EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Dimitri Rozanov	**v**	**EFG Private Bank Limited**
Heard at: London Central		**On**: 2 – 3 January 2020 (in chambers)

Before: Employment Judge Lewis
Ms S Plummer
Mr J Walsh

DECISION

The unanimous decision of the employment tribunal is that:

1. The tribunal will provide the Guardian with copies of the ET1 and ET3 on its file in unredacted form.

2. The Order made under Rule 50 for redaction and anonymisation remains in place.

3. The remainder of the Guardian's application is refused.

4. For the avoidance of doubt, no Order is made against the parties to supply any documents to the Guardian.

REASONS

Introduction

1. This is an application by the Guardian for access to pleadings and documents after the conclusion of the full merits hearing at which the claimant lost. The Guardian also applies for the redactions of certain names made under a Rule 50 Order to be lifted. The respondent opposes the application. The claimant has no objection to disclosure by the tribunal and makes no submissions. The parties wished for the application to be dealt with on the basis of their written representations.

History of the Application

2. By a reserved judgment and reasons sent out to the parties on 5 October 2018, the tribunal rejected the claims for unfair dismissal, automatic unfair dismissal and whistleblowing detriment. The hearing took place over 7 days in June and July 2018 and there were an additional two days in chambers. The judgment with reasons was put on the public register.

3. At the start of the full merits hearing, a Rule 50 Order was made by consent to redact the names of Bank clients as well as those of three individuals – 'individual 2', 'relative 19' and 'relative 20'. The reason the names of the three extra individuals were redacted was because their names would lead to the identification of Bank clients. The parties accepted that preserving client confidentiality is very important in the banking world. The tribunal believes that it was given a confidential key to the three individuals, but that it did not find it necessary or relevant to read the key. A confidential annex of three articles was also kept confidential and in the event, the articles were never read by the tribunal panel as an examination of their content was not considered relevant to the issues.

4. By letter dated 23 November 2018, David Pegg, a reporter for Guardian News and Media, wrote to the tribunal requesting copies of:
(a) a number of documents referred to during the hearing and in the judgment (these being those highlit in the judgment and attached to Annex 2 of the Guardian's submissions),
(b) the ET1, ET3 and any related or clarifying statements of case
(c) any witness statements and skeleton arguments relied on in open court.

5. Mr Pegg stated:

> 'There appears to me to be a number of matters of legitimate public interest arising out of the matters contained in the judgement, including:
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> i) Evidence that EFG Private Bank Ltd repeatedly and deliberately colluded with high-risk clients and politically-exposed persons (PEPs) in breach of UK anti-money laundering regulations.
> ii) Evidence that an employee of EFG Private Bank Ltd attempted to facilitate a transaction of $100m sourced from associates of Ramzan Kadyrov, a Chechen warlord who has been credibly accused of serious human rights atrocities.
> iii) Evidence that senior management at EFG Private Bank, including its chief executive, failed to take action when evidence emerged that the same employee had failed to abide by anti-money laundering regulations.'

6. By email dated 10 December 2018, the claimant stated he had no objection to the tribunal disclosing the requested documents, but had not kept hard copies. The respondent objects to disclosure.

7. It was agreed by the parties and the Guardian that the tribunal will deal with the application on written submissions. The claimant has not participated. The

tribunal has received and considered written submissions with a bundle of authorities from the respondent and from the Guardian.

8. The Guardian's written submissions now frame its request as follows:
   (A) The ET1, ET3 and other statements of case
   (B) The documents referred to in the judgment as identified by the Guardian
   (C) Skeleton arguments
   (D) Witness statements
   (E) Trial bundle.

9. In the Guardian's written submissions of 12 March 2019, it added that the public interest included questions of compliance with regulatory authorities as well as the Bank's handling of the dismissal.

10. The tribunal convened in chambers to discuss the Guardian's application on 16 April 2019. By letter dated 1 May 2019, the tribunal informed the parties that it felt it unwise to make a decision while the Supreme Court's judgment in Cape Intermediate Holdings v Dring was pending. Both parties had referred to Dring in their submissions.

