



PUMP COURT

CHAMBERS

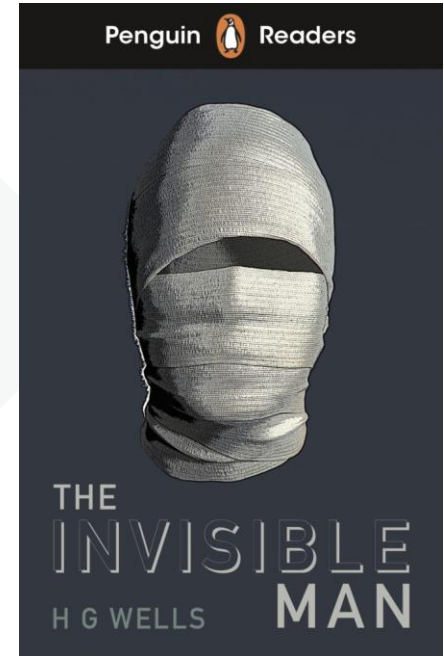
“Someone like you”

Anonymity Applications – what you need to know
before making/responding to one

RICHARD WAYMAN

Overview

- The legal framework governing anonymity
- The test applied by Tribunals
- Common factual scenarios
- Procedural considerations
- Practical advocacy tips



The Tribunal giveth...

Rule 49 of the 2024 Rules gives Tribunals power to:

- Make an order with a view to **preventing** or **restricting** public disclosure of **any** aspect of the proceedings.
- Do so where it is **necessary**:
 - in the interests of justice
 - to protect the Convention rights of any person
 - or in certain specified sensitive cases



...and the Tribunal taketh away

Tribunals must balance this against **Article 10** (freedom of expression) and the strong presumption of **open justice**

- s. 11 Employment Tribunals Act 1996 (cases involving sexual misconduct)
- s. 12 Employment Tribunals Act 1996 (disability cases)
- Rule 49 ET Rules 2024, and
- Articles 2, 6, 8 and 10 European Convention on Human Rights (“ECHR”) incorporated into UK Law by s. 2(1) Human Rights Act 1998 (“HRA”)



Rule 49

(3) Any order made under this rule may require—

- (a) that a hearing that would otherwise be held in public be conducted, in whole or in part, **in private**;
- (b) 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) that measures are to be taken to **prevent witnesses at a public hearing being identifiable** by members of the public;
- (d) that **a restricted reporting order is in place** within the terms of section 11 (restriction of publicity in cases involving sexual misconduct) or 12 (restriction of publicity in disability cases) of the Employment Tribunals Act;
- (e) that the **name, address or other information of, or relating to, any person be redacted** from a claim form, response form, witness statement or any other document in the proceedings.



Balancing the Convention Rights

Article 2 – Right to life

Relevant in cases involving self-harm, and vulnerable or suicidal individuals

Article 6 – Right to a fair trial

“In the determination of his civil rights ... everyone is entitled to **a fair and public hearing** within a reasonable time by an independent and impartial tribunal established by law”

Article 8 – Right to respect for private and family life

Article 10 – Freedom of expression

This right shall include freedom to ... receive and **impart information** and ideas without interference by public authority and regardless of frontiers”



Principle of Open Justice

The starting point is that:

- Hearings are **public**
- Judgments are **published** (usually online)
- Parties are **named**
- The tribunal must therefore begin with a **presumption against anonymity**
- The burden lies on the **applicant** to justify departure from open justice



Open Justice and the Rule of Law

“There is no doubt, as has been said in a long line of cases, that it is not merely of some importance, but of fundamental importance, that justice should both be done **and be manifestly seen to be done.**”

– *R v Sussex Justices, ex parte McCarthy* [1923] All ER Rep 233

“Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. Quis custodiet ipsos custodes—who will guard the guards themselves?

In a democracy, where power depends on the consent of the people governed, **the answer must lie in the transparency of the legal process.** Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse.”

