IN THE EAT **Appeal No: UKEATPA/1279/12/SM**

BETWEEN

Ms AA Vaughan

Appellant

-and-

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

Respondent

Date 25 October 2012

SKELETON ARGUMENTS FOR THE APPELLANT

References in the format -

[Cx.x] is to [page. para] in the Core bundle.

[Sx.x] is to [page. para] in the Supplementary bundle.

[Ax.x] is to [page] in the Authorities bundle.

Introduction

1. The Appellant was employed by the London Borough of Lewisham (LBL). The Appellant was TUPE'd in from Careers Enterprise Limited (CEL) on 1 April 2011. The Appellant issued eight claims in the London South Employment Tribunal, against the London Borough of Lewisham,

Babcock Education and Skills Ltd and several individual respondents. The first three were consolidated, for, race discrimination, disability discrimination and PIDA detriment. Part of the third claim, (claim number 2300254/2011B), was 'stayed' and that claim is due to be heard next year **[C71]**.

2. The Appellant is also appealing two earlier decisions by the London South Employment Tribunal before Judge Balogun, dated 2 March and 23 April 2012, which have been consolidated with this one. The first decision dismissed claims by the Appellant for disability discrimination, race discrimination and PIDA detriment, after a hearing between 9 January and 2 February 2012, by a judgment sent to the parties on 2 March 2012: the second was after the PHR/CMD (which dealt with the Respondents' cost application, arising out of such liability decision), before the same Tribunal on 19 and 20 April 2012, a decision handed down on 23 April 2012. In each case the Appellant applied for a Review. The application for Review of the liability decision was refused by Judge Balogun by a decision sent to the parties on 14 March 2012, and the application for Review of the costs judgment was refused by a decision of Judge Balogun sent to the parties on 28 May 2012.

3. This is an appeal on the judgment of the employment tribunal promulgated on 07 August 2012, **[C1 – C6]**:

   I. Refusal of the Appellant's request to submit supporting evidence post-February 2011
   II. Refusal of the Appellant's request to submit covert recordings and transcripts
   III. Refusal of the Appellant's request to rely on 'without prejudice' communication
   IV. The decision to grant the Respondents' late amendment application, and rejecting the Appellant's objection to this, which requested that the ET exclude any reference to covert recordings, only permitting the addition of factual details, (known to it at the time)

and/or the addition or the substitution of other labels for facts already pleaded to and requiring the Respondent to track the changes between documents, underlining any new paragraphs

The Procedural History

4. The history of the action are as follows:

4.1 The Appellant issued three claims in the London South Employment Tribunal, which were consolidated, for, race discrimination, disability discrimination and PIDA detriment. The Appellant believes that she was discriminated against for making protected disclosures and discriminated against and/or victimised and harassed on the grounds of her race or ethnic origin, and/or her disability. The Appellant's first claim was lodged at the Employment Tribunal on 19 April 2010, the second was lodged on 2 July 2010 and the third was lodged on 31 December 2010.

4.2 **On 4 November 2010** a PHR was held, no deposit order was made.

4.3 **On 1 April 2011**, the Appellant's employment was transferred from CEL to LBL.

4.4 **On 4 April 2011** the Appellant's wrote to the tribunal to request a substitution of the first respondent to LBL.

4.5 **On 4 May 2011** a telephone CMD was held. LBL was ordered by the employment tribunal to 'step into the shoes' of the Appellant's previous employer CEL and the liability for the Appellant's tribunal claims transferred to LBL.

4.6 **On 16 & 17 June 2011** a PHR was held, no deposit order was made.

4.7 **On 25 July 2011** the Tribunal issued an Order in relation to the main hearing preparation.

4.8 **On 10 August 2011**, the Appellant was suspended from work on full pay, one day after submitting an Equality form questionnaire. This suspension lasted 7 Months, whilst her

employer allegedly fabricated and falsified evidence against her in her absence. The Appellant lodged a disability discrimination/PIDA detriment claim at the ET soon after **[C153]**.

4.9 **On 14 October 2011**, the Appellant learnt that the respondents' had removed some of her supporting evidence from the trial bundle. The Appellant wrote to the tribunal to complain about this and requested that she be allowed to submit the supporting evidence post-December 2010, including evidence dated up until her employment transferred to Lewisham Council on 1 April 2011. This request was refused. She appealed this decision at the EAT and on 5 January 2012, the EAT (with the respondents' consent), directed that some of the supporting evidence (dated up until 7 February 2011), be put back into the trial bundle supporting evidence **[S160]**.

4.10 **November 2011**, the respondents' threaten costs **[S54]**. The Appellant lodges another disability discrimination/PIDA detriment claim at the end of this month after allegedly being subjected to continuing discrimination **[C232]**.

4.11 The Appellant represented herself in a 20 day hearing, which took place from 9 January – 2 February 2012. The respondents' perjured themselves under oath **[S2.para 431a, S6. para 9, S8.para 449, S11.para 10, S12.para 34, S19.para 151 & S23 – S45, S47] and [C641. para 8.1c & C793 – C798]**.

4.12 **On 2 March 2012**, the Tribunal wrote to parties dismissing all the Appellant's claims under race and disability discrimination and PIDA detriment.

4.13 **On 3 March 2012**, the Appellant wrote to the Tribunal to seek a review of its decision on in light of the respondents' perjured evidence and because the interests of justice requires such a review. The Appellant also made procedural applications **[C794]**, including an application for 'fresh evidence', relating to the respondents' perjured evidence. The Appellant also made request for the postponement of the PHR/CMD due to take place on 19 and 20 April 2012.

4.14 **On 5 March 2012**, the Appellant follows up her applications dated 3 March 2012 with an e-mail to the Tribunal **[S793]**.

4.15 **On 7 March 2012** the Respondents' e-mailed the ET objecting to the Appellant's application for a review of the ET's decision and her application for 'fresh evidence'. The respondents' do not deny the Appellant's perjury allegations **[S21]**. The Appellant responds to Respondents' objection to Appellant's request for a review of the judgment (and application for 'fresh evidence') **[S23]**; and

4.16 **On 10 March 2012**, the Appellant's e-mails to Tribunal requesting to submit further information in relation to her application for 'fresh evidence') and further clarification about the respondents' perjured evidence **[S26]**.

4.17 **On 12 March 2012** the Appellant lodges her Notice of Appeal against the ET's judgment dismissing her claims.

4.18 **On 14 March 2012** the ET rejects the Appellant's applications for a review of its decision, her request to submit 'fresh evidence' and the postponement of the PHR. It informs her that her recusal application has been referred to the Regional Employment Judge **[C797]**. The Appellant responds to the ET advising it that it has failed to address the issue of the Respondents' perjured evidence and asks if it will be referring the matter.

4.19 **On 15 March 2012** the Regional Judge rejects the Appellant's recusal application **[C799]**. Judge Balogun also informs the Appellant that the Tribunal will not be referring the matter of the respondents' perjured evidence to the police.

4.20 **On 20 March 2012** the Respondents' e-mail the ET making an application for a cost order against the Appellant.

4.21 **On 21 March 2012** the Appellant e-mails the ET objecting to the Respondents' application for a cost order.

4.22 **On 5 April 2012** the Appellant receives notification from the first Respondent that she is to be dismissed on 13 April 2012 **[S84]**. The Appellant lodges another disability discrimination/PIDA detriment claim **[C312]**.

4.23 **On 11 April 2012** the Appellant is signed off sick by her GP for 4 weeks with 'Depression & Anxiety' **[S156]**.

4.24 **On 13 April 2012** the Appellant was allegedly unlawfully dismissed by the first respondent- London Borough of Lewisham- she lodges an unfair dismissal claim at the Employment Tribunal.

4.25 **On 19 and 20 April 2012**, the parties attend a PHR/CMD. The ET awards the Respondents' costs in excess of £92,000 **[C808]**.

4.26 **On 20 April 2012**, the Appellant e-mails the ET requesting permission to submit recordings **[C803]**.

4.27 **On 21 April 2012**, the Appellant e-mails the ET requesting that it review its decision on the cost order.

4.28 **On 23 April 2012**, the Respondents' write to the ET regarding its objection to the Appellant's application for the ET to review of its decision on the cost order.

4.29 **On 24 April 2012** the Appellant makes an application to the ET requesting permission to submit evidence dated post-November 2011 in relation to claim number 2300254/2010B **[C812]**.

4.30 **On 24 April 2012** the ET sends parties the order on the PHR/CMD **[C806]**.

4.31 **On 25 April 2012** the Appellant's sends the ET her amended review application in relation to the cost order.

4.32 **On 26 April 2012** the Respondents' e-mail the ET its objection to the Appellant's application to submit recordings **[S118]** and the Appellant e-mails the ET requesting a PHR & sends a follow up e-mail to the ET clarifying further issues which will need to be determined at the PHR **[S121]**.

4.33 **On 27 April 2012** the Appellant sends the ET her second recusal application.

4.34 **On 4 May 2012**, the Appellant's makes an amendment application to the ET regarding supporting evidence post-February 2011 in relation to claim number 2300254/2011B and post the date of her unfair dismissal claim, dated 4 May 2012 **[C815]**.

4.35 **On 11 May 2012** the Appellant is signed off sick by her GP for a month with 'Depression' **[S158]**.

4.36 **On 23 May 2012**, the Appellant's e-mails the ET regarding the delay in responding to her recusal application dated 27 April 2012 and her application regarding a review of its decision on the cost order, dated 25 April 2012. **[S124]**.

4.37 **On 28 May 2012** the ET sends parties its decision rejecting the Appellant's application for a review of the decision on the cost order **[C816]** and the Appellant sends the ET a forward e-mail regarding her request for a PHR & the respondents' threat of cost orders **[S127]**.

4.38 **On 30 May 2012**, the Appellant's e-mails the regional judge clarifying her grounds for her recusal application **[S133]**.

4.39 **On 12 June 2012** the Appellant is signed off sick by her GP for a month with 'Depression' **[S166]**.

4.40 **On 20 June 2012**, the ET sends the Appellant its decision rejecting the Appellant's 2nd recusal application **[C822]**. On the same day the Appellant e-mails the ET her review application **[C824]**.

4.41 **On 22 June 2012** the ET sent the Appellant a letter advising her that the refusal on her recusal application is an order not a judgment & the review process for her review application on her recusal application is therefore inapplicable **[C827]**.

4.42 **On 11 July 2012** the Appellant e-mails the ET, attaching her e-mail to the Respondents' regarding her PHR bundle evidence and index (including authorities). She also request that the ET issue directions for the PHR **[S143 - S144]**.

4.43 **On 16 July 2012** the Appellant e-mails the ET attaching her e-mail to the Respondents regarding her updated PHR bundle evidence and index (including authorities), **[S167]**.

4.44 **On 23 July 2012** the Appellant' submits her PHR written submissions to the ET and the Respondents' **[S168]**.

4.45 **On 24 July 2012**, **a)** the first Respondents' make an amendment application **[S237 & 828]** and submit their amended pleadings **[C554]**, **b)** the Appellant e-mails the ET and Respondents' attaching her updated CMD agenda, **c)** the Appellant and the first Respondent engage in e-mail correspondence regarding the late provision of the Respondents' PHR bundle of evidence **[S234]**, **d)** The Appellant's e-mails the Respondents' requesting that they provide her with copies of their PHR written submissions and authorities at least 7 days in advance of the PHR **[S234]**, Babcock's legal representatives advise her that it will forward her them shortly **[S238]** and the first Respondent refuses to do so **[S236]**, **e)** therefore the Appellant forwards the e-mail to the ET (copying in the Respondents'), requesting that it orders the Respondents to do so within the time limits **[S236]**.

4.46 **On 26 July 2012**, the Appellant e-mails the ET objecting to the first Respondents' amendment application **[S239]** and she e-mails the ET & Respondents' regarding her intention to include her full medical records in the trial bundle.

4.47 **On 27 July 2012** LBL e-mails the Appellant and the ET attaching its written submissions for the PHR **[S241 & 242]** and the Appellant e-mails the ET regarding LBL's written submissions, (including the Respondents' suggested directions and additional procedural applications) **[S255]**.

4.48 **On 28 July 2012** the Appellant e-mails the ET and the Respondents' regarding further details about her covert recordings **[S257]**.

4.49 **On 1 August 2012** the Appellant e-mails the ET and the Respondents' setting out the specific details of the evidence that she wishes to rely on in support of her application for supporting evidence post- February 2012 **[S259]**. On the same day the Respondents' (Babcock's) e-mail the Appellant attaching its PHR written submissions **[S267 & S268]**.