11. The tribunal also informed the parties that it did not hold clean copies of the requested documents apart from the ET1 and ET3. Under the tribunal's retention policies, members are instructed to destroy their copies of the trial bundles and witness statements immediately following completion of the hearing (the claimant having lost, so that there was no remedy hearing) and the judge's bundle is subsequently destroyed if there is no appeal. In any event, as previously indicated, the judge's bundle would have been marked and therefore not suitable for disclosure. With regard to the ET1 and ET3, clean copies were still held because the originals were on the tribunal's correspondence file, which is stored for a longer period under the policies. These copies are unredacted. The respondent confirms that the copies in the trial bundle were unredacted.

12. Following the Supreme Court judgment in Dring, the Guardian made further submissions in a letter dated 29 July 2019. The tribunal wrote to the parties on 18 September 2019 setting out and clarifying the application and issues. The Guardian responded on 19 September 2019 and the respondent on 23 October 2019.

13. The respondent answered in submissions dated 23 October 2019, enclosing a further copy of their letter of 12 August 2019.

The issues as they now stand

14. The Guardian's application is now as follows:

(a) For disclosure by the tribunal of the ET1 and ET3

(b) For an Order that the respondent provide the Guardian with the following documents (since the tribunal does not hold clean copies):
(i) Skeleton arguments
(ii) Witness statements
(iii) Trial bundle; alternatively those documents in the trial bundle which were referred to in the tribunal's judgment.

(c) That the Guardian will pay copying costs of (a) and (b) above.

(d) That (a) and (b) above be disclosed without the redactions in respect of Bank clients generally and that the rule 50 order be lifted in relation to 'individual 2', 'relative 19' and 'relative 20'.

15. The respondent originally contested whether the tribunal has power to make the requested orders after the proceedings have concluded and further, whether it has power to order a party to supply the requested documents to the Guardian as a third party. It accepts following the decision of the Supreme Court in Dring that the tribunal does have such power under its inherent jurisdiction. We agree. The question is whether the tribunal should use its discretion to make each of the requested orders.

16. The respondent further requests that, if the tribunal does provide disclosure of the ET1 and ET3, only redacted versions are disclosed. It does not suggest how the documents should be redacted. In any event, the ET1 and ET3 do not name Bank clients or individual 2, relative 19 or relative 20.

The law

17. We have received lengthy submissions on the law from each side. We do not propose to repeat these in their entirety here. However, we shall make some key points.

18. The starting point is the common law principle of open justice. In R (on the application of Guardian News and Media Ltd) v City of Westminster Magistrates' Court [2012] EWCA Civ 420, [2012] 3 All ER 551 CA, the Court of Appeal described the principle of open justice as follows:

> '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? ... 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.

19. This was echoed by the Supreme Court in R (on the application of C) v Secretary of State for Justice [2016] UKSC 2:

> 'The rationale for a general rule that hearings should be held in public was trenchantly stated by Lord Shaw of Dunfermline in the leading case of *Scott v Scott*

[1913] AC 417 at 477, [1911–13] All ER Rep 1 at 30. He quoted first from Jeremy Bentham:
"'In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice.' 'Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.' 'The security of securities is publicity.'"

20. In Scott v Scott [1913] AC 417 HL, Lord Atkinson acknowledged the importance of the principle in the following terms:

'... The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect ...'

21. In R (Guardian News & Media v Westminster Magistrates Court, the Court of Appeal added:

'The purpose of the open justice principle .. is not simply to deter impropriety or sloppiness by the judge hearing the case. It is wider. It is to enable the public to understand and scrutinise the justice system of which the courts are the administrators'

22. This principle of open justice is also an aspect of the right to a fair trial, provided by art 6 of the European Convention on Human Rights. Art 6(1) says:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests 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.'

23. Art 10 is also relevant. Art 10(1) says:

'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...'

24. As with art 6, art 10 rights are qualified. Art 10(2) says:

'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 .... 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.'

