

**IN THE LONDON SOUTH  
EMPLOYMENT TRIBUNAL**

**CASE NUMBERS: 2318353/2010N**

**2330171/2010/N**

**2300254/2011B**

**BETWEEN:**

**Ms AA Vaughan**

Claimant

-and-

**London Borough of Lewisham, Babcock Education and Skills Limited  
and Others**

Respondent

**MAIN HEARING**

---

**SUPPLEMENTARY WITNESS STATEMENT OF AYODELE ADELE VAUGHAN**

---

I, Ayodele Adele Vaughan of, CENSORED, make this statement in support of my claims to the tribunal dated April, July and December 2010:

January 2011

1. By 5 November 2010 LBL was aware that legal proceedings had been issued against CEL (**at page 1935- 1937 & 1943 - 1944 of the bundle**). Standard clauses for all public authority contracts require the contractor not to

discriminate unlawfully **(at pages 2064 – 2082 of the bundle)**. CEL had breached its contract with LBL by doing exactly that.

2. With regards to the second OH consultation that I was instructed to consent to, Beverley Bannister asked me to choose from three OH companies, **(at page 2426 of the bundle)**. I responded and Beverley Bannister confirmed receipt of this **(at pages 2427 – 2428 of the bundle)**. My employer contacted me by e-mail on 7 January 2011 to offer me an OH appointment **(at page 2429 of the bundle)**. The earliest appointment was 13 January 2011 so I took this.
  
3. **On 10 January 2011** I e-mailed Benjamin Craig, copying in Beverley Bannister, Ethel Punter and Alex Khan **(at page 2430 of the bundle)**, to enquire about why I had been sent the 2006 Prospects Sickness Absence Procedure which had attached an e-mail from Ethel Punter's personal e-mail address dated 12 August 2009, with an overview of the 'Mental Capacity Act', which deals with the assessment of a person's capacity and acts by carers and people working with those who lack capacity. I expressed my concern and the fact that I was offended this. I requested an explanation.
  
4. **On 11 January 2011** received a copy of the OH referral letter, which was actually a 'pack' **(at pages 2431 – 2433 of the bundle)**. My employer had also included in the referral to the occupational health company 'Preventative Healthcare Co Ltd', copies of both my ET1's (over 100 pages) and copies of e-mail correspondence between myself and CEL, which together totalled over 145 pages. This act clearly demonstrates the respondents' motivation, showing that I was discriminated against because I brought legal proceedings. I was deeply distressed and alarmed by this, so much so that I

telephoned the OH company to advise them that I had been misled about the nature and purpose of the referral and I expressed my concerns. The manager that I spoke with, Ms Jane Puncher, stated that even though she had not seen the referral pack, that the consultant that would be seeing me would read it, but I should not be concerned by this. She did not see it as a problem and was not at all sympathetic to my concerns or distress.

5. In addition to this, she advised me that if I did not consent to a medical examination or the disclosure of my full medical records, the consultant would terminate the consultation. I was surprised and alarmed by this revelation, as I had advised her that my employer had already made it clear in the referral letter and that an appointment had still been arranged in light of this fact. She was adamant that this was the terms of the service and refused to acknowledge what I had informed her. I became too upset to continue the conversation and advised her that it would be better if she discussed the matter with my employer.
  
6. Following my conversation with Ms Jane Puncher, I e-mailed Beverley Bannister, copying in Benjamin Craig and Alexander Khan, to inform them about what had transpired and why it concerned me **(at page 2438 – 2439 of the bundle)**. I requested that the company identify an alternative role for me, as they had made no attempt to do so as yet and I was suffering financial loss whilst I waited for them to finish making their enquiries. I followed this e-mail up with another shortly after **(at page 2443 of the bundle)**, advising them of my concerns. Benjamin Craig also e-mailed me on 11 January 2010 to advise me that why he had sent me the Mental Capacity Act **(at page 2440 of the bundle)**.

7. It is important to note that the referral letter indicated that my employer was not aware of the reason for some of my absences. My employer has a duty to maintain records of workers' absences. In relation to sick leave, this is a legal requirement under the Statutory Sick Pay (General) Regulations 1982.
  
8. **On 12 January 2011**, I received a letter from my employer informing me that it believed that Lewisham staff would be transferred to Lewisham council and that from the end of March 2011 **(at pages 2441 – 2442 of the bundle)**, they would no longer have the Connexions contract.
  