4.50 **On 2 August 2012** the Appellant e-mails the ET and the Respondents' regarding the issue of the covert recordings and her suggested approach (agreeing to pay for the cost of engaging a transcription company) **[S277 - 279]**. She clarifies this the following day **[S276]**.

4.51 **On 3 August 2012** there is e-mail correspondence between the Appellant, the ET and the Respondents' (LBL) regarding LBL's objection to the Appellant's suggested approach and the Appellant's response to their objection **[S280 - 281]**.

4.52 **On 4 August 2012** the Appellant e-mails the ET and the Respondents' regarding her request for a 'reasonable adjustment' in relation to the ET's approach to the issue of the covert recordings **[C830]**.

4.53 **On 7 August 2012**, the Tribunal refused the Appellant's procedural applications, (including her suggested approach regarding the issue of the covert recordings) **[C4.para 6]**. The Tribunal granted the first Respondents' (LBL's) late amendment application and its suggested approach in relation to this, (which the Appellant had objected to). This decision was sent out to parties on 7 August 2012 **[C1]**.

4.54 **On 8 August 2012**, the Appellant wrote to the Tribunal to seek a review of the Tribunal's decision on its decision **[C831]**.

4.55 **On 11 August 2012**, the Appellant e-mails the Tribunal to point out that it had omitted to include directions relating to the Appellant's request to include her full medical records, which had bee granted by the judge **[S284]**.

4.56 **On 21 August 2012**, the Appellant e-mailed the Tribunal requesting full directions in relation to the issue of disclosure and the exchange of authorities **[S287]**. On the same day she sent the ET her amended pleadings **[C566]** and an e-mail detailing additional grounds for her review application **[S288]**.

4.57 **On 27 August 2012** at 10.28, the Respondents' e-mail the ET objecting to the Claimant's additional information/grounds for her review application on the ET's decision dated 7 August 2012, stating the following **[S292]**:

'…the Claimant appears to be seeking to rely upon her Amended Particulars of Claim to claim number 2313031/12 as further grounds to justify the inclusion of her covert recordings. Our clients object to this approach by the Claimant. This objection seeks to deal with matters proportionately and details our clients' objections in outline only. Our clients submit that the Claimant was aware of the Tribunal's refusal to permit her to rely on the covert recordings prior to drafting the Amended Particulars of Claim. In so far as the Claimant seeks to submit that the recordings are pivotal to her case, our clients submit that it is clear that the Claimant has drafted her particulars in such a manner as to identify the recordings as the central issue, rather than the amendments which she was permitted to make by the Tribunal'.

4.58 On the same day the Appellant e-mailed her response to the Respondents' objection to her e-mail to the ET setting out further grounds for her review application, reminding the Respondents' and the ET that she made reference to the covert recordings in her original pleadings **[S294]**. The Respondents' had even acknowledged this in their own amended pleadings **[C561.para 21L]** which also make reference to the recordings:

'In light of the Claimant's applications to the Tribunal and the reference to covert recordings in case number 2313031/2012A…'

4.59 **On 29 August 2012**, the Appellant forwarded her follow up e-mail response to the Respondents' and ET regarding the Respondents' e-mail objecting to her additional information/grounds for her review application on the ET's decision dated 7 August 2012, stating the following **[S294]**:

'Further to my attached e-mail, it is important to highlight the fact that during the PHR on 2 August 2012, I advised the Judge that with regards to the order to provide further and better particulars, I would be making extensive references to the covert recordings. The judge and the Respondents' did not express any objections to this. I have three sets of notes of the PHR, taken by myself, Tanya Davis and Ibi Vaughan which reflect this and I was accompanied by three individuals who are prepared to provide witness statements/affidavits, testifying to this fact'.

At no stage did the Respondents' refute the Appellant's assertion and it did not challenge this in its amended pleadings **[S602a]**. The ET also did not refute the Appellant's assertion **[C849]**.

4.60 **On 03 September 2012**, the EAT sends the Appellant it's decision on the Appellant's 'Notice of Appeal' on the ET's cost order - The rejection on papers **[C837]**.

4.61 **On 04 September 2012** at .25, the Appellant e-mails the EAT expressing dissatisfaction with the decision to reject her appeal on papers & requests an oral hearing **[C843]**.

4.62 **On 5 September 2012** the EAT writes to the Appellant notifying her of a combined hearing on 25 October 2012 **[C844]**, subject to any application from the Appellant regarding any delay in obtaining the ET's decision on her review application **[S296]**.

4.63 **On 7 September 2012** the Appellant's makes an application to the EAT' to admit documents exceeding 100 pages, fresh evidence and directions as to notes of evidence **[C845]**.

4.64 **On 8 September 2012** the Appellant's makes an application to the EAT requesting a 'reasonable adjustment' **[C847]**.

4.65 **On 13 September 2012**, the Respondents (LBL) submitted their amended pleadings for claim number 2313031/2012 to the ET and the Appellant. It accused her of abusing the process and being guilty of 'unreasonable conduct'. It refused to respond to any of the details **[C602a]**. The Appellant e-mailed the ET (copying in the Respondent) on the same day **[S297]**, refuting their allegations. She reminded the ET that she was a disabled litigant in person. She also highlighted the following facts; **a)** no request had ever been made by the Respondents' in the first instance for 'further and better particulars' (FBPs)- in writing and in line with ET rules, before she was ordered by the ET to provide FBPs **b)** she was not offered any specific guidance from the ET in relation to the matter (the order was extremely vague), or asked to respond to specific questions by the Respondents' (which might have been less confusing for a litigant in person) **c)** her FBPs were in line with her original pleaded case, (the covert recordings, gross misconduct, malicious falsehood and discriminatory conduct of management) and the ET's order, which specifically instructed her to state '*who was involved*' and '*what was said, done or written*' and any comparator(s).

4.66 **On 14 September 2012** the Appellant e-mails the ET regarding its failure to apply the proper procedure regarding 'further and better particulars' **[S298]**.

4.67 **On 20 September 2012** the ET writes to the Appellant rejecting her review application **[C849]** and the Appellant forwards the ET's decision to the EAT via e-mail **[S299]**.

The Present Appeal

5. In producing this document, the Appellant has aimed at assisting the EAT as much as possible and will be proud to make sure that every single relevant aspect of the case is brought to the careful attention of the EAT.

6. The grounds of the Appellant's appeal are set out in **[C7.paras 50 - 52]** of her notice of appeal which the Appellant lodged on 09 August 2012. The basis of her appeal is set out in her notice of appeal **[C7.paras 53 - 186]**.

General principles

7. This is a case where the Tribunal exercised its discretion contrary to principle, in disregard of relevant factors and the decisions are just plain wrong, as set out in the case of ***McPherson v BNP Paribas*** [2004] IRLR 558, paragraph 26 **[A9]**. In that case it was held that the appeal court should read the reasoning of the tribunal as a whole, see ***McPherson v BNP Paribas*** [2004] EWCA Civ 569, paragraph 36.

8. An appeal to an Employment Appeal Tribunal lies only on a question of law. An interlocutory decision will only be challengeable where the Tribunal exercises discretion under a mistake of law, or in disregard of principle, or under a misapprehension as to the facts, where it took into

account irrelevant matters, failure to take into account relevant matters, or where the conclusion was outside the generous ambit, within which reasonable disagreement is possible. The Appellant keeps those principles firmly in mind. The ET's exercise of discretion was erroneous in law.

9. Further to the above, the employment tribunal erred in law by refusing the Appellant's applications. The Appellant believes that the decision of the Tribunal is legally flawed. The Tribunal exercised its discretionary powers of case management under rule 10 of the Employment Tribunal (Constitution and Procedure) Regulations 2004, which the Appellant's believes are challengeable, on what may loosely be called "Wednesbury" grounds. The Appellant believes that the tribunal has exercised the discretion under a mistake of law or disregard of principle, under a misapprehension as to the facts, where it took into account irrelevant matters and failed to take into account relevant matters.

10. The ET departed from the oral and/or documentary evidence or the pleaded case, which were so wrong as to amount to Wednesbury unreasonableness and perversity, namely the suggestions that the covert recordings may have been tampered with. This was not an argument advanced by the Respondents', as evidenced by their written submissions, the ET's judgment and the Appellant's notes, (which were taken by two individuals).

11. The tribunal made a totally flawed decision. Authorities were overlooked and the tribunal adopted an incorrect approach. The employment tribunal erred in law by failing to take into account the legal argument.

12. Further to this, in reaching its decision, the Tribunal took into account matters which it was not proper to take into account, namely the matters set out in the respondents' letter dated 19 June

2012 **[C818]** and their written submissions and authorities **[S242 & 268]**, which had not been provided to the Appellant at least 7 days before the PHR **[S236]**. The Appellant wrote to the ET on 31 July 2012, asserting that the Respondents' should therefore not be allowed to rely on them **[S258a]**. The Appellant had raised the issue before with the ET and the Respondents' on more than one occasion **[S234 – 238]**. The EAT had also failed to respond to the Appellants' e-mails requesting directions for the PHR **[S168]**.

13. It is in the Appellant's view an error of law for an Employment Tribunal, when exercising discretion, to refuse her application, to take into account a matter which should have been taken into account or should have been left out. That is common ground. Secondly, if that can be shown to have occurred, then the Employment Appeal Tribunal is at liberty to set aside the exercise of the discretion as being in error of law. Thirdly, if the discretion is thus set aside, the Employment Appeal Tribunal can either remit the matter for fresh or further consideration by the Employment Tribunal or, if the case is plain enough on the material before the Employment Appeal Tribunal, the Employment Appeal Tribunal can itself exercise the discretion that would otherwise have fallen for exercise by the Tribunal.

14. The Tribunal failed to have regard to all circumstances relevant to the issues in the action and the history of the action hitherto and the matters leading to the action.

General principles

Supporting Evidence post-February 2011

15. Whilst the Employment Tribunal has wide powers to conduct hearings in such a manner as the Chairman thinks most appropriate for the clarification of the issues and for the just handling of proceedings, it is submitted that those powers do not extend to preventing the Appellant from

submitting supporting evidence, as this may lead to inadequate justice. It also does not extend to excluding evidence that she intends to rely on in order to prove his/her case.

16. Weighing the balance of prejudice as between the parties it is the Appellant's view that the decision by the Tribunal to refuse her application would have a greater prejudicial impact on her case as an unrepresented disabled Appellant than it would have upon the respondent's case. This balancing exercise was one which it had to perform in compliance with its own obligations as a statutory body under the Human Rights Act 1998. The decision is in breach of natural justice. It is not just and equitable for the Tribunal to refuse the Appellant's application. It failed to apply the just and equitable balancing exercise to the facts of this case, the tribunal should have done this and made decisions/orders to that effect.

17. The tribunal has also been influenced by some irrelevant considerations that the respondent party has put forward, i.e. that the granting of her request should not be permitted because the supporting evidence postdates the presentation of the claim form in question. This directly contradicts the relevant case law which states that supporting evidence after the facts of the founding claim are admissible.

18. The basic rule is that if evidence is relevant it is admissible and if it is irrelevant it is inadmissible. This was also acknowledged by Judge Baron in the ET's letter to parties dated 9 November 2011 [B218-219]. In ***O'Brien v. Chief Constable of South Wales Police*** [2005] 2 AC 539 **[A12]**; Lord Bingham said, at para. 3 (p. 540 F-G):

"***Any evidence, to be admissible, must be relevant. Contested trials last long enough as it is without spending time on evidence which is irrelevant and cannot affect the outcome. Relevance must, and can only, be judged by reference to the issue which the court (whether judge or jury) is called upon to decide*****".**

As Lord Simon of Glaisdale observed in ***R v Kilbourne*** **[1973] AC 729, 756**:

"Evidence is relevant if it is logically probative or disprobative of some matter which requires proof … relevant (i.e. logically probative or disprobative) evidence is evidence which makes the matter which requires proof more or less probable."

19. The Appellant respectfully suggests that the EAT should consider the following question: If the Appellant asserts that her supporting evidence shows, a) the Respondents' propensity to behave in the manner alleged in her founding claims, b) the evidence does not consist of isolated examples, c) the evidence consists of similar facts that are highly/strongly probative of the issues in the substantive case, (it has enhanced relevance) and d) the evidence of similar facts, are proven facts/ reasonably conclusive, not unsubstantiated allegations, should she be permitted to submit such evidence?

