

Can you protect the identity of employees who are named in Employment Tribunal proceedings?

written by Craig Upton
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In the recent case of Dr Piepenbrock v London School of Economics and Political Science the EAT made an anonymity order to protect the identity of a non-party and non-witness to the proceedings who was the subject of false, lurid sexual allegations.

What happened in this case?

Dr Piepenbrock was a fellow of the LSE. In 2012 he was in the US delivering lectures, accompanied by a much younger female colleague who was referred to in the Employment Tribunal and EAT proceedings as "Ms D". Ms D went on to make a complaint of sexual harassment against him. In turn, Dr Piepenbrock alleged that Ms D had made sexual advances towards him, was stalking him and had exposed herself to him.

Dr Piepenbrock went on sick leave with anxiety and stress for 20 months and his fixed-term contract was not renewed in 2014. He subsequently brought claims in the Tribunal for unfair dismissal, victimisation and discrimination arising from disability and also High Court claims for personal injury and defamation.

Dr Piepenbrock made an amendment application in the Tribunal to add new claims. This was refused. He then appealed to the EAT and lodged various documents which included the allegations he had made against Ms D (including some in which she was named).

The EAT dismissed Dr Piepenbrock's appeal but decided that an application made by the LSE for an order to prevent the

disclosure to the public of Ms D's identity should be heard separately. Ms D was not a party to the proceedings, nor a witness to the appeal to the EAT, but she had given evidence on behalf of the LSE in the Tribunal. An interim order was made to preserve Ms D's anonymity in the meantime.

Before the EAT heard the anonymity application, the Tribunal dismissed all of Dr Piepenbrock's claims against the LSE. The Tribunal's judgment concluded that he was not a reliable or credible witness, that Ms D had not made any sexual advances towards him, and the allegations made against Ms D were untrue and Dr Piepenbrock had made them maliciously. Ms D was anonymised in the Tribunal's judgment.

What was decided?

An indefinite anonymity order was granted in order to preserve Ms D's right to a private life under the European Convention of Human Rights. This was the result of a balancing exercise in which the EAT also considered the fundamental principle of open justice, Dr Piepenbrock's right to a fair trial, and the right to freedom of expression. The EAT held that if Ms D was named in a judgment Dr Piepenbrock would be very likely to use any document associated with the appeal to "name and shame", vilify and harass Ms D and would not stop doing so voluntarily.

The EAT accepted Ms D's evidence in the Tribunal that she had been traumatised by Dr Piepenbrock's actions and would continue to suffer if her identity was published. The EAT held that he would use the court process in a way that was an abuse of the system and contrary to the interests of justice.

What does this mean for employers?

While this case shows that the principle of open justice can be outweighed by other rights, and courts will grant anonymity orders, the facts were at the more extreme end of the scale.

The EAT clearly had concern for the potential impact on Ms D

if it was not ordered based on Dr Piepenbrock's conduct and his desire to expose her. Employers may be able to protect the identity of third parties in Tribunal proceedings, but this is not a given. The court will undertake a balancing exercise and the decision will be dependent on the facts.

[Dr Piepenbrock v London School of Economics and Political Science](#)

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Senior Associate Theo Nicou (theo.nicou@bdbf.co.uk), Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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