9. At 12:05 pm, I e-mailed my line manager Benjamin Craig, copying in Beverley Bannister and Alex Khan, **(at page 2444 of the bundle)** attaching a copy of another GP 'fit note' which indicated that my GP had assessed me as being able to work from 9th December 2010, recommended 'reasonable adjustments' and provided comments relating to the fact that I am not suffering from any significant condition(s) that would prevent me from carrying out my role.
  
10. At 12.18pm Beverley Bannister e-mailed me **(at page 2445, 2446 & 2446a of the bundle)** advising me of the reason why CEL had deviated from normal procedure with regards to her making the OH referral, instead of Babcock HR. It is important to note that she failed to make a referral for me in November/December 2009, and the company unreasonably delayed the referral, stating that it was Adam Buckby was unable to do it due to work constraints. Beverley Bannister stated that if I did not attend the appointment or if I refused to consent to the disclosure of my full medical records and/or an examination (if the OH consultant felt that this was required), I would face disciplinary action and possible dismissal).

11. At 1.10pm, I responded to her e-mail expressing my disappointment at the company's response. I advised her that I believed that the letter constituted harassment, victimisation and discrimination and emphasized that any subsequent decision by the company to invoke disciplinary action and/or dismiss me would also be viewed in the same light and would result in further legal action. I stressed that I did hope that the matter could be resolved amicably and that any further legal action could be avoided and advised her that I would be forwarding my e-mail to PHC for their information.
12. Acas's guidelines (**at page 2328 of the bundle**) clearly state that an employer should only ask an employee to consent to a medical examination if they have reasonable doubt about the nature of the illness. My employer did not have reasonable doubt, as they had received a fit note from my GP stating that I was not suffering from any condition that would prevent me carrying out my role.
13. **On 13 January 2011**, I attended my appointment with Dr Mason. I was chaperoned by my friend Tanya Davis. Dr Mason did not feel that it was necessary for me to consent to the disclosure of my full medical records or a full physical examination. He advised me that he believed that I was fit enough to return to work and informed me of the recommendations that he would be making to CEL. In addition to this, Dr Mason advised me that Clive Dobbin from 'Paris Smith' Solicitors (and not CEL) had asked PHC to see me and he referred to the letter sent from Clive Dobbin. I was shocked and angered by this; however, I managed to conceal these emotions from him and decided against raising the issue with him. I felt that it would be more appropriate to raise the matter with my employer.

14. I had raised the issue of my employer's failure to conduct a risk assessment on several previous occasions (including whilst I was still of sick), but each time I raised this issue it was ignored. A proper assessment is a necessary part of the duty to make reasonable adjustments. On 18 January 2011 I received a copy of Dr Mason's report and I sent an e-mail to Beverley Bannister, (copying in Alex Khan and Benjamin Craig), **(at pages 2447 – 2448 of the bundle)**, I requested a copy of the letter from Clive Dobbin, asked for the company to confirm that I will now be paid at full rate and for an alternative role to be identified for me to do in the meantime. I also asked for a return to work meeting to take place as soon as possible.

15. I assumed that the risk assessment would be undertaken/reviewed during the return to work meeting.' Beverley Bannister unreasonably delayed responding to my e-mail. She had been in regular contact with other staff by e-mail since receiving my e-mail to her on 18 January 2011, whilst ignoring my e-mail to her **(at pages 2450, 2450a, 2451, 2453, 2454, 2455, of the bundle)**. She finally responded to my e-mail on 21 January 2011**(at page 2456 -2456a of the bundle)** after receiving my follow up e-mail on that same day **(at page 2452 of the bundle)**, without offering a explanation for the delay.

16. Beverly Bannister advised me that she had set up a meeting for me, Benjamin Craig and Michelle Naylor (HR manager) on 25 January 2011 at 11am at the Babcock offices. She informed me that I would have to remain on sick leave until a risk assessment had been undertaken and adjustments have been agreed . She did not provide me with a copy of the letter that Clive Dobbin had sent to the OH company and failed to answer a direct question I had asked regarding clarification of how my medical information would be

used and why. She asked me to confirm that I would attend the meeting on 25 January 2011 **(at pages 2456 – 2456a of the bundle)**.