20. It is submitted that the Appellant's supporting evidence should be admitted because it is relevant to the claims (this case) and already in the public domain (particularly in relation to the proceedings since February 2011 and up to the full hearing for these claims and the PHR hearings dated 19 and 20 April and 2 and 3 August 2012) **[S259]** and:

    a) The evidence post-February 2011 sheds light on the respondents' motivation and proves that there was a culture of discrimination; and
    b) All the witness statements which are dated after December 2011 for the part of the claim which has already been heard are clearly highly material to this claim. In particular, witnesses gave oral testimony in January 2012, which contain perjured evidence, and the Respondents' have informed the ET that they will not be calling any witnesses in relation to claim number 2300254/2011B, (the 'stayed' claim). Therefore the Appellant's written submissions which makes reference to the oral testimony, dated February 2012 and the fresh evidence which the ET refused to consider in relation to the perjured evidence and her review application will have to be adduced in order to dispose of the case fairly; and

c) The Appellant has alleged that the respondents' (Deborah Francis, Beverley Bannister & Benjamin Craig) perjured themselves on the witness stand in January 2012, she has evidence to support this assertion and this will go to the heart of the issue of credibility; and

d) The evidence has been adduced for PHR's and are referred to in the Appellant's PHR written representations on 19 and 20 April and 2 and 3 August 2012; and

e) The Respondents' unreasonable and vexatious conduct in relation to the proceedings, as evidenced by its disclosure to the ET and the Appellant dated 5 April 2012, which proves that it suppressed evidence for an entire year, in order to protect Lewisham Council **[S101.para 8 – 9]** & **[C507.para 52]**.

21. It is important to note that the Respondents' will be relying on witness statements dated January 2012 **[S115.para 6a]**, therefore the Appellant does not understand why she is being prevented from relying on witness statements dated December 2011 and January 2012. The Appellant set out the details of the specific documents that she wished to rely on in an e-mail to the ET and Respondents' dated 1 August 2011**[S259]**. The Appellant will need to rely on the supporting evidence to demonstrate/prove her claims. Permitting supporting evidence of continuing acts of discrimination occurring after the acts founding a claim, would not cause hardship to the Respondents' and will assist the tribunal in dealing with the case efficiently and fairly because (i) it clarifies the continuing victimization, harassment and detriments that the Appellant has been subjected to as a result of her decision to bring proceedings against her employer and (ii) it demonstrates her former employer's motivation.

22. The acts of discrimination occurring after the acts founding the Appellant's claim have particular significance, as they give weight to the Appellant's allegations of discrimination, victimization and harassment. Acts of discrimination occurring after the acts founding a claim are also admissible as supporting evidence of a tendency to discriminate, see ***Eke v Commissioners of***

Customs and Excise [1981] IRLR 334, EAT and ***Qureshi v (1) Victoria University of Manchester (2) Brazier***, EAT/484/95, approved and quoted at length in ***Anya v University of Oxford*** [2001] IRLR 377, CA **[A2]**, (pages 6 – 9).

23. The supporting evidence is extremely crucial. It will therefore be required in order for the Appellant to advance her case and evidence the way in which the Respondents dealt with her disability and discriminated against her. The evidence is admissible because it is relevant to an issue between the parties and it is rationally relevant to issues in dispute. The Respondents' indicated during the PHRs in April and August 2012 that it would not be calling any witnesses for claim number 2300254/2011B and so the Appellant would not be given a chance to cross-examine the witnesses (who had perjured themselves during the hearing in January 2012) and individual respondents' **[C833.point 9]**. The Appellant was so shocked by this that she sought to confirm with the judge that such an approach would surely count in her favour, (her voice raising a little as she did so).

24. The supporting evidence is relevant, recent and particularly of assistance to the Appellant in the case that she is putting, that the respondents have a tendency to discriminate. It also demonstrates motivation. All of the Appellant's supporting evidence has a potential to shed some light upon the culture that she suggest, therefore the evidence should be admissible.

25. Further to this, no additional witnesses shall be required in relation to the supporting evidence, and the Respondents already have copies. The evidence is self explanatory and undisputable, and as such, the Respondent will not be put to any considerable disadvantage or any considerable cost. The supporting evidence of similar facts, are proven facts/ reasonably conclusive and not unsubstantiated allegations.

26. When making her application the Appellant had previously advised the ET that a dispute regarding supporting evidence had arisen before, in relation to the previous hearing which was heard in January 2012, whereby the respondents' removed the evidence from the trial bundle at the very last minute, without her consent. She explained that she relied on the same reasons to be allowed to submit the evidence and that in the end the matter had to be taken to the EAT and the EAT directed that the evidence be put back into the trial bundle **[S160]**.

27. Where evidence is relevant and admissible, the tribunal should not refuse to admit it: ***ALM Medical Services Ltd v Bladon*** [2002] EWCA Civ 1085, [2002] IRLR 807 **[A1]**, where the Court of Appeal decided that the tribunal had wrongly held that the evidence which the respondent wished to call (and in respect of which witness statements had been submitted) was irrelevant. Mummery LJ said (at para 15):

> **"*A party is entitled to adduce evidence relevant to the issues in the case and to put questions on relevant matters to the other party and to his witnesses. It is for the tribunal, with the assistance of the parties and their representatives, to identify the relevant issues for decision and to exercise its discretionary case management powers to decide whether the evidence adduced or the questions put to the witnesses in cross-examination are relevant. The exercise of the discretion will rarely be disturbed on appeal: it can only be successfully challenged if it can be shown that the tribunal has exercised it contrary to legal principle or otherwise in a manner which is plainly wrong.*"**

28. The Appellant asserts that the ET's decisions amount to or contain errors of law and/or involved procedural impropriety. The procedural decisions are not sound in law. The evidence that the Appellant is being prevented from submitting is clearly relevant and will have had an important influence on the hearing. Any refusal to permit the admission of the evidence will result in an unfair hearing. The upholding of the Appellant's appeal will cure the unfairness.

Covert Recordings and Transcripts

29. In relation to the issue of engaging the services of a transcription company, it is clear to both the Respondents and the ET that a transcription company would not be able to recognise any of the individuals featured in an of the recordings, (which can be anything up to 12 people at a time) and so a transcription company would obviously not be able to identify which individuals are saying what. This is clearly a barrier, it would be near impossible for the company to be able to transcribe any of the meetings, (of which there are numerous). This rationale is in line with the Appellants' review application dated 8 August 2012, sent at 4.41 **[C835]**. Even if the company were able to overcome this barrier, the sheer amount of work involved in doing so would result additional fees, which would be astronomical. Such a state of affairs is clearly unnecessary and unreasonable and not in line with the overriding objective.

30. In paragraph 6 of the ET's reasons it stated the following:

> **'*Given the clandestine nature by which the Claimant obtained the recordings, their credibility may be affected by the risk that they may have been tampered with or that they are unreliable, in technical terms. To mitigate against this, I informed the Claimant that, if the recordings were to be admitted, she would, at the very least, have to arrange for them to be independently transcribed*' [C4.para 6].**

It is important to note that the judge never put the question of the possibility of the covert recordings being tampered with to the Appellant, (as is evidenced by her notes) and in addition, this was not even an argument that had been advanced by the Respondents' (which is also evidenced by the judgment), **[C1]**. It is submitted that even if the ET does question the authenticity of the recordings, this could easily be dealt with by the fact that the Respondents' would clearly be given an opportunity to authenticate them all. It is also submitted this would not be the job of a transcription company, but a company which specialises in examining, analysing,

verifying and authenticating audio recordings. It is clear to the Appellant that the reason given and the approach taken by the ET was inadequate and unreasonable.

31. In the Appellant's view, the suggestion that the covert recordings have been tampered with is an unjust one given the fact that the Appellant was not selective in what she recorded; she simply recorded all of her contact with management. Therefore it is implausible, (particularly when the meetings were minuted/notes were taken **[S182.para 38 & C510.para 61f]**, that the Appellant would tamper with 39 hours worth of recordings), and given the fact that the Appellants' allegations against the Respondents', have not been the subject of defamation proceedings by the Respondents').

32. In light of the fact that the ET is already questioning the credibility of the Appellant because of, (as the judge put it), the 'clandestine' nature of the recordings **[C4.para 6]**, it is only right that the Appellant should be given the opportunity to admit the recordings to prove that she was justified in obtaining the recordings covertly. It is clear that the Appellant's credibility has already been tainted by the Tribunal's view of the Appellant's means of obtaining her crucial evidence. The issue of credibility will clearly be paramount in this case. The ET failed to adequately consider the issue of the assessment of credibility and reliability when making its decision to disallow the covert recordings. If the Appellant is not permitted to admit the evidence, the Respondents' will be able to take advantage of this situation in order to try to discredit her and the Appellant will be unable to defend herself, prove her claims and vindicate herself. The ET will obviously hear evidence from the Respondents' as to the circumstances in which the Appellant's evidence had been acquired and this will likely be central to their case **[C561.para 21L]**, as is evidenced by their amended pleadings. No fair and just findings can be properly made about the matter without admitting the covert recordings and transcripts into evidence.

33. Vindication is not only important for her future career prospects, but also in relation to her ability to claim on insurance policies. Even neutral third parties like insurers, after reading the dismissal letter have incorrectly asserted that her dismissal was for 'misconduct' **[S159]**. In the Appellant's view, third parties are taking such a view because of the catalogue of false allegations, the nature of them and the extreme language used by LBL in its letter, and as such have refused to payout on her insurance policy. The Appellant brought this to the attention of the ET at the PHR in August 2012 **[S186.para 50]**. This is completely devastating for the Appellant. It is clear that the Respondents' actions have impacted on her both financially, (as she is unable to now cover the costs of her loan re-payments due to the fact that she is now on benefits) and psychologically/physically- exacerbating her medical condition. She has been completely humiliated. Even after having left LBL's employ she is still suffering the consequences of their deplorable actions.

34. The Tribunal made its decision without taking into account relevant considerations, including the Appellants' responses to the Judges questions, (which were not noted in full by the judge), her applications **[C803, C812, C815, C830, C831]**, her e-mails to the ET **[S139, S239, S255, S257, S259, S276, S280, S288 & S294]**, her PHR written submissions **[S169]** and her review application **[C831]**, which included the following facts;

a) The Employment tribunal failed to consider the Appellants' ability to pay for the services of a transcription company; and
b) The Tribunal in the course of its above decision refused to make 'reasonable adjustments', for the benefit of a disabled claimant. The Tribunal's decision/approach put the Appellant at an unfair disadvantage as an unrepresented, unemployed disabled claimant. The ET failed to take into account the fact that the Appellant recently lost her job (as a result of being unfairly

dismissed) and had experienced a sudden deterioration in her financial circumstances (as well as her health- which directly relates to the unfair dismissal and discrimination); and

c) Dealing with a case justly includes ensuring that the parties are on an equal footing. The Appellant is unrepresented, unemployed and disabled claimant and so is already disadvantaged. The Respondent parties all have legal representation. The ET's decision and approach is denying the Appellant her right to properly present her case, prove her claims and protect/restore her reputation- in relation to the Respondents' false allegations/defamation. The Appellant is also being denied the opportunity to attack the Respondents' credibility. It is prejudicial to her case, it is oppressive, and a denial of justice to her. ***De Haes & Gijsels v Belgium*** [1997] 25 EHRR 1 **[A6]**, at para 53, '*The principle of Equality of Arms which is a component of the broader concept of a fair trial requires that each party must be afforded a reasonable opportunity to present his case under conditions which do not place him at a substantial disadvantage vis a vis his opponent*'. It is crucial that the Appellant is able to adduce evidence that will disprove the Respondents' defence and allegations and that an unreasonable condition in relation to the preparation of the transcripts is not imposed upon her; and

d) The Tribunal failed to take into account the Appellants' written submissions and e-mails dated 2 and 3 August 2012; and

e) The ET failed to give proper consideration on the Appellant's approach- that she be allowed to transcribe the evidence, (which constitutes a refusal to hear argument on a procedural application on a particular occasion). The transcript could be prepared by the Appellant and agreed between the parties for the purposes of the hearing- the Respondent having been given the opportunity to confirm that the transcripts are accurate and unbiased. This approach is entirely in keeping with the authority cited in the Appellants' PHR written submissions- ***Dogherty v Chairman and Governors of Amwell View School*** [2006] UKEAT/0243/06/DA **[A7]**, paragraphs 18 and 75. The Claimant in that case was allowed to submit her own

transcriptions and in the EAT's conclusion, it held that the ET was right to permit the Claimant to put her transcriptions as evidence; and

f) The ET's failure to properly consider the Appellant's approach- a reimbursement as part of any compensation package or cost-recovery. The Appellant cannot see any circumstances in which it would be appropriate for an employer or the ET not to agree to this. The Appellant doesn't even believe that she should be required to reimburse the Respondents when her claim is successful, yet she offered to do so. There is no good reason why the Appellant should have to employ the services of a transcription company when she has offered to transcribe the recordings herself. Since such a condition has been imposed by the ET, it is only right that it should consider the Appellants' approach, as it is possible for the Respondents' (who have caused the hearing to take place by taking the unlawful action complained of); and

g) The ET failed to consider/take into account the impact of its decision in parallel to its decision to issue an extreme cost order in excess of £92,000 against the Appellant; and

h) The ET failed to adhere to rule 14(2) and (3) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 – '*So far as it appears appropriate to do so, the chairman or tribunal shall seek to avoid formality in his or its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts*': In relation to the issue of the covert recordings, Claimant's should not be prevented from being able to admit crucial evidence like covert recordings, on grounds of their inability (because of their financial circumstances and disability), to comply with a rule that the ET has unreasonably imposed in relation to the costs/fees of employing the services of a Transcription company to transcribe the material. '*The chairman or tribunal (as the case may be) shall make such enquiries of persons appearing before him or it and of witnesses as he or it considers appropriate and shall otherwise conduct the hearing in such manner as he or it considers most appropriate for the clarification of the issues and generally for the just handling*

of the proceedings': The Appellant was not asked any questions about her current financial circumstances or state of health, nor was she asked to provide any additional evidence; and

i) In relation to supporting evidence post-February 2011: The Respondents' indicated during the PHR that it would not be calling any witnesses for claim number 2300254/2011B and so the Appellant would not be given a chance to cross-examine the witnesses (who had perjured themselves during the hearing in January 2012) and individual respondents'; and

j) The decision is inconsistent with the duty imposed on a Tribunal (or any other public body) by section 6 of the Human Rights Act 1998 not to act incompatibly with convention rights.