25. Other Convention rights (including the right to respect for a private life under art 8) may outweigh the requirement for public access to judicial proceedings or pronouncements. Art 8 says:

> '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.'

26. The Supreme Court has said that 'in many, perhaps most cases, the important safeguards secured by a public hearing can be secured without the press publishing or the public knowing the identities of the people involved.' (R (on the application of C) v Secretary of State for Justice) [2016] UKSC 2.)

27. Where Convention rights give rise to competing interests, the House of Lords in S (a child) (identification: restrictions on publication), Re [2004] UKHL 47, [2004] 4 All ER 683 said:

> '... neither article has as such precedence over the other ... where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary ... the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each ...'

28. The Supreme Court in Re Guardian News and Media Ltd [2010] UKSC 1, [2010] 2 AC 697, [2010] 2 All ER 799 added that 'the weight to be attached to the rival interests under articles 8 and 10 – and so the interest which is to prevail in any competition – will depend on the facts of the particular case' Further, (adopting the approach suggested by Lord Hoffman in Campbell v MGN, 'when press freedom comes into conflict with another interest protected by the law, the question is whether there is a sufficient public interest in that particular publication to justify curtailment of the conflicting right'.

29. The decision of the Supreme Court in Cape Intermediate Holdings Ltd (Appellant/Cross-Respondent) *v* Dring (for and on behalf of Asbestos Victims Support Groups Forum UK) [2019] UKSC 38 is particularly relevant to the application before us in the present case. It is relevant to quote from it in detail.

> There should be no doubt about the principles. The question in any particular case should be about how they are to be applied.
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> The constitutional principle of open justice applies to all courts and tribunals exercising the judicial power of the state. It follows that, unless inconsistent with statute or the rules of court, all courts and tribunals have an inherent jurisdiction to determine what that principle requires in terms of access to documents or other

information placed before the court or tribunal in question. The extent of any access permitted by the court's rules is not determinative (save to the extent that they may contain a valid prohibition). It is not correct to talk in terms of limits to the court's jurisdiction when what is in fact in question is how that jurisdiction should be exercised in the particular case.

The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases - to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly.

But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases. In the olden days, as has often been said, the general practice was that all the argument and the evidence was placed before the court orally. Documents would be read out. The modern practice is quite different. Much more of the argument and evidence is reduced into writing before the hearing takes place. Often, documents are not read out. It is difficult, if not impossible, in many cases, especially complicated civil cases, to know what is going on unless you have access to the written material.

It was held in *Guardian News and Media* that the default position is that the public should be allowed access, not only to the parties' written submissions and arguments, but also to the documents which have been placed before the court and referred to during the hearing. It follows that it should not be limited to those which the judge has been asked to read or has said that he has read. One object of the exercise is to enable the observer to relate what the judge has done or decided to the material which was before him. It is not impossible, though it must be rare, that the judge has forgotten or ignored some important piece of information which was before him. If access is limited to what the judge has actually read, then the less conscientious the judge, the less transparent is his or her decision.

However, although the court has the power to allow access, the applicant has no right to be granted it (save to the extent that the rules grant such a right). It is for the person seeking access to explain why he seeks it and how granting him access will advance the open justice principle. In this respect it may well be that the media are better placed than others to demonstrate a good reason for seeking access. But there are others who may be able to show a legitimate interest in doing so. As was said in both *Kennedy*, at para 113, and *A v British Broadcasting Corpn*, at para 41, the court has to carry out a fact-specific balancing exercise. On the one hand will be "the purpose of the open justice principle and the potential value of the information in question in advancing that purpose".

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'On the other hand will be "any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others". There may be very good reasons for denying access. The most obvious ones are national security, the protection of the interests of children or mentally disabled adults, the protection of privacy interests more generally, and the protection of trade secrets and commercial confidentiality.