17. I was alarmed, distraught and angry that my employer was directing me to go to Babcock PLC offices for my return to work meeting. This was clearly inappropriate and insensitive. My employer was not interested in creating a working environment that allowed me to feel comfortable when talking about my disability and long-health condition. This was not the first time that my employer would behave in this manner. When I was attempting to make arrangements for my appeal hearing in April/May they had refused Tony Smith's request for the venue of the meeting to be changed to Lewisham, so that he would be able to accompany me and I would not have to have a rep that I did not know **(at pages 2056 – 2057 of the bundle)**. I know that other members of staff have been permitted to have their appeal heard in Lewisham **(at pages 1860 – 1861 & 606 of the bundle- point 8.21b)** and Michelle Naylor was spending some time at the Lewisham office anyway **(at page 2451 of the bundle)**.

18. Later that afternoon I responded Beverley Bannister's e-mail, (copying in Benjamin Craig and Alex Khan), **(at page 2456b of the bundle)**. I outlined my concerns and advised her that I would prefer the meeting to take place at the Lewisham office. I confirmed that I would attend.

19. I was so worried and distraught about the prospect of having to go to Babcock offices, by being bullied into submission, that the following day (22 January 2011), I e-mailed several Babcock managers (Alex Khan- MD, Sasha Chaudri- HR Director and Fiona Hawkesley- Babcock Operations MD), **(at pages 2457 – 2458 of the bundle)** to outline my concerns further and asked

them to direct Michelle Naylor to attend the Lewisham office for the meeting instead and permit me to be accompanied by a friend.

20. **On 17 January 2011** the respondents contacted the ET (**at page 644 of the bundle**) requesting a stay of proceedings and raising the issue again of limiting the scope of my claims even further. They also requested that claim number 2300254/2011 be consolidated with claims 2318353/2010 and 2330171/2010 and that proceedings be 'stayed'. This was contrary to what they had requested in November 2010- to have the claims heard separately over two hearings, (**at pages 1977 – 1979 of the bundle**).

21. **On 24 January 2011** I telephoned my line manager Benjamin Craig to confirm that he had received my e-mail and that the meeting would be taking place at the Lewisham office and that I could bring a friend along with me. My friend was with me when I spoke with him and I had him on speaker phone. Tanya Davis's witness statement corroborates this. He advised me that he needed to check that this was okay with the relevant people and that he was not sure that I would be allowed to bring a friend along as it was his understanding that the purpose of the meeting was to do a risk assessment. He informed me that he would e-mail me to advise of the outcome once he had consulted the relevant people.

22. I followed up that conversation with an e-mail (**at pages 2460- 2464 of the bundle**), again outlining my concerns and attaching an agenda for the return to work meeting, a copy of my existing Individual Risk Assessment and relevant HSE guidelines. I asked him to confirm asap that the meeting will go ahead at the Lewisham office tomorrow at 11am and that I will be able to be

accompanied by a friend. I copied Beverley Bannister, Alex Khan, Michelle Naylor and Fiona Hawkesley into the e-mail as well.

23. Immediately after sending the e-mail I realised that Benjamin Craig had already e-mailed me **(at page 2459 of the bundle)**. In his e-mail he stated that he was happy for the meeting scheduled for tomorrow to take place at the Lewisham office and that I am accompanied by a friend. He told me that the purpose of the meeting would not be to do a risk assessment, but to discuss with me the contents of the occupational health report, and agree with me the process going forward. He advised me that if I would prefer to postpone the meeting tomorrow, and instead just come in for the risk assessment meeting to be scheduled, then I should let him know. He stated that the company was trying to find the appropriate person to undertake the risk assessment '*in light of the length and reason for my absence*'. This indicates that I was subjected to this treatment and treated less favourably and victimized because of a reason arising from my disability. I was so angry and frustrated after reading the e-mail and distressed by my employer's conduct.

24. This response indicates that the respondent did not view my return to work in a positive light and viewed my return to work as unusually problematic. The paragraph further states that I had indicated on several occasions since my return to work that I felt unable to work with any of CEL's staff. I have never stated this. There is no evidence in the bundle to support this. The company states that it is for this reason that they felt it necessary to obtain a detailed OH report and conduct a risk assessment. The company's OH referral and the subsequent risk assessment did not deal with this alleged issue at all. I was never informed by my employer at the point of my referral of this alleged

issue and the company was duty bound to do a risk assessment anyway, it is illogical to me for someone to assert that this alleged issue would be a 'reason' to undertake a risk assessment.