35. The tribunal has also been influenced by some irrelevant considerations that the respondent party has put forward in its written and oral submissions, in particular in relation to the issue of the covert recordings, rule 10(1) and (2) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004: '*Subject to the following rules, the chairman may at any time either on the application of a party or on his own initiative make an order in relation to any matter which appears to him to be appropriate'*. It is submitted that the ET's decision to order me to engage the services of a transcription company is not appropriate nor in keeping with any orders listed in paragraph (2), particularly given the fact that the ET failed to consider/take into account points a – j above and in light of ***Dogherty v Chairman and Governors of Amwell View School*** [2006] UKEAT/0243/06/DA **[A7]**, where it has been held by the EAT that the Claimant in that case could submit her own transcriptions. A transcription service was not engaged.

"Natural Justice" and the Appellant's Right to be Heard

36. The judge made extremely oppressive and discriminatory decisions in relation to the issues of the admissibility of the covert recordings, 'without prejudice' communication and supporting evidence post-February 2011 and the Respondents' amendment application. The judge went even further by stating that she was not persuaded that the covert recordings are materially relevant to the issues to be tried and she does not consider that it is proportionate to include them. In the Appellant's view, this is perverse and she is being prevented from submitting all the necessary evidence to prove her case and backing it up with all relevant legal arguments. The limitations placed on the Appellant will mean that she cannot deal with those matters at the full hearing. This will have far-reaching consequences for the final outcome of her case.

37. There is tension between what expedition requires and what fairness requires. In the end, 'Justice should be preferred to expedition', ***Senyonjo v Trident Safeguards Ltd*** [2004] UKEAT/0316/04. See also EAT's comments in ***Sodexho v Gibbons*** [2005] IRLR 836, EAT. Article 6- The right to a fair hearing, Article 10- The right to freedom of expression and article 14 non-discrimination of the European Convention on Human Rights were not taken into account.

38. This is a complex case, which is in the public interest and raising new and/or controversial points of law and as a disabled and unrepresented claimant, the Appellant must have full and fair hearing and must be permitted to argue all of points raised her pleadings or relating to merits of actions with which she is concerned with. The order requiring her to limit this, in the Appellant's view constitutes an interference with her Article 6 and 14 rights. It will result in her having to omit the details of her extensive claims and other important information.

39. The Appellants' pleadings and allegations include references to the covert recordings and 'without prejudice' communication. The test that should be applied by the parties when considering whether documentary/audio evidence should be included is, a) *are their witnesses going to refer to it?* And b) *are they going to cross-examine the other side's witnesses about it?*

40. As a disabled and unrepresented Appellant she should be given a full opportunity to make all her points. An ET would act in arbitrary way in imposing any restrictions in respect of these issues both on law applicable and on merits of individual cases. This would be tantamount therefore to a denial of "Natural Justice" at common law by being denied "audi alteram partem", (it should be heard [audiatur] also the other party", "hear [audi] the other side too", or "hear the alternative party too". The Employment Tribunal has a duty to ensure a fair hearing and this is expressly provided for by rule 27(2) of the Employment Tribunal Rules of Procedure. Very good cause must be shown before a litigant is deprived of that right.

41. The Appellant has pleaded that the respondents' have publicly defamed her and the ET therefore has a duty to give the Appellant the opportunity to clear her name and give her a fair opportunity to make any relevant statement and evidence which the Appellant may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to her prejudice. The Appellant should be given an opportunity to state her case- be given a reasonable opportunity of being heard in answer to the allegations made against her which resulted in her dismissal.

42. In all cases an ET must afford Claimant's the full opportunity to make submissions and adduce all evidence necessary (supporting evidence post-February 2011, 'without prejudice' communication and covert recordings and transcripts), in order to prove their case, in

accordance with principles of "Natural Justice". Well established principle of "Natural Justice" that ET's must give litigants adequate opportunity of dealing with all aspects of their pleaded case. Any restriction would be a very draconian measure.

43. The limitations that have been placed on the Appellant will restrict and reduce the access left to her in such a way and an extent that the very essence of this right will be impaired. The restriction does not pursue a legitimate aim and there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

44. It is submitted that the Appellant's approach is in line with the overriding objective, ensuring that the parties are on an equal footing; dealing with the case in ways which are proportionate - to the amount of money involved; the importance of the case, (the Appellant's reputation, future job prospects and mental health are on the line it is a public interest case); to the complexity of the issues (the case involves 5 and a half consolidated claims involving disability discrimination, PIDA detriment, unfair dismissal, breach of contract, human rights and defamation; and ensuring that it is dealt with expeditiously and fairly; and allotting to it an appropriate share of the court's resources, (particularly given the fact that the ET has taken the extreme decision to consolidate a large number of claims- **86 in total**). The issue of proportionality is dependant on the nature and gravity of what is at stake and the duty of the ET to protect Convention rights.

45. It is submitted tat the Order, was "Wednesbury" unreasonable and/or illegal and/or irrational and/or perverse and an unfair determination of her civil rights under schedule 1 article 6(1) of the Human Rights Act 1998. The making of the Order is in breach of schedule 1 article 6(1) and 10(1) of the Human Rights Act 1998 for the following reasons :-

    a) The measure is not "established by law" and/or "prescribed by law".

b) The criteria for making such an Order (without reasonable ground) is too vague and undefined.

The Appellant respectfully requests that the EAT should set aside the ET's Order and grant the Appellant's appeal under section 4(2) of the Human Rights Act 1998 a Declaration of Incompatibility in respect of article 6(1) and 10(1) of the Human Rights Act 1998 .

46. The tribunal made a totally flawed decision. The employment tribunal erred in law by failing follow binding authorities. An Appellant must be entitled to produce the evidence which he/she feels supports his/her case, unless it is patently inappropriate or irrelevant. The evidence that the Appellant intends to submit is directly related to the grounds already pleaded and includes the detriments and discrimination that she has suffered to date, and which constitutes part of the continuing acts, course of conduct and an ongoing situation/continuing state of affairs by her former employer.

<u>The Admissibility of Covert Recordings and Transcripts</u>

47. Firstly, it is important to note that the Appellant made the following submission to the ET, in accordance with **<u>Phipson on Evidence</u>** (17th edition) 2010 at paragraph 39-35:

"In general, disputes about admissibility of evidence in civil proceedings are best resolved by the judge at the substantive hearing rather than at a separate preliminary hearing."

48. Whilst the Employment Tribunal has wide powers to conduct hearings in such a manner as the Chairman thinks most appropriate for the clarification of the issues and for the just handling of proceedings, it is submitted that those powers do not extend to preventing the Appellant from

submitting covert recordings and transcripts, as this may lead to inadequate justice. It also does not extend to excluding matters that she intends to rely on in order to prove his/her case.

49. The Appellant provided the ET and the Respondents' with details of the covert recordings and compelling reasons why they should be admitted into evidence in her PHR written submissions **[S169. paras 24 – 44, 52, 56, 140, 145, 148, 150 – 151, 154 & 156]**. She provided further details of her covert recordings in an e-mail dated 28 July 2012 at 13.06, **[S257]**, indicating how long they lasted- At least **23 hours** of the covert recordings relate solely to LBL's investigation interviews- (**8 hrs**) and its SOSR hearings- (**15 hours**) and the remaining 16 hours of covert recordings covering other meetings and telephone calls etc.

50. The covert recordings conclusively prove the Appellant's allegations against Lewisham Council and prove that she was unlawfully dismissed. They depict the true version of events which the Respondents' falsified and relied on as a basis to dismiss her. They evidence all the incidents referred to by parties in the case, (and which are in dispute), for example the incident which triggered the Appellant's suspension **[C501.para 31 & C503.para 31]**- the respondent acknowledges it received two completely different versions from the Appellant and the Appellant's manager and that this incident had bearing on the Appellants' grievance and SOSR outcome, (which resulted in her grievance not being upheld and her subsequent dismissal). It is important to note that the Appellant has a recording of this which will conclusively prove which version is the truth. The recordings don't represent some insignificant sideshow; they represent the true version of the main events in this case, (which are in dispute- as set out in the Appellant's pleadings). The Appellant even cited this fact in her pleadings and PHR written submissions dated 23 July 2012 **[S169]**. The appellant asserts that she is in possession of the true facts, spoken words and conduct of the Respondents', which is a very powerful piece of

evidence that the ET is obliged by precedent to take into consideration in its determination of the case.

51. The Respondents' deny that minutes to meetings are accurate, that any allegations were false or evidence falsified/fabricated, that the hearings were not conducted in a fair and impartial manner and that the Appellant was prevented from asking questions of witnesses; therefore the only way to establish if this is true or false is by admitting the covert recordings and transcripts.

52. The Appellant is in possession of dozens of recordings estimated to last around 39 hours in total. The covert recordings do not include any private deliberations of the investigating officer/hearing officer or any events where she was not present. The covert recordings conclusively prove her allegations against Lewisham Council and prove that she was discriminated against and unlawfully dismissed. The recordings disclose evidence that is critical to the Appellant's claims/disclose important facts, such as discriminatory views that the respondents' deny expressing and acts that they deny engaging in. The fact that LBL is objecting to the covert recordings being allowed as evidence, (even though it has asserted that the Appellant's claims have 'no reasonable prospect of success' and the Appellant refers to the recordings in her pleadings for claim number 2313031/12), is clear proof that the respondents' have something to hide and that it is therefore crucial to the issues between parties.

53. In addition, having regard to the nature of the Appellant's overall case as pleaded, the covert recordings/transcripts will be such as to assist her in succeeding in a case of disability discrimination/PIDA detriment. The Respondents' defence is based on fabricated evidence and the ET is denying the Appellant her right to a fair trial and the ability to prove her case, by refusing to admit the evidence that will confirm this. The evidence will go to the issue of the Respondents' credibility and will demonstrate the fact that the Respondents' are corrupt and

dishonest. These practices have been aimed squarely at the Appellant in order to discriminate against her, public defame her, cause her professional damage and severely injure her health.

54. The words used by the respondents' in the recordings and the tone are so clearly indicative of a discriminatory attitude that it would be prejudicial to the Appellant to exclude the recordings. To exclude them exclusion would prejudice her in the proper prosecution of her case. The recordings are indisputable proof that the respondents' assertions/defence are lies, and the allegations made against the Appellant, (which were used as their reason for suspending and subsequently dismissing her), are unjustified and also lies.

55. The respondents' deny all the Appellant's allegations and they rely on the content of the dismissal letter to support their assertion that the Appellant's dismissal was fair **[S84]**. The covert recordings are conclusive proof of the Appellant's allegations and it will have to be adduced in order to her allegation that her dismissal was unfair and she was discriminated against, publicly defamed and had her human rights breached. The decision to dismiss the Appellant was arguably tainted by the malicious, discriminatory and defamatory actions (which the covert recordings evidence) and this was present in the hearing officer's mind.

