

# What happens when vexatious litigants try to bring claims?

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*Williamson v The Bishop of London and others* [2023] EWCA Civ 379

## Powers to stop vexatious litigants

1. **Civil Proceedings Orders** ('CPOs') are orders made against vexatious litigants which stop them from bringing any proceedings, in any court or Tribunal, without the permission of the High Court. The power exists in s42 Senior Courts Act 1981 and they are the widest and most draconian of orders that can be made against such litigants. CPOs perhaps surprisingly, can be indefinite.
2. They are to be contrasted with **Civil Restraint Orders** ('CROs') under Rule 3.11 CPR (see also Practice Direction 3C) which are more limited. They can be restricted to individual courts ('limited'), groups of courts ('extended') or all county courts and the High Court ('general'). They last a maximum of three years before they need to be renewed. Despite not being specifically mentioned in the CPR, CROs can cover the Employment Tribunal - *Nursing and Midwifery Council and anor v Harrold* 2016 IRLR 30, QBD.
3. There are also specific provisions relating to the Employment Tribunal ('ET'). Under s33 Employment Tribunals Act 1996, the EAT (*not* the ET itself) can make **Restriction of Proceedings Orders** ('RPOs'). These prevent an individual from bringing or continuing with claims in the ET without permission from the EAT to do so. The test is that an individual must have habitually, persistently and without any reasonable ground either instituted vexatious proceedings or made vexatious applications in the ET or EAT. There is no limit to the duration for which an RPO can be made. RPOs have to be applied for by the Attorney General.
4. The case of *Attorney General v Groves* EAT 0162/14 also notes that vexatious litigants can often be ignored by Defendants to general civil claims, but in the employment context,

this is not so easy, as they can continue to apply for jobs and then claim victimisation if they do not succeed. Therefore there is even more reason for a mechanism such as RPOs to prevent serial litigants in the ET. See also *Attorney General v Taheri* [2022] EAT 35.

## Rev Williamson

5. The Appellant, Rev Paul Williamson, was the subject of an unlimited CPO issued in 1997. Under the order, he was not permitted to bring any civil proceedings at all without first applying to the High Court, which would only give permission if the claim had reasonable grounds and the claim was not an abuse of process.
6. In April 2019, Rev Williamson issued a claim for age discrimination in the ET. The ET set down a preliminary hearing to determine whether proceedings could continue given that no permission had been given. Before that hearing took place, Rev Williamson sought and got permission from the High Court to bring the discrimination claim. However, this was of course after he had issued the claim in the ET.
7. The question for the ET was whether or not the permission of the High Court could be applied retrospectively to a CPO or whether it made the proceedings a 'nullity' as if they had never been issued. The ET decided they were indeed a nullity. Rev Williamson therefore issued another claim. This was not a nullity as it was presented after permission had been given by the High Court, but because this was not presented until nine months after the first claim, it was considered out of time and dismissed.
8. Rev Williamson appealed to the EAT on the question of whether the ET had correctly found the first claim to be a nullity. Eady P noted that he had failed to get permission to bring the appeal, and therefore the EAT proceedings were also a nullity. However, she did in fact decide the appeal and dismissed it, finding that the CPO was a substantive barrier to the institution of proceedings and therefore that the original proceedings were a nullity.
9. The appeal came to the Court of Appeal. It found that it is well established that courts '*may regulate their own procedures to prevent abuse and that this entails that the right of access to the courts may be subject to restriction, provided always that this does not reduce the access that remains to the individual to such an extent that the very essence of the access right is impaired; and provided that any restriction pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.*' The ECJ had already found that CPOs can be justified, proportionate and compatible with Article 6 of the ECHR (*Attorney General v Covey* [2001] EWCA Civ 254).

10. The Court considered that permission of the High Court is a condition precedent to the institution of proceedings. It found that the whole point of CPOs is to avoid the unnecessary waste of costs and the time and resources of the courts. It neatly described vexatious litigants as those '*who are as often as not motivated more by a desire to enjoy the oxygen of the legal process than any desire for or expectation of redress from it*', and noted that a CPO is aimed at those vexatious litigants who bring claims '*habitually and persistently, without any reasonable ground*'.
11. With that background, the Court decided that the CPO is intended to be a filter, and that this would not work if retrospective permission were allowed as it would lead to courts, tribunals and respondents to have to respond to claims. It would also mean that others (such as Respondents) would have to take the initiative to raise the question of permission.
12. The appeal was therefore dismissed.

## **Analysis and recommendations**

13. This claim confirms for the first time at Court of Appeal level that there are very strict rules when it comes to CPOs. However, it also is a useful reminder to check whether individuals may have such orders in place against them. The Tribunal may well not be aware of such orders and therefore if there is any indication that a claim may have been brought by a vexatious litigant, it is worth searching on <https://www.thegazette.co.uk/all-notices> to see if the individual has had a previous CPO against them<sup>1</sup>. Although the Notice Code pertaining to CPOs is '2301' (a term which can be searched), it is worth doing a text search for the individual's name and 'civil proceedings order' as the Notice Code alone may bring up too many results. Ironically, despite the Court of Appeal noting that Respondents always have the means available to discover if someone is the subject of a CPO, Rev Williamson's CPO is very difficult to find!
14. If a client receives multiple claims from the same individual or otherwise has evidence that they are a vexatious litigant, a CRO can be applied for in the civil courts. Otherwise, the client can request that the Government Legal Department investigates on behalf of the Attorney General with a view to making an application such as an RPO or a CPO. Of course, the Attorney General may do this of its own accord if alerted by a court or tribunal.

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<sup>1</sup> For CROs, <https://www.gov.uk/guidance/civil-restraint-orders--2> provides links to an updated list of general and extended CROs currently in force.

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