– *R (Guardian News and Media Ltd) v City of Westminster Magistrates’ Court* [2013] QB 618



Consent and Discretion

So fundamental is the principle of open justice that **parties cannot consent to or agree a privacy order**. Were they to do so, the Tribunal would **still** have to consider whether the test was met.

As Lord Neuberger MR (as he then was) put it in *JIH v News Group Newspapers Ltd* [2011] 2 All ER 324:

“An order for anonymity or for reporting restrictions should not be made simply because the parties consent: **parties cannot waive the rights of the public**”

Similarly, the grant or refusal of a privacy order is **not** an exercise of discretion.

If the test is met, the Tribunal **must** make the order sought; if it is not, the Tribunal **must** refuse it

– *AMM v HXW* [2010] EWHC 2457 (QB)



What's in a Name?

In re Guardian News and Media Ltd and others [2010] 2 AC 697

Lord Rodger, set out a pertinent reason why the litigants should be properly identified:

“What's in a name? **“A lot”**, the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected ... The judges [have recognised] that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information.

A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.”



Publication and Vindication

F v G [2012] ICR 246, per Underhill P (as he then was):

“...the default position in English law is and should be that it is in the public interest that the full decisions of courts and tribunals, including the names of the parties, should be published.

I need not elaborate the reasons for that view, which simply reflects what has been said by numerous courts and tribunals ever since the decision of the House of Lords in *Scott v Scott* [1913] AC 417, and indeed before. **It is not a right specifically of the press but reflects the public interest generally.**”

“In addition to that public interest, weight must also be given to the claimant’s wish for the judgment to be published in a form which names herself and the college. 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.”



Article 10 – Frewer v Google UK

Frewer v Google UK Ltd & Ors [2022] IRLR 472, per HHJ Tayler:

“Pursuant to the first order the names of the first respondent's clients were to be anonymised in all documents put before the tribunal and made available to the public.

I consider that the making of the order constituted an error of law because the employment tribunal did not have regard to **the Article 10 rights involved** or to the cases, set out above, that demonstrate the importance of naming the names of persons involved in legal hearings.

There is a public interest in hearings being conducted so that the press can report names of those involved, even if the court could have done its job without the names being named, because in a strict sense the identities of the persons involved are not relevant to the issues in dispute.



Jigsaw Identification

If anonymisation is to be ordered, **consideration must also be given to the issue of 'jigsaw identification'** where the identity of the employer, team, colleagues, etc. would enable an observer to piece together sufficient information to identify the Claimant

In a number of cases, orders have been made to prevent identification of a Respondent employer, **not** in order to guarantee the Respondent's privacy but because it was deemed necessary to do so to prevent the identification of individuals (see *A &OR v X &Ors* [2019] IRLR 620)



Types of Anonymity and Reporting Restrictions

- A party is referred to by initials or a cipher (e.g., “A”)
- Their name is removed from judgments
- That the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, either during the course of any hearing, its listing, or in any documentation entered on the Register, or otherwise forming part of the public record
- Preventing witnesses at a public hearing being publicly identifiable
- Redacting the name, address or other information of, or relating to, any person from a claim form, response form, witness statement or any other document in the proceedings



Restricted Reporting Order/Private Hearing

- Prohibits publication of identifying information during the hearing
- Often used in whistleblowing or sexual misconduct allegations
- An RRO within the terms of section 11 or 12 of the ETA 1996 in cases involving alleged sexual misconduct or disability discrimination
- Disability discrimination cases where there is likely to be medical evidence or other evidence of an intimate nature which "might reasonably be assumed to be likely to cause significant embarrassment to the complainant if reported" (section 12)
- In rare cases, all or part of a hearing may be conducted in private



s. 12 ETA 1996 (disability)