56. The covert recordings support the Appellant's allegation that the procedure was unfair since there were inaccurate documents and falsified/fabricated evidence (which the recordings will prove) taken into account by LBL, which LBL failed to acknowledge. Thus, if an investigation was carried out by virtue of ***Burchell*** the recordings conclusively prove that LBL could not have held a genuine belief that the Appellant was guilty of the allegations/alleged conduct that she had been accused of. That belief could not have been reasonably held by reason of the content of the covert recordings. The recordings will support the Appellant's contention that her

dismissal lays outside the band of reasonable responses (and most importantly), that she did not contribute to her dismissal by any culpable conduct.

57. The ET is required by section 98(4) Employment Rights Act 1996 to have regard to 'all the circumstances of the case' in reaching a decision as to whether this dismissal was fair or unfair. Only hearing the covert recordings will allow the ET to do this, as what took place during meetings and telephone calls are in dispute.

58. It is essential to understand how LBL's particular position had been reached, as in the Appellant's view, it had for no very good reason decided that it had no confidence and trust in her as an employee and so to focus upon that matter to the exclusion of the covert recordings and any consideration of how allegedly the confidence and trust came to be lost (particularly in light of the defamatory allegations made by LBL and the severe impact of this on the Appellant) and to conclude that because there was the loss of confidence as to which LBL's evidence and/or the disputed evidence would be the only evidence that could be relied upon would be insufficient to answer the question of fairness posed by section 98(4).

59. To admit recordings made secretly would not be a breach of the Local Authority's right to privacy under Article 8 of the European Convention on Human Rights — the right to respect for private and family life, as the Local Authority is engaged in public work, not work of a private nature, and that there was no evidence of any likely or potential interference with the private life of any public officer. The Local Authority can also not rely on judicial immunity, since the Local Authority was not acting in a judicial capacity, but in the capacity as senior managers (public officers) of a public body. This view is supported by ***Dogherty v Chairman and Governors of Amwell View School*** [2006], **[A7]**.

60. The clandestine nature of the recordings also cannot by itself be a ground for excluding relevant evidence. As is demonstrated by the case of ***Dogherty*** the EAT said that if covert recordings were the only means of demonstrating discrimination, then they may be allowed as evidence for that reason **[A7]**, paragraphs 29 – 30.

61. The Appellant was forced to secretly record conversations as a precautionary measure, because she anticipated that she would capture some discriminatory conduct and statements being uttered by individuals, which she reasonably believed they would not do and say if they knew they were being recorded.

62. Even if the respondents argues that the Appellant was in breach of trust by making the secret recordings, whatever the Appellant arguably did wrong pales into total insignificance compared to the material she recorded, which is very much in the public interest that it be disclosed. It is not in the public interest for the material to remain confidential and the Appellant believes that it is her right to be able to prove her claim of discrimination, (Article 6 – Right to fair trial- natural justice), confront the people who subjected her to experiences (that she equates with inhumane and degrading treatment- Article 3), and who have also defamed and slandered her.

63. The recordings don't represent some insignificant sideshow (as the Appellant indicated in her pleadings- **[C537.para 16 & C572.para 16]**; they represent the true version of the main events in this case, (which are in dispute- as set out in the Appellant's pleadings **[C166 – 226, C245 – 291, C325 – 372, C386 – 428 & C536 - 538]**, the respondents' pleadings **[C308 – 311, C429 – 473, C494 – 515, C521 – 528 & C547 - 565]**, the equality form questionnaire and response **[C685 - 719]**, the SOSR witness statements, the SOSR/grievance presentation and SOSR/grievance outcome statement- dismissal letter **[S84]**). The recordings evidence events

which took place between **April 2011 and March 2012**, which are in dispute- meetings and telephone calls.

64. Each of the recordings proves that LBL lied about the way that events 'played out'. They support the Appellant's version of events/her case and refute the respondents' case/defamatory allegations. The evidence is damning. One of the Appellant's allegations is the Respondents' persistent failure to keep accurate notes and omit important facts **[C283.para 77a]**, which they are refuting **[C510.para 61 f]**. Another of the Appellant's allegations is that the Respondents' subjected her to unnecessarily long investigation interviews and internal hearings **[C285.para 77m, n & t]**, which they are also refuting **[C562. para 21 m & n]**.

65. The Respondents' also deny that the Appellant was prevented from speaking during the investigation interview on 4 November 2011 **[C286.para 77s, C563.para 21s, C368.para 93s & C513.para 61s]**, any allegations of false or evidence falsified/fabricated **[C284.para 77h, C561.para 21h & C506.para 50]**, that the hearings were not conducted in a fair and impartial manner **[C286.para 77u, C563.para 21u, C549.para 13 & 564.para 23]** and that the Appellant was prevented from asking questions of witnesses etc **[C368.para 93s & C513.para 61s]**; therefore the only way to establish if this is true or false is by admitting the covert recordings and transcripts. The Appellant will not be able to prove these claims unless she is permitted to admit the covert recordings, see **[S257]**. Where facts are disputed the employment tribunal must resolve them by admitting and evaluating evidence about them.

66. The respondents publicly defamed the Appellant, slandering her and calling her good character into question. They labelled her as aggressive, rude and combative. Central to LBL's reasons for the SOSR dismissal are issues of the Appellant's alleged conduct. The Tribunal will not be able to properly decide on the issues relating to for example, whether the Respondent acted on

the basis of stereotypical assumptions about the Appellant's mental health condition, its subjective view of it or it acted on the basis of how the Appellant presented herself, unless it is provided with the actual evidence of how she presented herself (which is demonstrated by the covert recordings).The question of how the Respondents' presented themselves will also be highly relevant. The recordings are also essential in order to enable the Tribunal to make findings of fact on this and the related issue of whether the Appellant's alleged conduct contributed to her dismissal and whether LBL knew whether or not this was the case. It will not be sufficient to take LBL's word for it. LBL in fact relied on fabricated/falsified evidence as reasons for dismissing the Appellant from her employment- which is the Appellant's pleaded case.

67. The respondents should be held to full public account for these intentional allegations and perceptions which have been transmitted and /or published both verbally and in writing and the Appellant will also be seeking stigma damages (a record of ill health and the fact that the Appellant had to take legal action against her employer- these facts will debar her from gaining further employment).

68. It is submitted that the Tribunal ignored the issue of vindication. Following the Appellant's transfer to Lewisham Council, (along with her ET claims), her requests for 'reasonable adjustments', the making of protected disclosures, giving evidence against Lewisham Council at the ET and the bringing of further legal proceedings, on the Appellants' return from sick leave due to work induced stress, she was summoned to a meeting with Christine Grice and immediately suspended.

69. In all that time until the Appellant was suspended by LBL (including the 7 years that she had previously worked for Connexions), she had never had a formal or informal complaint made

against her, yet suddenly, in the space of just four months following her transfer to the council and the making of protected disclosures/acts by her, including one to a prescribed regulator (Michael Gove MP) which the Appellant had notified LBL of), the giving of evidence against Lewisham Council at the ET and the bringing of further legal proceedings, LBL decided that she was an employee whose alleged conduct, required that she be dismissed. When the Appellant asked why, she was told that it was because she had caused a breakdown of trust and confidence and her employment was no longer sustainable. The reality is that the evidence demonstrates that Lewisham Council based its decision to suspend and dismiss the Appellant on it's perception that her disability was problematic and the fact thatt she had made a series of protected disclosures.

70. It is highly important that the Appellant be allowed to evidence the truth of her account. It is paramount that she is permitted to submit all the covert recordings and transcripts, as the issue is about her reputation and her career. LBL have ended the Appellant's career (and all prospects of future employment in her chosen career, and even any other, earning the same level of income in her current field, because of the stigma) on findings of SOSR involving malicious defamatory allegations. The Appellant's allegations include being publicly defamed suffering injury to her reputation and stigma. This requires, in the Appellant's view, both clear and compelling evidence, which are the covert recordings and transcripts. The Appellant's dismissal under SOSR requires evidence that an offence had been committed that was so serious as to warrant the termination of her career. Since the evidence is in dispute and the Appellant has asserted that the covert recordings support her version of events it should be allowed.

71. To end the Appellant's professional career for conduct that she has clearly not engaged in and other discriminatory actions/detriments that she was subjected to by LBL, short of dismissal

involved breaches of Article 3, 8 and 10 of the European Convention on Human Rights (ECHR). The covert recordings will prove that LBL engaged in these actions and that the disciplinary proceedings and the disciplinary/SOSR procedures were not Article 6 compliant.

72. The defamatory allegations made against the Appellant by LBL employees required evidence to prove them to be true and that is the subject of any defence of justification/qualified privilege. What matters is whether those responsible for the alleged defamatory allegations were well aware at the time that there was simply no evidence to support them. The Appellant's covert recordings prove that they were aware that there was no evidence to support them.

73. In the Appellant's view managers were malicious because they included false and irrelevant material, despite knowing that it was untrue, because they wished to create prejudice against the Appellant, muddy the waters, lend credibility to their other defamatory charges (which they also knew to be false) and secure the Appellant's dismissal. They made the whole thing up and tried to conceal their own misconduct and systemic issues, which was an improper motive and therefore malice. The covert recordings are conclusive proof of this. It is the Appellant's view that it is for the Tribunal to decide, based upon the documentary evidence, written statements, oral evidence, submissions and the covert recordings, if LBL was deliberately putting the boot into the Appellant by lending credibility to what the Appellant is alleging was known to be malicious false accusations.

The Public Interest Issue

74. The Appellant believes that besides having an overwhelming importance to her and other Claimant's, which raises significant human rights issues, there is a clear and demonstrable point of significant wider public interest in the case, thus ensuring that public bodies are accountable

for their actions. It is in the general public interest for public authorities to act lawfully. This case, which, on its own particular facts, can be said to bring benefits to a section of the public, i.e. persons other than the individual bringing the proceedings.

75. In line with the Appellant's ET PHR written submissions **[S169]** and her above submissions, on the 21 August 2012 the Appellant e-mailed the ET in order to provide additional grounds for her review application dated 8 August 2012 **[S288]**. She expanded on the public interest argument and the ET's failure to appoint a full panel.

76. The Appellant advised the ET that it should be noted that her amended pleadings for claim number 2313031/12 dated 21 August 2012, made extensive references to the covert recordings and that the ET's order on the CMD/PHR instructed her to provide further and better particulars, including, but not limited to, *'what was said, done or written'*. She also highlighted the fact that the ET had instructed her to provide a schedule of allegations, detailing the *'description of any document relied on'*. The Appellant explained that she could not do this if she is not permitted to admit the covert recordings, which detail *'what was said, done or written'*, (which are issues of dispute between parties) and if she was not permitted to admit the transcriptions of the covert recordings, which are the *'documents relied on'*.

77. The Appellant emphasised the fact that her case dealt with genuine public interest issues and that it was very much in the public interest that allegations of misconduct by agents of the government, the abuse of taxpayer's money and unlawful discrimination in the workplace are heard and properly determined by the Employment Tribunal to whom complaint is made and that cases involving allegations such as hers are peculiarly fact-sensitive and can only properly be determined after full consideration of all the facts and evidence. She stated that all the facts and evidence includes the covert recordings and transcripts.

78. The Appellant’s test for what is in the public interest is two fold.

a) Is a Claimant's right to a fair hearing, the integrity of our judicial system, society and democracy defended/protected and the legal system and justice made more accessible to all by granting the admission of this evidence?
b) Does the granting of the Appellant’s request to admit the evidence improve the integrity of our judicial system, the defence/protection and democracy of the legal system and the accessibility of justice to all?

79. It is submitted that this criteria is met and for the Appellant, the admission of the evidence is therefore justified. Exposing corruption, lies and scandal amongst those who make the decisions that affect our lives is paramount. This case is in the public interest as the actions of these servants of the government are damaging the integrity of our society and the public have a right to know. The servants of the government have effectively signed a contract with the public to be held to a high moral standard. There was a breach of a duty owed to the public, not merely an employment duty or a general duty of care owed to the Appellant.