Also relevant must be the practicalities and the proportionality of granting the request. It is highly desirable that the application is made during the trial when the material is still readily available, the parties are before the court and the trial judge is in day to day control of the court process. The non-party who seeks access will

be expected to pay the reasonable costs of granting that access. People who seek access after the proceedings are over may find that it is not practicable to provide the material because the court will probably not have retained it and the parties may not have done so. Even if they have, the burdens placed on the parties in identifying and retrieving the material may be out of all proportion to benefits to the open justice principle, and the burden placed upon the trial judge in deciding what disclosure should be made may have become much harder, or more time-consuming, to discharge. On the other hand, increasing digitisation of court materials may eventually make this easier. In short, non-parties should not seek access unless they can show a good reason why this will advance the open justice principle, that there are no countervailing principles of the sort outlined earlier, which may be stronger after the proceedings have come to an end, and that granting the request will not be impracticable or disproportionate.

It is, however, appropriate to add a comment about trial bundles. Trial bundles are now generally required. They are compilations of copies of what are likely to be the relevant materials - the pleadings, the parties' submissions, the witness statements and exhibits, and some of the documents disclosed. They are provided for the convenience of the parties and the court. To that end, the court, the advocates and others involved in the case may flag, mark or annotate their copies of the bundle as an aide memoire. But the bundle is not the evidence or the documents in the case. There can be no question of ordering disclosure of a marked up bundle without the consent of the person holding it. A clean copy of the bundle, if still available, may in fact be the most practicable way of affording a non-party access to the material in question, but that is for the court hearing the application to decide.'

30. Finally on the case law, we mention the Court of Appeal in R v Legal Aid Board ex parte Kaim Todner[1999] QB 966 citation of Sir Christopher Staunton in *Ex Parte P*, 'When both sides agreed that information should be kept from the public that was when the court had to be most vigilant.'

The Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013

31. There are various rules in the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which provide context for the Guardian's application.

32. Under rule 59, any final hearing shall be in public, subject to rules 50 and 94. (Rule 94 refers to national security and does not apply in this case.) Under rule 67, again subject to rules 50 and 94, any judgment and written reasons must be entered on the Register. This is a public Register, which is available on-line and can easily be found by a google search.

33. Rule 50(1) states '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.'

34. Rule 50(4) states '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.'

35. Any such application can be made by a non-party after the claim has been decided. (Fallows v News Group Newspapers [2016] ICR 801, EAT.)

36. Rule 51 states, 'Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.'

37. Rule 44 says: 'Subject to rules 50 and 94, any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public attending the hearing unless the Tribunal decides that all or any part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection.'

38. The respondent also draws our attention to the Presidential Guidance – General Case Management (2018). Guidance Note 2 paragraph 15 says that the tribunal will need 5 copies of the trial bundle for a full Tribunal including '1 to be shown to the public or media, where appropriate'. Paragraph 17 says: 'Because it is a public hearing, the Tribunal will enable persons (including the press and media present at the hearing to view documents referred to in evidence before it (unless it orders otherwise).'

39. Paragraph 19 of Guidance Note 3 says that parties should bring 5 copies of their witness statements to the hearing if there is a full tribunal panel, ie 1 copy for the witness table, 1 for each member of the tribunal panel and '1 to be shown to the public and media, where appropriate'.

40. Paragraph 24 says 'Rule 44 provides that any witness statement, which stands as evidence in chief, shall be available for inspection during the course of the hearing by members of the public (that includes media) attending the hearing.'

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Conclusions

41. Throughout our deliberations, we have borne in mind the overriding importance of the open justice principle.

42. Given the conflict of Convention rights and other interests in this case, we have scrutinised each element. It is for the Guardian to explain how granting access to the documents will advance the open justice principle.

43. Having regard to the three matters of public interest identified in Mr Pegg's letter, we find that the reason for requesting access is to explore whether the Bank colluded with high-risk clients in breach of the UK's money-laundering

regulations. Although the Guardian's formal submissions of 12 March 2019 add that the public interest included questions of compliance with regulatory authorities as well as the Bank's handling of the dismissal, we do not accept the latter was the purpose. It was not referred to in Mr Pegg's letter and is referred to only briefly as an afterthought in the legal submission. The Guardian has therefore not satisfied us that its purpose relates to the treatment of the claimant.