25. I responded to his e-mail (**at page 2465 of the bundle**), reminding him of the advice that he had given me over the phone only half an hour before, (which contradicted what he was now stating in his e-mail). I stressed the fact that I was extremely disappointed with the way that the company was dealing with my return to work and continuing to unreasonably delay the process, which was having an impact on me financially and impacting on my health and the company had failed to remedy the situation. I asked my line manager why Michelle Naylor (HR manager) or Margaret Jones would not be able to carry out the assessment and why the company has failed to identify any other suitable member of staff to carry out the assessment since receiving the OH report last Tuesday. I concluded my e-mail by asking the company to provide me with a deadline (date) by which the meeting should take place.

26. Some hours later Benjamin Craig responded to my e-mail (**at page 2466 of the bundle**). I did not see this e-mail until after 4pm, as I was out for the day with a friend. He advised me that I would be able to be accompanied by a friend at the meeting and that this would take place at the Lewisham office. He failed to answer the direct questions that I had put to him regarding the failure to identify someone to undertake/review the risk assessment and he did not give me a date by which the meeting should take place. I was able to speak to him on the phone at around 5pm. We agreed that it was more sensible to have one meeting where everything could be addressed together. I confirmed this by e-mail as well. Tanya Davis' testimony also corroborates this.

27. **On the morning of 28 January 2011**, I accessed my work e-mail and saw that Michelle Naylor had contacted me the previous day to inform me that a meeting had been arranged for 31 January 2011 at 12.30pm with Babcock's head of health and safety John Bacon **(at page 2467 of the bundle)**. I was surprised and intimidated by this, as this was not in line with normal procedure. I responded to her e-mail **(at page 2467 of the bundle)**, (copying in Benjamin Craig), asking her to confirm that my line manager would be in attendance. I followed this up with a call to my line manager, who explained to me that he was not aware that this meeting had been arranged, but that he would be happy to attend. I asked him if he could confirm this in writing (via e-mail) and he agreed that he would do this. However, by the afternoon, neither Benjamin Craig nor Michelle Naylor had got back to me, so I decided to send an e-mail to the operations manager Hugh Haughian, (copying in Benjamin Craig and Michelle Naylor), asking him to respond to my e-mail regarding my return to work meeting **(at page 2469 of the bundle)**.

28. An hour later Michelle Naylor sent me an e-mail **(at page 2470 – 2471 of the bundle)** informing me that my line manager would not be attending and that I would now have to attend two meetings instead of one. I was devastated by this news. The company had gone back on what had been agreed and I was extremely upset and stressed out because this now meant that my return to work would be further delayed. I responded to the e-mail **(at page 2472 of the bundle)**, (copying in Benjamin Craig, Hugh Haughian, John Bacon, Alex Khan and Fiona Hawkesley). I expressed my disappointment/concerns and emphasised the fact that I would prefer to have my line manager attend the meeting. Both Benjamin Craig and Michelle Naylor denied any knowledge of the company ever having agreed to only one meeting for my return to work.

29. I sent a further two e-mails to advise the company who would be accompanying me to the meetings and that if possible to give me three days notice of the second meeting, but failing this I would still be able to attend at short notice. This was acknowledged **(at page 2473 of the bundle)**
30. **On 31 January 2011** I attended my risk assessment meeting with Mr Cliff Obaseki, Michelle Naylor and John Bacon. My manager was also in the office, but he was not permitted to attend the meeting, even though I raised this as an issue again during the actual meeting. John Bacon explained his role and asked me to explain my own. He was not aware of my individual risk assessment or circumstances. He informed me that he did not believe that there were any health and safety issues that would prevent me from returning to my normal job role.
31. John Bacon advised me that he would e-mail my updated risk assessment the following day and Michelle Naylor informed me that another meeting would take place with her and Benjamin Craig before the end of the week, which would be to agree the reasonable adjustments and incorporate the medical advice that the company had received into my individual risk assessment. She confirmed that both she and Benjamin Craig would be able to make the final decision(s) at this meeting. After the risk assessment meeting I e-mailed the notes to the meeting (including what had been agreed), to Benjamin Craig, Michelle Naylor, John Bacon, Hugh Haughian, Alex Khan and Fiona Hawkesley **(at pages 2476 – 2477 of the bundle)**. Not one of these individuals acknowledged the e-mail.