80. The question is whether the servants of the government in this case live up to their responsibilities to the society that allows them to exist. The covert recordings will demonstrate that the answer to this question is a resounding no. The Covert recordings reveal discriminatory, oppressive, arbitrary and unconstitutional actions by the agents of government and the very worst kind of abuse of executive power by the servants of government. There has been a cover-up of what the Respondents’ knew well to have happened. The Respondents’ acted in a contumelious way and in a way in which there was active and knowing concealment of what had

taken place. For this reason and for the following reasons it is very much in the public interest for the covert recordings to be admitted as evidence:

a) It will contribute to the administration of justice generally, including procedural fairness; and
b) It will allow or assist inquiry into the conduct of agents of government: The Appellant has alleged that the servants of the government (the individual respondents') and others whom she has named have breached the employee code of conduct and she believes that the individuals failed to use the public funds entrusted to or handled by them in a responsible and lawful manner. The Appellant also believes that the actions of these individuals constitutes fraud because the actions of these individuals were designed to ensure that they were able to use their position improperly to confer an advantage and disadvantage over her, a disabled employee, (breaching their duty of trust and her legislative rights in the process) and at the expense of, (or loss to) the Council; and
c) It will reveal or substantiate that agents of government have engaged in misconduct or negligent, improper or unlawful conduct: The individuals involved have tried to cover their 'gross misconduct' by using tax payers used public money to suspend the Appellant on full pay for over 6 months, which she believes allowed them to be able to fabricate evidence in her absence. In the Appellant's view this is a criminal act of dishonest assumption of the rights of the true owner, namely the Council Taxpayer. Surely this is fraudulent or corrupt activity. Every pound lost through fraudulent or corrupt acts is a pound stolen from the residents of Lewisham; and
d) It will inform debate on a matter of public importance; and
e) It will root out waste, fraud and abuse of taxpayers' money and result in a better informed public. The public are entitled to know how public funds are being abused. All Directorates are required to address the risk of loss due to fraud and/or corruption through the Council's risk strategy and appropriate Directorate risk action groups; and

f) It will advance the fair treatment of individuals in accordance with the law in their dealings with government agencies and public bodies

81. The Appellant's evidence reveals that the management team from Lewisham Council's Children and Young People's department have systematically engaged in dishonest, malicious and discriminatory practices and conduct against a disabled employee. This team are entrusted to work with the most vulnerable groups of children and young people in the borough. It is surely in the public interest when a Local Authority is behaving unlawfully and in such an abusive manner that it costs employees their health and scores of thousands of public money is spent in an employment tribunal, trying to defend such indefensible behaviour. These matters should be properly scrutinized and not swept under the carpet. It is a colossal waste of tax-payers money to fund such behaviour and corruption. It is submitted that the ET failed to take a broad judgment taking account of the public interest involved.

82. Today's whistleblowers face a harsh reality. As the Appellant well knows, those courageous enough to blow the whistle often do so at considerable personal cost. The ET's decision will discourage employees from coming forward and raising concern over workplace malpractice, with a view to defending the wider public interest. The Appellant had been led to believe that the aim of whistle-blower legislation is to ensure that those workers who speak out in the public interest are protected, and thereby encouraged, by de-stigmatising whistleblowing, contributing to a change in the prevailing culture and providing a real alternative to silence. The EAT's rulings don't reach people one at a time. This case is about safeguarding the masses. It is essential, therefore, that the ET and the EAT who are presumably seeking to encourage whistleblowers, recognise the importance of protecting public sector employees and people like the Appellant- a vulnerable disabled, unrepresented and unemployed Claimant. It is a measure of the advancement of any society how it treats it's most vulnerable. Detrimental action taken

against whistleblowers should always be regarded as a very serious breach of discrimination legislation.

'Without prejudice' communication

83. Whilst the Employment Tribunal has wide powers to conduct hearings in such a manner as the Chairman thinks most appropriate for the clarification of the issues and for the just handling of proceedings, it is submitted that those powers do not extend to preventing the Appellant from relying on without prejudice communication, which is referred to in her pleadings as part of her claims, as this may lead to inadequate justice. It also does not extend to excluding from an Appellant's witness statement, a matter that she intends to rely on in order to prove his/her case.

84. The statements made in a without prejudice context are clearly connected with issues in a case and the Tribunal should not hesitate to lift the umbrella of 'without prejudice' because the case for doing so is absolutely plain. The evidence in question is already in the public domain- having been submitted as evidence at the PHR in April 2012 **[S46 – S69 & 74]** and made reference to by the Appellant in her PHR witness statement and submissions dated 16 April 2012 **[S98.paras 18 - 21]**, which relate to an allegation that she has pleaded in her ET1, **[C424.para 88a]**. The Appellant will clearly need to rely on the evidence that they are seeking to exclude, in order to prove her case.

85. References to 'without prejudice' correspondence has also been referred to in open correspondence between the Appellant and her former employer **[S153 - 155]**. The Appellant will need to refer to the 'without prejudice' discussions in order to prove her tribunal case. The Respondents' approach to the settlement discussions was carried out in 'bad faith' and as a

means to intimidate/threaten the Appellant. The 'without prejudice' correspondence was used by the respondent as a tool to discriminate against the Appellant. Mr Dobbin (respondents' legal representative) wrote to the Appellant on 22 November 2011 **[S60]**, with a settlement offer, which she rejected because amongst other things, there was a clause in it regarding LBL wishing to reserve its right to make a safeguarding referral, '*(save for any claim relating to any breach of statutory duty and/or any claim relating to safeguarding)*' **[S65.para 10.b]**. It is important to note that the previously drafted contracts did not include this clause, (as was presented to the Tribunal in the Appellant's PHR evidence pack in April 2011 **[S48 – S49, S50 – S59, S74, & S98.para 18]**.

86. When the Appellant challenged LBL's legal representatives about this **[S69 - S70]**, the response was as follows **[S70b]**:

'*I have removed the words "save for any claim relating to any breach of statutory duty and/or claim relating to safeguarding". However the London Borough of Lewisham cannot contract out of its obligation to make a safeguarding referral should it become aware of facts or circumstances which would require a referral. However I have included a new clause 11 which is confirmation that the London Borough of Lewisham isn't aware of any such facts or circumstances, which should hopefully give the claimant the comfort she requires in this regard. The wording of clause 11 is currently being checked by Lewisham, and is subject to their approval*'.

87. The reference to the making of a possible referral to the ISA, (Independent Safeguarding Authority, under the Safeguarding Vulnerable Groups Act 2006) was completely unwarranted. The Appellant had never been accused of putting a child at risk of harm, nor had she done so, which LBL and Babcock knew full well. There was no child protection issue relating to the Appellant's conduct at work. LBL was essentially implying that it believed that she had engaged in conduct that put a child at risk of harm. If LBL were to make a referral, it would have resulted in the Appellant's name being placed on the children's barred list, (if the ISA upheld that there was such conduct on the Appellant's part).

88. The Appellant believes that settlement negotiations were being used to threaten and intimidate her and as some preliminary to the placing of her name on a barred list. The potential consequences for her future career would be severe. This was clearly malicious and discriminatory conduct by the Respondents'. The Appellant had strong grounds to suspect that the Respondents' were conspiring to potentially refer her to the ISA based on what would be fabricated evidence. It is important to note that to date, no referral has been made by LBL to the ISA, and this is almost a year on.

89. The respondents' actions therefore fall under the umbrella of 'unambiguous impropriety'. In ***BNP Paribas v Mezzotero*** [2004] 508, EAT, **[A3]**, paragraph 38 the EAT reached the conclusion that there *was* evidence of impropriety, because, although the Claimant's general claim in that litigation went wider, it *was* part of her case that the specific behaviour alleged on behalf of the Respondent, *in the without prejudice discussions* in that case, namely suggesting to her that her employment be terminated by mutual agreement after she had raised a grievance about her treatment on return from maternity leave, was *itself* improper conduct.

90. The EAT appear to have accepted that the making of such a suggestion would itself be improper conduct. The 'without prejudice' rule should be less strictly applied in discrimination cases than in commercial cases. The decision in ***Mezzotero*** is that evidence of discrimination cannot be excluded by the WP rule and that a lower level of impropriety should be applied. It is submitted that the respondents' conduct falls within the concept of 'unambiguous impropriety' in the context of a genuine and legitimate complaint of disability discrimination and PIDA detriment, and thus amounting to an exception to the rule. It is the clearest cases of abuse of a 'privileged occasion' and so should be admissible in accordance with ***Foster v Friedland and Fazil-Alizadeh v Nikbin*****,** 1993 CAT 205 and cited in ***Mezzotero*** **[A3]**, paragraph 22.

91. It would not be just and equitable to exclude evidence of the 'without prejudice' correspondence from the proceedings because the correspondence is a blatant example of discrimination, harassment and victimisation. The Appellant has pleaded malice in relation to her defamation allegations and has also pleaded in claim number **2390531\2011**, paragraph 80 **[C288.para 80]** that the respondents were trying to 'get rid' of her, (which they subsequently did). The Appellant has specifically pleaded in claim number **2302645\2012 [C392.para 10 & 11 & C424.para 88a]** that the settlement discussions was abused and used by LBL as a means to harass her and as a tool to intimidate and discriminate against her and put pressure on her to leave her job, rather than about resolving a dispute. The 'without prejudice' communication is therefore crucial, as it supports the Appellant's allegations and will help her prove her case.

92. It is submitted that the ET failed to take these matters into account and recognise the fact that the respondent party is trying to obstruct the just disposal of proceedings. The Appellant therefore respectfully requests that EAT overturns the ET's decision and permits her to rely on the 'without prejudice' correspondence and admit it as evidence, because it contains information which is clearly relevant and crucial to her case.

93. The use of the without prejudice communication formed part of the disclosure process in litigation, resulting in the submission of the material in the PHR in April 2012. The Appellant referred extensively to the material in her PHR written representations. This amounts to putting the material in the public domain and so there has automatically been a loss of privilege, particularly as the respondents' had the opportunity, but did not seek to exclude its admissibility at the time.

94. It is submitted that the Respondent must have realised that what was said and relied upon at PHR and its own internal SOSR hearings was likely to be revealed in future Tribunal proceedings. Making and considering settlement offers are 'part and parcel' of any litigation proceedings and the PHR hearing in April took investigated this in relation to the Respondents' cost application. The ET was asked to look into the improper conduct of the Respondents' during the course of negotiations.

95. The respondents' also included 'without prejudice' correspondence in its own SOSR bundle **[S152 – S155]**. It is submitted that the outcome of the SOSR hearings had already been pre-determined and was not a genuine attempt to objectively consider the alleged issues (which is the Appellant's pleaded case). The SOSR hearings had also taken place with groups of people who had not been privy to the settlement discussions, (who would have also had access to the SOSR bundles- LBL managers, LBL HR and including an alleged short-hand note taker from the external company '***Brook Street recruitment agency***'). Their positions and interest would not entitle them to inclusion in the '*circle of privilege*'. The Brook Street note-taker subsequently produced wholly inaccurate notes and saw fit to include her personal opinions on what occurred during the hearing and she also omitted numerous statements and included numerous statements that had not been made.

96. In line with the rationale of ***Brunel University and Another v Vaseghi and Webster*** [2007] EWCA Civ 482 **[A5]**, paragraphs 12 – 41. Please note that the Appellant incorrectly cited the wrong authority in her Notice of Appeal. This was a genuine mistake, as she had clearly cited the correct authority above in her PHR submissions **[S169.para 77 - 79]**. The Council staff involved in the SOSR process/hearing were brought in by LBL because they were supposedly independent. The hearing officer and HR officer in particular was selected because they knew nothing about the dispute or the people involved in it. During the internal SOSR procedure, the

hearing officer's function was to act as an independent adjudicator. The proceedings were formal and adversarial. Evidence was called, including the documents containing references to 'without prejudice' communication. Findings of fact were made; inferences were drawn and conclusions reached. The reality was that the SOSR hearing was a mini-trial, leading, in effect, to judgment.

97. Where documents containing references to 'without prejudice' communication was called, the ET is entitled to conclude that privilege had been bilaterally waived. The ET should also be mindful of the fact that it was LBL that had made the public allegation that the Appellant had made vexatious grievances/unwarranted allegations relating to LBL's conduct regarding settlement negotiations. It had been content to rely on the documents containing references to 'without prejudice' communications when making its case against the Appellant during the SOSR process/hearing **[S152 – S155]**, (which took place on during the months of February and March 2012). Waiver was then complete, as LBL staff (whose positions were not privileged and as a result of LBL's own actions), would have had access to the without 'prejudice communication' since this time.

98. Even if LBL had not waived privilege by its conduct of the SOSR hearing, it had done so when, in response to the Appellant's allegations and its bid to 'get rid of' the Appellant, it had relied on the SOSR proceedings and included documents containing references to 'without prejudice' communications in its SOSR bundle. Privilege had been waived by compiling the bundle of documents so as to include 'without prejudice' material and by disclosing the statements to staff, including the hearing officer, which clearly would have tainted his mind, i.e. his reference to the Appellant's alleged 'vexatious' grievances/allegations **[S97]**, (the respondents' included this document in the joint PHR bundle in April 2011 **[S83]**). It is unrealistic to think that a party can rely on this when setting out its case against the Appellant, (which led to her dismissal) and then

seek to withdraw it at the hearing. By including the evidence in its SOSR bundle, LBL made it plain that it intended to waive privilege. In the Appellant's view, bilateral waiver had taken place at the time the ET1 and ET3 regarding this matter was lodged with the Tribunal office and the evidence.