44. The Supreme Court in Dring identifies two principal purposes of the open justice principle. In short, they are to hold judges to account and subject them to public scrutiny, and to enable the public to understand how the justice system works and why decisions are taken. The Guardian's purpose does not advance these purposes because it does not aim to examine the claimant's treatment (which was the subject of his claim) or the tribunal's investigation of that issue.

45. We bear in mind that, had Guardian reporters attended the hearing, they could have made any use of the information revealed as they wished. However, they did not attend, and now make an application based on the principle of open justice.

46. We do not go as far as saying the principle of open justice is not engaged at all. Dring contemplates there could be further purposes for the open justice principle, although there is no indication as to what these might be. Furthermore, it is possible that the Guardian might pursue avenues of exploration which are tangentially relevant to the claimant's treatment and his case. However, this is not a situation where a newspaper wishes to report on the case itself or on issues of treatment of whistleblowers for example. When put into the equation with conflicting rights and interests, the argument that granting access will advance the open justice principle is weaker than it might otherwise be when a request is made by the media.

Redaction and confidentiality

47. The Guardian requests disclosure of unredacted trial bundles and the names of the three anonymised individuals. We cannot now recall precisely what was redacted, save that it was to protect the confidentiality of Bank clients. It would have been the names of clients and possibly other confidential details. The three anonymised individuals were not Bank clients but they were associates of some clients. If their names were known, it would have been possible to identify certain clients. We do not know which clients or how many. As regards the anonymised individuals, as far as we can recall, we were given a key. We did not look at the key. In our view, the identity of the individuals and the identity of clients were entirely irrelevant. All that was relevant was that certain clients had high net worth, lived in certain geographic areas, had certain associations and sometimes fell into PEP categories.

48. As far as the tribunal recalls, no unredacted trial bundles were given to the tribunal and there was no key for the redactions.

49. The reason redaction and confidentiality were requested was to preserve client confidentiality. The request was unopposed. Nevertheless, the tribunal did give it some consideration. As the case-law cautions, the fact that the parties agree confidentiality might be reason for greater scrutiny. The tribunal did not rubber-stamp the requests for Rule 50 redactions. A request to keep confidential 'ex-employee 11' was also considered but in that instance, refused.

50. In its written submissions opposing the present application, the respondent confirmed that the anonymisation was to protect private information relating to the Bank's clients and other individuals where their identity was irrelevant to the decision. The Bank also had in mind obligations of confidentiality under regulatory requirements and the Data Protection Act.

51. We find that as well as the principle of open justice, arts 6, 8 and 10 of the European Convention on Human Rights are engaged. Under art 10, the Guardian has the right to freedom of expression including the right to receive and impart information. This is extremely important for a newspaper and the money-laundering matters it raises are certainly of important and legitimate public interest (even if they do not relate specifically to the open justice principle, which is a different point).

52. However, art 10 is a qualified right and can be subject to restrictions necessary for the rights of others or for preventing disclosure of information received in confidence. Art 8 is also engaged. This concerns the right to privacy of the Bank's clients and the third parties referred to.

53. We consider that the legitimate interests of the Bank's clients to their privacy outweigh the open justice principle and the Guardian's art 10 rights. We would have reached the same view even if we had expressed no doubts about the strength of the open justice purpose in this instance. It is perfectly possible to report on the case and the issues arising from the case, and to understand their import, without naming the clients or the three individuals. What mattered was that certain individuals were PEPs or PEPs by association. Their exact identity was irrelevant. It was their classification which mattered. This is why the tribunal did not read the key at the time of the hearing. The names were irrelevant.

54. Individuals are entitled to privacy about where they bank unless there are stronger countervailing reasons. The Bank's clients (and the third parties) were not parties or witnesses in the tribunal proceedings.

55. For these reasons alone, we decline to lift the Rule 50 order redacting the names of clients and the three third parties. We add that, as well as their own rights, identifying the three third parties would identify certain clients.