32. On this same day (31 January 2011), the Employment Tribunal ordered the respondent party to respond to my new claim and apply for a stay of proceedings at the next PHR/CMD.

#### February 2011

33. On 1 February 2011 I did not receive my updated individual risk assessment.

**On 2 February 2011** I e-mailed Benjamin Craig, Michelle Naylor and John Bacon, (copying in Hugh Haughian, Alex Khan and Fiona Hawkesley), requesting that this be e-mailed to me by the close of business that day and that the company confirm whether the return to work meeting with Benjamin Craig and Michelle Naylor would take place the following day or Friday 4 February 2011 **(at page 2483 of the bundle)**. I also asked the addressees to confirm receipt of my e-mail and action what had been agreed.

34. Later that morning I was contacted by Michelle Naylor **(at page 2484 of the bundle)**. She advised me that she had arranged the meeting with herself and Benjamin Craig to take place on Friday 4 February 2011 at 11am. The individual risk assessment that John Bacon had drafted was also attached to this e-mail **(at pages 2478 – 2482 of the bundle)**. I responded to this e-mail, (copying in Benjamin Craig, Hugh Haughian, Alex Khan and Fiona Hawkesley), confirming that I would attend with a friend and that I hoped that I would be able to return to work the following Monday because the continued delays were causing me financial hardship and stress **(at page 2484 of the bundle)**.

35. Later that evening I decided to look at the actual individual risk assessment. I was horrified to discover that John Bacon had failed to use the correct form

and had also failed to assess the level of risk. I sent two further e-mails to the company expressing my concern and asking this to be addressed **(at page 2486 & 2488 of the bundle)**. Benjamin Craig, Michelle Naylor, John Bacon, Hugh Haughian, Alex Khan and Fiona Hawkesley were all copied into the first e-mail and only Benjamin Craig and Alex Khan were copied into the second e-mail.

36. **On 2 February 2011, (at page 2487 of the bundle)**, the respondent submitted its ET3 and requested again that my new claim be consolidated with my previous two claims, (which they had been attempting for some time to narrow the scope of and put on hold and have heard over two separate hearings).
37. **On 3 February 2011**, Jackie Boyd (a work colleague) and Unison sent staff correspondence regarding their Freedom of Information Requests responses from Lewisham Council in relation to its alleged failure to comply with its equality obligations in relation to the service users and the decision to close the Connexions service **(at page 2489 - 2492a of the bundle)**. Following these revelations, the unions also attempted to seek a judicial review of LBL's decision to close Lewisham Connexions
38. **On 4 February 2011**, I attended my return to work meeting with my friend Tanya Davis. During the meeting, the risk levels were assessed by Michelle Naylor and Benjamin Craig. This demonstrates the fact that the risk assessment and return to work arrangements could have been dealt with in one meeting, rather than two, as it was clear that both Michelle Naylor and Benjamin Craig were able to assess undertake the assessment and assess the risks. During this meeting I was informed that I would receive full pay for

February and that the company would backdate my full pay to 9 December 2010. The company had never advised me before the meeting that they would be prepared to backdate my full pay, and as such I asked Benjamin Craig who had made the decision to do this. He declined to tell me.

39. I highlighted the fact that there was a discrepancy between what I had been told by the company's solicitors and what Benjamin Craig had informed me, in relation to my annual leave entitlement. I was informed that I could return to work on Monday 7 February 2011. After the meeting I sent an e-mail to Benjamin Craig, Michelle Naylor and Hugh Haughian clarifying what had been discussed and agreed and asking the company to confirm details about my annual leave entitlement and my pay **(at pages 2493 – 2494 of the bundle)**.

40. Michelle Naylor then sent me an e-mail in response and attached my complete Individual risk assessment to her e-mail **(at pages 2495 – 2501 of the bundle)**.

41. **On 7 February 2011** I was finally allowed to return to work. I also had a 1-2-1 with my line manager Benjamin Craig on this day **(at pages 2502 of the bundle)**.

42. My supporting evidence (dated between January and February 2010) is materially relevant to the issues to be tried and reference to it is already in the public domain, having been made reference to in the mine and the Respondents pleading, my schedule of claims, the questionnaires and responses, and several of the Respondents witness statement, which are in the trial bundle.