99. The respondents' SOSR bundle will obviously need to be adduced as evidence at the full hearing. In addition, the Appellant is also seeking to admit the evidence which was adduced during the PHR in April 2012 (her PHR evidence pack), which evidence several drafts of settlement agreements and the fact that the Respondents' had not included the clause about them reserving their right to make a safeguarding referral in previous drafts of settlement agreements. The Respondents' failed to provide an explanation for this inconsistency. It would be an abuse of a privileged occasion not to allow the Appellant to refer to the discussions to support her claims of discrimination, unfair dismissal, breach of contract/human rights and defamation.

Relevant Law

100. The jurisdiction of this Court is limited to the correction of error of law, as explained in ***Melon* v *Hector Powe Ltd*** 1980 SC 188 and ***Meek* v *Birmingham City Council*** [1987] IRLR 250. In the opinion of Lord President Emslie at 198:

"*It hardly requires to be mentioned that an appeal lies from a decision of the industrial tribunal to the Employment Appeal Tribunal, and from a decision of that Tribunal, to this Court, only upon a question of law. This being so I am happy to say that the parties are not in dispute as to the extent to which the appellate tribunal, or this Court, is entitled to interfere with a decision of first instance, and to substitute their own decision for that arrived at by the industrial tribunal. The law is clear that where it cannot be shown that the tribunal of original jurisdiction has either misdirected itself in law, entertained the wrong issue, or proceeded upon a misapprehension or misconstruction of the evidence, or taken into account matters which were irrelevant to its decision, or has reached a decision so extravagant that no reasonable tribunal properly directing itself on the law*

***could have arrived at, then its decision is not open to successful attack. It is of no consequence that the appellate tribunal or court would itself have reached a different conclusion on the evidence. If there is evidence to support the decision of the tribunal of first instance then in the absence of misdirection in law - which includes the tribunal's selection of the wrong question to answer - that is an end of the matter.*"**

101. ***Meek* v *Birmingham City Council***: The judgment of Bingham LJ. in Meek v City of Birmingham was until 2004 the benchmark for tribunals as to whether a decision was adequately reasoned (Meek compliant'):

> "***the decision of an Industrial Tribunal is not required to be an elaborate formalistic product of refined legal draftsmanship, but it must contain an outline of the story which has given rise to the complaint and a summary of the Tribunal's basic factual conclusions and a statement of the reasons which have led them to reach the conclusion which they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be sufficient account of the facts and of the reasoning to enable the EAT or, on further appeal, this court to see whether any question of law arises***."

102. The Appellant believes that the judgment neither articulates the issues as fully as the rule requires nor sets out the facts relating to those issues adequately nor explains its reasons for reaching the conclusions adequately. The fact that the ET failed to give a decision or make findings complying with the comprehensibility test laid down in the case of (***Meek v City of Birmingham*** amounts to an error of law and in breach of Article 6.1 and 14 ECHR. In deciding on the comprehensibility of the ET's decision the ET is required to apply the well-known test set out in Meek by Bingham LJ (as he then was) – see ***Meek v City of Birmingham District Council*** [1987] IRLR 250**, (at 8 to 10)**, namely that:

> ***"The parties are entitled to be told why they have won or lost. There should be a sufficient account of the facts and of the reasoning to enable the EAT or, on further appeal, this court to see whether any question of law arises ...."***

and that:

"The overriding test must always be: is the Tribunal providing both parties with the materials which will enable them to know that the Tribunal has made no error of law in reaching its findings of fact?"

The absence of reasons which accord with or failure to give reasons consistent with the oral and documentary evidence will constitute an error in law under the principles in Meek. The Meek attack is supported by later authorities. ***Mowlem Technical Services (Scotland) Ltd*** **v** ***King*** [2005] at **[A11. paras 9 - 10 & 16]** also makes references to the omission of the Tribunal to the substance of the Appellants' evidence/submissions. The Appellant submits that the judgment was not Meek compliant because it did not provide a coherent and intelligible explanation as to why her case was rejected

103. The Tribunal failed to explain why it reached its conclusions in relation to the issue of the covert recordings and the Appellant's suggested approach. The Employment Tribunal's decision appeared to be inconsistent, it first stating that it believed that the evidence was not probative, but then going on to assert that the Appellant should pay for the cost of engaging the services of a transcription company. This paints a potentially misleading picture of matters. The Appellant asserts that the ET had indicated that the evidence would be allowed if she engaged the services of a transcription company. It is submitted that it would not make any sense for the issue of the engagement of a transcription company to be debated, had the ET already concluded that the covert recordings were not probative and/or that it would be disproportionate to admit them as evidence. It is clear that the Appellant's assertion is correct, as evidenced by the fact that the Respondents' did not dispute her account **[S280 – S281]**, in the context of its response to her suggested approach in relation to the issue.

104. Further to the above, the decision that the covert recordings are probative was a perverse one, given the fact that it will be the only way for the ET to conclude which party's version of events are true, (which are the facts that are in dispute, as indicated by the pleadings of both parties). The covert recordings and transcripts are relevant to the truthfulness of the witnesses, and should be admitted so as to ensure a fair Hearing. The ET's finding of fact on all the principal submissions made, the oral evidence and the pleadings has led to a consequent error of law and incorrect finding of fact. The Employment Tribunal made a crucial finding of fact unsupported by evidence. It was perverse of the Tribunal not to have addressed, and indeed to have disregarded, these fundamental points of evidence, and that, without proper consideration of those points of evidence, (which the Tribunal failed to make findings on), its conclusion was perverse.

105. If it can be shown, that the ET departed from the evidence presented, it follows that the ET acted on some irrelevant consideration or for an improper motive - i.e. it was Wednesbury unreasonable (see Associated Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223), and in breach of Article 6.1 and 14 ECHR. The ET departed from the oral and/or documentary evidence or the pleaded case and making findings, which were so wrong as to amount to Wednesbury unreasonableness and perversity, as set out in ***Yeboah v Crofton*** [2002] EWCA Civ 794 at paragraph 93 Mummery LJ explains what such a ground of appeal involves:

"Such an appeal ought only to succeed where an overwhelming case is made out that the Employment Tribunal reached a decision which no reasonable tribunal, on a proper appreciation of the evidence and the law, would have reached."

At paragraph 95, where he said:

"Inevitably there will from time to time be cases in which an Employment Tribunal has unfortunately erred by misunderstanding the evidence, leading it to make a crucial

finding of fact unsupported by evidence or contrary to uncontradicted evidence. In such cases the appeal will usually succeed."

106. The ET's reasons give no indication of the factors taken into account and it fails to make any kind of assessment of the Appellant's suggestion except to say that it is '*unacceptable*'. The Tribunal erred in failing to give reasons for its general conclusion. That cannot be fair or correct and therefore vitiates the decision so far as procedure is concerned. The ET therefore erred in law. This state of affairs fell foul of the Tribunal's obligation to provide an adequate explanation for its conclusions: ***Meek v City of Birmingham District Council*** [1987] IRLR 250; ***Yeboah v Crofton*** [2002] IRLR 634. The decision simply represents a series of unreasonable demands and criticisms of the Appellant, all of which could not be said to be permissible and/or could not in any event legitimately lead to a decision being made against the Appellant. It is clear that the Employment Tribunal adopted an unfair, prejudicial and onerous procedural approach against the Appellant, (a disabled claimant of limited means), operating in favour of the Respondents', (the former employer).

107. The judgment lacked sufficient reasons to show why the tribunal reached the decision it did. The decision was fundamentally wrong and irrational. The ET failed to provide sufficient analysis and reasons. It is submitted that the Employment Tribunal erred in law in failing to provide both parties with extended reasons which contained sufficient detail to enable the parties to know why they won or lost. Applying her conclusions on the law to this judgment, the Appellant is driven to the conclusion that the judgment does not comply with Rule 30(6) either in form or substance and, is inadequately reasoned to the extent that it is erroneous in law.

108. Any failure to do give reasons or adequate ones may also contravene schedule 1 article 6(1) Human Rights Act 1998 which requires reasons for decisions for a "fair hearing". The

Tribunal failed to clearly set out the relevant principles of law and explain how it applied those principles of law to the facts and how and all of allegations made by the Appellant were disposed. It is submitted that the Employment Tribunal failed to include in its written reasons a number of matters including a concise statement of the applicable law, contrary to the requirements of Rule 30(6) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004.

109. The Tribunals' reasoning was defective and it failed to make appropriate findings of fact on the face of the decision, and, instead, it attached too much weight to the disabled Appellant's inability (as a result of her disability) to provide specifics, (which even if she could have done, would have prejudiced her case) and it appear to have relied on general impression and it reached conclusions on the issues of fact and on the general findings that no reasonable Tribunal, properly directing itself, could have reached.

110. The order on the CMD/PHR also fails to record the fact that during the PHR the ET and the Respondents' agreed that the Appellant could include her full medical records in the trial bundle. The Appellant e-mailed the ET regarding this failure on 11 August 2012 at 9.10 to request that the Tribunal confirm this in writing **[S284]**. The order on the CMD/PHR dated 7 August 2012 **[C1]** also fails to include any directions in relation to enabling the Appellant her right to request from the Respondents any additional material documents which she considers to be material and under its control, following simultaneous disclosure and a date for this do be done by or a date by which parties are to supply to each other details of any authorities to be relied upon. These matters are crucial and the Appellant believes that they should have been covered as a matter of course- as was the case for the last hearing. The Appellant e-mailed the ET regarding this failure on 21 August 2012 at 4.56 to request that the Tribunal issue directions in relation to this **[S287]**.

111. ***G v G*** [1985] 1 WLR 647 **[A8]**, at page 3 - 4: As to the correction of an error of law committed by a judge who is exercising a judicial discretion, the law is equally clear. ***G v G*** is the leading case, which contains references to the well known judgment of Asquith LJ in ***Bellenden (formerly Satterthwaite) v Satterthwaite*** [1948] 1 All ER 343 at 345. For an appeal to succeed, the exercise of discretion which is challenged must, in Asquith LJ's words:

'Exceed the generous ambit within which reasonable disagreement is possible'.

112. ***Boyce v (1) Wyatt Engineering (2) S J Tapsell Ltd (3) Black & Veatch Ltd*** [2001] EWCA Civ 692 **[A4]**, paragraphs 10, 15, 20 – 21, 29, 32 & 36 - 37. It is submitted that the Tribunal paid too much attention and/or alternatively gave too much weight to the respondents' evidence and thus agreeing to its unreasonable and discriminatory suggested approach regarding the issue of the covert recordings and rejecting the Appellant's. The Tribunal never adequately considered the Appellant's unemployed status, disability, her evidence and written submissions. The tribunal made a totally flawed decision.

113. In relation to the Appellant's applications generally, it is submitted that the Tribunal paid too much attention and/or alternatively gave too much weight to the respondents' submissions and evidence. The premise upon the weight attributed is incorrect, thus the Tribunal made an error of law. It failed to give any weight to the Appellant's submissions and evidence because of its distaste of her and in particular, the circumstances by which she had obtained the crucial recordings. The Tribunal misdirected itself by relying effectively, almost entirely, on the Respondents' arguments, which were not justified upon the evidence and its own reason (the suggestion that the Appellant had tampered with the recordings), which had not been advanced by the Respondents'. The Appellant believes that the absence of any reference by the Respondents' to this in the ET judgment supports her assertion. The employment tribunal erred

in law by failing to follow binding authorities which the Appellant set out in her submissions. The Employment Tribunal failed to have these in mind when considering the facts.

114. The Appellant believes that the Tribunal attached little or no weight to her written and oral submissions and evidence and that it also failed to consider the relevant authorities and gives no detail on how it applied the law. It gives no detail on the conclusions drawn from the Appellant's submissions, which is insufficient as reasoning. The Tribunal failed to comment on whether or not it was persuaded by any of the submissions. It does not say what those submissions were, and if it wasn't, why they were rejected.

115. If it can be shown, that the ET departed from the evidence presented, it follows that the ET acted on some irrelevant consideration or for an improper motive - i.e. it was *Wednesbury* unreasonable (see ***Associated Picture Houses Ltd v Wednesbury Corporation*** (1948) 1 KB 223), and in breach of Article 6.1 and 14 ECHR.