56. There is a further reason why we would not order disclosure of unredacted trial bundles. This is that, as far as we can recall, we were never given unredacted bundles at the hearing.

57. A further concern we have is that we are unable to say at this stage what information would be revealed about each and every client from the relevant documents were they unredacted. Removing the redactions would reveal they were clients of the Bank, which in our view is sufficient to engage confidentiality. But it might also reveal other information, such as how much money they held or what sums were paid in and out and when. The only way to know the significance of unredacting documents would be to go through every redacted page. This would require at least one further hearing and would be very time-consuming. It simply is not proportionate at this stage. The tribunal has already had to deal with correspondence on this after conclusion of the case. The three-person panel has devoted two and a half days. The respondent has prepared and provided a number of detailed written submissions. Had the Guardian attended the hearing and made its request at that time, it would have been far easier to assess exactly what information would emerge regarding the private concerns of each client.

58. Finally we mention that the Bank's own commercial interests in holding the names of its clients confidential and being known to be reliable in this respect would be a further reason against lifting the Order.

Disclosure of documents

59. We now consider whether to grant the Guardian's application to disclose the various categories of documents (set out at paragraph 8 above), albeit still in their redacted form. Apart from an additional point on the trial bundle, our reasoning applies to all the categories.

60. A big concern here is that the request was made after the proceedings had concluded and that the tribunal no longer holds any documents apart from the ET1 and ET3. This would mean making an order for disclosure against the respondent (the claimant says he has not retained hard copies) many months after the case has ended.

61. The Guardian did not apply for disclosure until roughly 6 weeks after the judgment was sent out and four months after the last day of the hearing. It is now 6 months since the last day of the hearing. It is true that the delay in dealing with the application has in part been due to tribunal availability, but some time lapse in dealing with applications is to be expected. Moreover, it was only logical to await the outcome of the Supreme Court decision in Dring.

62. Had the Guardian attended the original hearing and made its requests then, it would have been far simpler. Facilities are available for journalists to attend and see all the documents referred to. We appreciate that the Guardian may not have resources to attend every hearing, but we are in a more difficult situation now where an Order would have to be made against the respondent.

63. The respondent would have to retrieve the papers, identify clean copies, identify the categories of document ordered and supply them to the Guardian. It would have to calculate the copying costs, which the Guardian has

undertaken to cover. It would be entitled to request the costs of legal supervision of the exercise. The tribunal could order this, but in turn the amount might become the subject of dispute.

64. Regarding the trial bundle, the tribunal did not at the hearing read the entire bundle. That would not be usual in a lengthy employment tribunal case where bundles are nearly always prepared prior to witness statements and frequently contain many hundreds of pages of irrelevant or unnecessary documents which are never referred to. We cannot now say which documents we did read other than those explicitly referred to us by the parties during evidence or set out by us in the judgment. If we were to order disclosure of only those documents referred to in the judgment, there is then the additional task, falling on either the respondent and/or the tribunal of identifying the page number of the documents referred to and highlit by the Guardian.

65. When weighed against the principle of open justice, we believe this is disproportionate. The case was heard in open court. There was a very detailed judgment. Other newspapers were able to make reports at the time. Media and other third parties were free to attend, listen and take copies. It is now more than 6 months after the hearing concluded and three months since the judgment was sent out.

66. We have mentioned why we do not believe the principle of open justice is powerfully engaged by the purpose of the Guardian's application. But even if we are completely wrong on that and it is a strong factor, we still think an Order against the respondent now would be disproportionate for the reasons given above.

67. Nevertheless, the tribunal does hold the ET1 and ET3 on file. It is not unduly onerous for the tribunal to make a copy of these two documents and send them to the Guardian. No redactions appear necessary to us and in any event, this is the form in which these pleadings appeared in the trial bundles. Copies of these documents will be sent to the respondent by separate letter.

3/1/20

Employment Judge Lewis

Sent to the parties on: 9/1/20

For the Tribunals Office