43. For example, I have alleged the following:

- a) The respondents' failed to pay me properly from December 2010 – **schedule of claims**, (this remained a failure until I was paid at the end of February 2011; and
- b) A failure to permit me to return to work following my sickness absence which began in May 2010- – **schedule of claims**, (this remained a failure until I was permitted to return to work on 7 February 2011); and
- c) My employer had no genuine interest in supporting me to return to work and is trying to get rid of me: allegations dated 13 August 2010, and November – December 2010 (at pages 1828 – 1829, 1832 – 1833, 1888);

44. My line manager and Michelle Naylor (HR) made a joint decision regarding whether or not to approve my return to work in February 2011, following a meeting with them which took place on 4 February 2011- this directly relates to the claim pleaded in claim number **2300245/2011**, concerning the my claim that my employer prevented me from returning to work following my sickness absence which began in May 2010. This contradicts the assertion made in the Equality form response, - *points 8.2 (b) and (c)*, which the respondent goes on to say that the issue of how HR staff (Babcock Education and Skills LTD) are managed is not relevant to the appellants claim of disability discrimination. I believe that the question will help determine how much or how little control my employer had over this third party- who is a respondent in this case which is denying liability.

45. The state of affairs that I have set out in my witness statement should be regarded as extending over a period, (post-December 2010), and so treated

as done at the end of that period, because Respondents maintained and kept in force a discriminatory regime, rule, practice or principle which had a clear and adverse effect on me. I will need to rely on the supporting evidence to demonstrate/prove these claims. The unlawful discrimination that I was subjected to amounted to 'conduct extending over a period'.

46. The supporting evidence of similar facts, are proven facts/ reasonably conclusive and not unsubstantiated allegations. The supporting evidence is relevant and particularly of assistance to me in the case that I am putting, that the respondents have a tendency to discriminate. It also demonstrates motivation.

### CONCLUSION

47. All of my supporting evidence has a potential to shed some light upon the culture that I suggest. The issues are in dispute and therefore if the supporting evidence assists the Tribunal in the difficult task of determining such issues of fact, the tribunal should add weight to it and my supplementary witness statement.

48. The Respondents' had received no training in respect of either the provisions of the DDA/EA or practice and procedure in managing disability. My employer failed to educate all employees on discrimination, diversity and equality, its policies and procedures was not supplemented by adequate training and monitoring for all employees;

49. It is clear that the respondents' had made generalised and stereotypical assumptions about me. I had provided a GP 'fit note' and then in addition to

that I also provided an independent OH report, therefore they had no reason to believe that I posed any 'risk' when I attempted to return to work on 9 December 2010. Under the Equality Act 2010 and in accordance with paragraph 4.28 of the Employment Code, '*the health, welfare and safety of individuals may qualify as legitimate aims provided that risks are clearly specified and supported by evidence*'. The Respondents' did not possess any evidence to proving that there were any risks, nor did they have any reason to believe that this was the case.

50. Even after they received two independent OH reports they still refused to allow me to return to work, they would not even consider assigning me an alternative role in the interim. The Respondents' would not have engaged in this course of conduct and made stereotypical assumptions on my ability to do my job, nor would it have been so quick to rush to judgment without proper consideration of all the relevant circumstances, had I not been disabled, requested 'reasonable adjustments', made protected disclosures, brought legal proceedings and threatened further legal proceedings.

51. Another employee who had a similar sickness record in respect of, for example, a complicated broken bone or other surgical problem, and who had not done protected acts, would not have been subjected to the same treatment.

52. My work colleague Cathy Robinson had also been off sick leave for quite a long time during the period that I was off sick. However, Cathy was allowed to return to work without having to see an OH consultant and 'reasonable adjustments' were also made for her straight away (she has a physical

disability), with just a recommendation from her GP whereas in case my GP's and the OH consultants recommendations were deemed unacceptable.

53. When making enquiries about disability (particularly in relation to the actions of Amanda Duckett, Beverley Bannister, Benjamin Craig and Andrea Ward), the respondents' should have considered issues of dignity and privacy- (the Equality Act 2010, **Sch. 8, para 20(1)(b)**), they did not.

54. The Respondents engaged in a course of conduct which was unlawful. Instead of making adjustments the Respondents refused to and chose instead to continuously bully, intimidate, victimise and harass me. It is the recognition of this, inevitable state of affairs on the facts of this case that should lead the Tribunal to regard it as self-evident that I was treated less favourably than others.