- (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 ET hearing the complaint
- (2) Procedure Rules may include provision in relation to proceedings to which this section applies for—
- (a) enabling an employment tribunal, on the application of the complainant or of its own motion, to make a **restricted reporting order** having effect (if not revoked earlier) **until the promulgation of the decision of the tribunal**, and (b) where a restricted reporting order is made in relation to a complaint which is being dealt with by the tribunal together with any other proceedings, enabling the tribunal to direct that the order is to apply also in relation to those other proceedings or such part of them as the tribunal may direct

[*“evidence of a personal nature” means any evidence of a medical, or other intimate, nature which might reasonably be assumed to be likely to cause significant embarrassment to the complainant if reported]



Statutory Anonymity for Sexual Offences

- Where an allegation is made that a sexual offence has been committed, publication of any matter relating to the alleged victim is prohibited during their lifetime if it would be likely to lead members of the public to identify them as the victim of the alleged offence (section 1, Sexual Offences (Amendment) Act 1992 (SOAA 1992))
- The sexual offences in question are identified by section 2 of the SOAA 1992 and include rape and indecent assault
- The statutory prohibition is automatic, so there is no need for an order to be made
- However, in Employment Tribunal proceedings an order may be made under Rule 49 to give effect to the SOAA 1992



Medical Evidence

Medical evidence becomes legally significant where:

- A claimant alleges disability under the Equality Act 2010
- There are claims of psychiatric injury
- Medical incapacity forms part of the dismissal decision
- Personal injury overlaps with employment claims

NB: Medical evidence is not **automatically** “sensitive.” The question is: would disclosure cause a serious interference with private life beyond ordinary litigation exposure. Not all medical material qualifies

Tip: obtain **expert or GP** medical evidence supporting the application for anonymity (objective evidence)



Neurodivergent Litigants

F v J [2025] EAT 34

The EAT held that an Employment Tribunal erred in refusing to grant an autistic university lecturer anonymity in his disability discrimination claims, given his concerns about his future employability should his disability become public knowledge

The EAT held that the tribunal had erred by setting **too high a bar** for F to satisfy the tribunal that anonymity should be granted, and had wrongly focused on the need for him to provide medical evidence in support of his application

In this case, while medical evidence could demonstrate the extent of the disability, it could **not** address the question of whether his disability carried with it the stigma which F claimed. All F had to do was prove that he had a **reasonable foundation** for his belief, which is a relatively low evidential threshold



Procedural Aspects

An anonymity application should:

- Be made as **early** as possible
- Be supported by **evidence** (e.g. witness statement)
- Identify precisely **what** order is sought
- Address **proportionality**

Late applications may be viewed sceptically, particularly if the hearing has already begun, although they can still be made even after judgment

Interim orders may be made pending full argument



Practical Advocacy Tips

For **Applicants**

- Do not rely on general assertions of distress
- Provide detailed evidence of specific risks
- Address why lesser measures are insufficient
- Engage explicitly with open justice principles

For **Respondents:**

- Emphasise constitutional importance of transparency
- Challenge speculative or unsupported claims
- Highlight public interest (esp. in discrimination cases)



Practical Considerations

When to apply

- Don't lock the stable door after the horse has bolted (e.g. open PH)

What to redact?

- What specific information actually creates the identification risk?
- Don't ask for more to be removed than you need

How much work is involved? (esp. large bundles/late applications)

How does the Tribunal refer to redacted evidence in the judgment?

- Vital to leave the evidence and substantive reasoning available



Contact details



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Call: 2015

Richard Wayman is a Leading Junior employment barrister who has spent a decade practising in this fast-moving area of law. Prior to this he developed extensive hands-on commercial experience of employment law as Managing Director of a long-established family printing business with 80 employees.

Richard went on to read law at Magdalene College, Cambridge (Upper Second Class) and complete the Bar Professional Training Course at the City Law School (Outstanding), before being Called to the Bar and awarded the Certificate of Honour by the Middle Temple. He also holds an Honours degree from the University of St. Andrews (First Class).

“Richard is a professional, experienced and skilled barrister. He is attentive to the needs of clients, has expertise in all areas of employment law and knows the intricacies of the employment tribunal system.”
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