truth or otherwise of the damaging allegation. Where anonymity is being sought by a claimant, the fact that they have chosen to bring proceedings is a significant factor to be considered, BBC v Roden. A witness with no interest in the proceedings has a stronger claim to be protected by the courts if he or she is prejudiced by publicity. Further, findings of dishonesty against the person seeking anonymity, it may be inimical for that person to be shielded from full publication of the judgment which includes those findings, BBC v Roden.
68. In relation to article 10 rights, freedom of expression, if this is for limited periods, it is less objectionable than a restriction on disclosure that is permanent. A public judgment can reduce or minimise any risks of inaccurate reporting and, therefore, the principle of open justice is stronger once judgment has been delivered. There may be an interest in relevant bodies or future employers knowing about the outcome of proceedings, especially where there are findings of dishonesty. Where a party has successfully brought or defended a claim, it is entirely legitimate that someone who has had their rights vindicated after a hard-fought piece of litigation, should wish to be able to report, and produce the evidence of that victory without constraint, F v G (2012) ICR 246, paragraph 49.
69. The judgment of Cavanagh J in the case of X v Y UKEAT/0302/18/RN, was considered.

Conclusion

70. The burden is on the claimant to provide cogent and compelling reasons for derogating from the principle of open justice.
71. In the area of restricted reporting there are essentially three competing fundamental human rights: the right to a fair hearing, article 6; the right to private and family life, article 8; and the right to freedom of expression. These are not absolute rights but are subject to certain qualifications. Set against them is the fundamental principle of open justice.

72. In relation to the claimant's application that the hearings be in private, I was not persuaded that it is in the interests of justice to do so. The principle of open justice requires that the public have access to hearings whether in person or by reading accounts of them. The claimant brought claims against the respondent and must have been aware that in so doing the normal course of action taken would be that hearings would be in public. She submitted that she is unable to communicate clearly when interacting with people whom she does not know, and her conditions of anxiety, depression, and PTSD, will impact adversely on her ability to verbally communicate in new settings which will negatively affect the quality of information or evidence she gives. She also submitted that she would be unable to correctly interpret questions when asked.
73. No medical evidence was produced in support of her assertions. She was able to respond to Ms Broughton's submissions and to my questions, though I acknowledge that this was not at a final hearing.
74. I do have regard to the claimant's right to a fair hearing. Equally, the respondent, as an employer with witnesses having to respond to several serious allegations, has a right to a fair hearing. One of the issues in the case is whether or not the claimant's performance and capability were in issue. That matter would require testing in evidence. It is in the public's interest to know how the respondent's school treats its teaching staff.
75. I am not persuaded that the claimant's right to a fair hearing and family life would be seriously prejudiced if the hearings or part of them were held in private. She has not persuaded me that I should derogate from the principle of open justice.
76. I am satisfied and do conclude that the principle of open justice should apply in this case and that all hearings except preliminary hearings in private, should be in public.
77. In relation to her anonymisation application, the claimant relies on the same grounds as for her application for a private hearing.
78. Although she applied to add the claim of failure to make reasonable adjustments, it was dismissed, therefore, the provisions in section 12(1) Employment Tribunals Act 1996 does not apply. I still took into account her medical conditions. There is no medical evidence in support of the claimed impact on her if the application is refused, and for the reasons given above, I was not persuaded that it is in the interests of justice for there to be an anonymity order.
79. If there are material changes in the claimant's circumstances, she may renew her application for a rule 50 order.

Employment Judge Bedeau

Date: 10 August 2021

Sent to the parties on: 19 August 2021

N Gotecha

For the Tribunal Office