55. The Respondents' were aware of my continuing concerns and knew that it was my wish to have the bullying, harassment, victimization, discrimination, (including failure to make reasonable adjustments) addressed. This in itself would have been a reasonable adjustment.

56. The Respondents' failed to relieve the pressure which I was feeling, which I communicated various managers and other staff on numerous occasions. Management at various levels failed to react to the warnings given. Alex Khan, Marcus Watson and HR staff were at fault in their own right, as well as being an accessory to my employer's unlawful acts. Alex Khan & Marcus Watson, the managing Directors of Careers Enterprise LTD and VT/Babcock Education and Skills failed to adequately intervene and prevent their employees from subjecting me to any further bullying, harassment and

victimization. As the managing directors they had responsibility/control for health and safety and this is such as to create a duty of care to me **(at pages 2059, 2062, 2290 & 2312 of the bundle & Marcus Watson's conduct in relation to his investigation of Sue Ely and Debbie Francis).**

57. Alex Khan & Marcus Watson had sufficient control and they had power(s) to insist on proper workplace standards being maintained. They were were also personally accountable for the well-being of employees. Essentially, there was a failure to prevent harm and a duty to take positive action that is placed on both companies.

58. The Tribunal is also asked to draw an inference from Marcus Watson's and Alexander Khan's failure to attend the hearing. Marcus Watson and Alexander Khan are individual respondents named in claim numbers 2330171/2010/N and 2300254/2011B, therefore their attendance was paramount. It is clear that they had relevant evidence to give and the Respondents' refused to call them, (which is contrary to what they stated in their own CMD agenda) and they themselves have failed to turn up to defend the claims against them.

59. Amanda Duckett and Beverley Bannister defamed my character, in relation to their allegations about my alleged conduct on 9 December 2010. The courses of conduct that the Respondents' engaged in caused me alarm and distress and were arguably unreasonable and oppressive in nature. The Respondent's policy of not challenging the behaviour in relation to my disability was capable of itself of having the effect of creating an offensive environment for me.

60. The respondents' cannot show that 'having regard to all the circumstances', and taking into account the perception of me as a disabled person, the course of conduct set out in my witness statement should not reasonably be considered to have that effect. The effect was in the context of a background that it did violate my dignity and created an intimidating hostile and humiliating environment.

61. I was expected to work in a hostile environment which the respondents took no steps to control. There was a complete abdication of responsibility in dealing with the individuals that I had alleged had bullied, victimised, harassed and discriminated against me.

62. I believe that I have established provision, criterion or practice in the respondent's organisation which put me at a disadvantage as an employee with a mental health impairment. The respondents' had knowledge of my medical condition. It was in breach of its duty of care when it failed to adequately address the issue, provide appropriate support and make 'reasonable adjustments'. The exacerbation of my illness was attributable to the conduct of the respondents'

63. The respondents' had initially removed all of the evidence detailed in my supplementary witness statement from the bundle in an effort to suppress it and ensure that it never came to light. I was forced to make an application to the EAT to ask for the evidence to be put back in. The Respondents' representative Mr Clive Dobbin, (faced with the prospect of dealing with a full appeal hearing over the issue), then advised the EAT Judge that he was happy for the evidence to be put back in, however, after the appeal hearing,

later that day, he sent me an e-mail later, informing me that he would be arguing for the evidence to be inadmissible at the CMD on Monday 2012.

64. The respondents actions regarding supporting evidence were not based on any legal argument, it was merely to try to inflict the maximum amount of mental distress upon me and prevent me from proving my case. I found their actions deeply distressing and stressful. It was intimidating, scandalous, disruptive, vexatious, oppressive, discriminatory and malicious. In my view, the respondents have tried to disrupt the just disposal of proceedings and have conducted themselves in an unreasonable and vexatious manner throughout, particularly since October 2011 and right up until the main hearing itself.

65. The respondents had known all along that I should be allowed to rely on the supporting evidence, because an act, (preventing me from returning to work and not paying me at full rate etc- as set out in my pleadings and schedule of claims), will be regarded as extending over a period, (December 2010 – February 2011), and so treated as done at the end of that period (February 2011), if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant.

This statement is true to the best of my knowledge and belief.

Ayodele Adele Vaughan

Date: 9 January 2012