116. The evidence that the Appellant is seeking to rely on (the covert recordings and transcripts, supporting evidence post-February 2011 and 'without communication') is relevant and probative and she once again refers the EAT to Lord Simon of Glaisdale comments in **R v Kilbourne** [1973] AC 729, 756:

"Evidence is relevant if it is logically probative or disprobative of some matter which requires proof … relevant (i.e. logically probative or disprobative) evidence is evidence which makes the matter which requires proof more or less probable."

117. The Appellant submits that the Tribunal has therefore erred in law in its downgrading of the material and its refusal to admit it as evidence. The Appellant has referred to the evidence in her pleadings and will be making extensive references to it in her witness statements and oral

evidence. The Appellant will not be able to prove her pleaded case without the excluded evidence.

118. The Tribunal will not be able to assess the credibility of witness statements and oral evidence, if it is unable to compare it to the evidence that has been excluded. The witness statements and oral evidence of the Respondents' and the Appellants' witnesses will clearly conflict and the ET will be unable to fairly and adequately explain why one witness is preferred over that of another if the evidence is not admitted. It is highly likely therefore, that the Appellant will be found to be not credible and adverse inferences will be made against her and the ET will be free to add weight to the Respondents' fabricated and perjured evidence.

119. The Tribunal will not be able to identify discrepancies, contradictions or inconsistencies with the witness statements, oral evidence and the documentary evidence (including the questionnaires and responses), if it is unable to compare it to the evidence that has been excluded. The primary relevant facts are disputed/'at issue' between the parties. The determination of the relevancy of a particular item of evidence rests on whether proof of that evidence would reasonably tend to help resolve the primary issue at trial. There is contradictory evidence, therefore the evidence that the Appellant is seeking to rely on will be crucial in order to enable the Tribunal to making findings of fact, resolving issues of credibility, determining the real truth and disposing of the case fairly and justly. The end result probably being that the Appellant will lose her case and be at risk of a cost order, which is what happened in her previous case against the Respondents'.

Human Rights: The Discriminatory Impact of the ET's Decision- Equality Impacts on People with Protected Characteristics

120. The Tribunal erred in its decision with regards to the Appellant's request for a 'reasonable adjustment' in relation to the issue of the covert recordings which she sent on 4 August 2012 **[S830]** and which the ET was asked to address again on 8 August 2012, in the context of the Appellant's review application **[C832.point 2]**. The Equality Act 2010 places on service providers to take reasonable steps to change any practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which they provide to other members of the public.

121. *Article 14*: The ET's decision in relation to the issue of the covert recordings is indirectly discriminatory and essentially constitutes the introduction of further upfront costs/fees and the costs/fees are not a proportionate means of achieving a legitimate aim. The ET's suggested approach is particularly oppressive, given the fact that if upheld, it would disadvantage Claimants' like the Appellant even more than they are already, because from next summer, they will also need to pay a fee of £160 or £250 when they issue their claim. In addition, they will pay a further fee 4 to 6 weeks before the hearing of £230 or £950. When you couple this with the devastating cuts being made to legal aid, it essentially tips the scales of justice heavily towards employers, and denies legal redress to those who do not have the cash to pay for it.

122. It is essential that claimants can access employment tribunals and cost/fees should not be a barrier to access. The ET's decision represents a further bar to the Appellant's ability to enforce her employment rights, which have already been severely eroded. The Appellant's treatment by the ET as some kind of 'consumer', there by choice, is extremely unfair and dangerous. The Appellant and other Claimant's are not "shopping" for their employment rights,

they are merely trying to enforce what is legitimately theirs and by doing so encouraging good standards of behaviour by employers.

123. During the PHR, when the Appellant repeatedly explained to the Judge that she was not in a position to pay £10,000 for the services of a transcription company, the Judge responding by saying that she was '*not even prepared to do the basics*'. The judge then asked the Appellant, '*Who do you think is going to pay for it?*' The Appellant believes that this showed a discriminatory attitude and approach. In the Appellants' view the EJ had clearly already made up her mind in favour of the respondent, even though the decision regarding the covert recordings had been reserved. It was not fair for the Tribunal to form such a view. The ET's decision and approach placed an unnecessary burden on the Appellant as an employment tribunal user at the expense of preserving access to justice and maintaining an effective system for the enforcement of employment rights. It's clear that natural justice does require that the European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 is adhered to.

124. The Appellant submits that the ET failed to apply the just and equitable balancing exercise to the facts, the tribunal should have done this and made an order regarding reasonable adjustments in the Appellant's favour. The ET failed to place in the balance the Appellant's right as an unrepresented disabled claimant and the rights of the Respondents'. Weighing the balance of prejudice as between the parties it is her view that the decision by the Tribunal to refuse her application for 'reasonable adjustments' has a greater prejudicial impact on her case as an unrepresented disabled claimant than it has upon the Respondents' case. This balancing exercise was one which it had to perform in compliance with its own obligations as a statutory body under the **Human Rights Act 1998.**

125. An ET must give effect to the overriding objective when exercising its procedural powers. The EAT failed to take this factor into account when making the decision regarding the Appellant's request for 'reasonable adjustments'. The ET's decision and approach in relation to the issue of the covert recordings has limited access to justice for the Appellant and adversely affected her as an unrepresented, unemployed, and disabled Claimant. It has effectively 'priced her out' of access to justice. The ET is well aware of the Appellant's precarious financial situation (which is evidenced by its cost order dated 23 April 2012), **[C809.para 12]** and which is also evidence by the fact that she had advised the EAT that she couldn't even afford to provide them with hard copies of her Notice of Appeal and supporting evidence **[C283]** and she had to decline ELAAS representation because she couldn't even afford the cost of printing extra sets of bundles that would be required by a representative.

126. The ET's approach will clearly be a deterrent for other individuals pursuing meritorious claims. It has serious potential consequences for the Appellant and other claimants'. It simply sends out the wrong message (that full justice is not something the judicial system believes in for them) and makes it even harder for claimant's to access justice, enforce their basic employment, legislative and human rights.

127. The ET's approach amounts to a handicap to the attainment of justice and as a result, many unscrupulous employers will be emboldened to treat employees in a worse manner because they will be able to ensure that damning evidence never comes to light by making applications to the ET for the Claimant to pay upfront costs that they know the Claimant's can't afford. This will allow those unscrupulous employers to 'rest easy', knowing that they will not be then held to account by the damming evidence in public and for evading legal duties. It provides a powerful incentive for employers to demand that Claimants' pay upfront costs/fees that they

cannot possibly afford. By making such an order the ET is undermining the effective enforcement of employment law and sending an entirely wrong message to rogue and discriminatory employers.

128. Under Article 6 of the European Convention on Human Rights the ET has a clear obligation to maintain access to justice for all claimants and not simply those with the means to pay upfront costs/fees. This will help to ensure that those individuals who have been recently dismissed and whose financial circumstances have deteriorated are able to use the employment tribunal system.

129. In the Appellant's opinion the overriding aim of the employment tribunal system should be to provide an effective system for the enforcement of employment rights which is accessible to all, including those on limited means. Indeed any other aim is inconsistent with the requirements of Article 6 of the European Convention on Human Rights. The ET's decision and approach is discriminatory and unjustifiably penalises the Appellant for bringing claims under the Equality Act 2010. The Appellant has experienced a prolonged periods of discrimination and so she is particularly disadvantaged.

130. The ET's decision is highly likely to deter meritorious claims and individuals will be put off from bringing claims as a result of a system of high upfront being imposed, particularly those from protected groups in the low income brackets who might seek to bring a claim. This constitutes a further barrier to justice for the Appellant. The ET's appraoch will have the further consequence of weakening efforts to advance equality of opportunity for protected groups.

The Appellant's Application to Disclose Chairman's Notes

131. This is crucial under the precedent case laws in UK where there is are allegations of perversity, pre-judgment/a 'closed mind'. It is clearly crucial to this case, therefore the EAT will require access to all the evidence bearing on the alleged perversity and failure to make findings of fact on the oral evidence. It will be is impossible, for the Appellant to make her case unless this is permitted. It is for the Applicant who seeks to suggest that the Tribunal's Decision is wrong to show the EAT the material upon which that submission is based. The Appellant respectfully requests that the EAT grant her request and take the necessary steps to enable her to obtain the ET's notes.

132. Paragraph 7 of the ET's reasons state **[C1.para 7]**, '*When asked by me to be more specific about the content of the recordings, the Claimant was not prepared to elaborate but simply referred me back to her written submissions*'. The Appellant believes that such a criticism is extremely unfair. It is submitted that the Appellant provided extensive PHR written submissions **[S169]**- (65 pages long) on the matter and even followed this up with two e-mails on 27 and 28 July 2012 **[S255 & S257 - S258]**, giving additional details. The Appellant was essentially being asked by the judge to present her evidence/case (ahead of disclosure, the exchange of witness statements and the hearing), which would be prejudicial, (this fact had been raised with the ET before, in response to the Respondents' e-mails to the ET asserting that she should provide precise details about the recordings **[S121 & S140]**. Even if this were not the case, the Appellant would not have been able to do so, as she is disabled, suffering with memory impairment, (due to her mental health condition- depression).

133. The Appellant has been signed off as 'unfit to work' due to depression since April 2012 **[S156 – S158 & S161 – S166]** and is undergoing counselling **[S157]** and taking two sets of prescription medication for this condition. The Tribunal is fully aware of the Appellant's fragile state of health and was provided with proof of this during the PHR in April 2012 **[S98.paras 24, 50, 60, 62 – 64 & S148 – S149]** and August 2012 **[S169.paras 50, 84, 86, 109, 111 - 113, 125 - 127, 129 – 131 & 133]**. The Appellant should not therefore be expected to give specific details, on the spot, relating to 39 hours worth of recordings, which go as far back as April 2011. This was an extremely onerous approach for the ET to take and it failed to take her disability into account. The Appellant put this argument to the Judge at the time, but this has not been included in the judgment. The omission by the Judge paints a potentially misleading picture of matters.

<u>The Failure to Appoint a Full Panel</u>

134. It is submitted that the approach taken by the Judge during the PHR in relation to the covert recordings meant that the issue being determined by the ET became a question of fact and not just law. Fact-finding was then in play. The substantive merits of her claims were obviously being considered in this respect. Such an issue required a full panel, rather than a judge sitting alone. The Appellant had requested a full panel **[S121]**, but this request had been refused and parties were advised that judge Balogun would conduct the hearing alone **[S131]**. The Judge was essentially attempting to clarify issues and review/decide certain/actual aspects of the case in question, (which were in dispute). In its judgment, the ET neither set out the competing factual contentions nor indicated how they had been resolved, and concluded that the covert recordings were not probative and inadmissible.

135. The Appellants' friend had also accompanied her to the PHR, (and was taking notes on her behalf). The Appellant's friend is also featured in a number of the covert recordings and she therefore would have been able to corroborate the Appellants' assertions in relation to the content of the covert recordings, had the Appellant been in a position to provide the Judge with specific information that she was seeking, (without prejudicing her case). All three members of a tribunal should have been able to consider such evidence and have an equal vote in the tribunal reaching its determination. The issue is integral to the heart of the Appellants' case (including the malicious and false allegations and destruction of the Appellants' reputation by the Respondents'), and the Tribunal cannot pre-empt the matter at so early a stage as this, when there are underlying issues in dispute.

136. The EAT have on occasions criticised the practice of Employment Judges sitting alone and have urged the power to be exercised with restraint and only used where it is appropriate to the case, (see ***Southwark London Borough Council v O'Brien*** [1996] IRLR 420 and ***Morgan v British Gof Cyf*** [2001] ICR 978 **[A10]**. The Appellant does not believe that a multi-discrimination case, (where issues are clearly in dispute), is an appropriate case for a judge to sit alone. This is contrary to law and as set out in ***Morgan*** **[A10]**, paragraph 20, 26 and 28 - 30.

137. In addition to this, it is important to note that the Appellant had made the application to admit the covert recordings in support of her unfair dismissal case as well and that the Respondent bears the burden of proving, on a balance of probabilities, that the appellant was dismissed for one of the potentially fair reasons set out in Section 98(2) ERA. The Appellant therefore should not have been required to set out any specifics by the Judge.

138. **In her pleadings the Appellant has made the following allegations:**

138.1 The Appellant refers to the covert recordings in her original pleadings for claim number 2313031/12 **[C536.para 7]**: At paragraph 7 she states the following:

'*I have covert recordings, which prove that he failed to conduct a fair, objective and reasonable hearing/process and that witnesses wilfully gave false evidence during the process*'.

138.2 At paragraph 16 of her original pleadings she states the following **[C537.para 16]**:

'16. Lewisham Council should be held to full public account for these intentional allegations and perceptions which have been transmitted and /or published both verbally and in writing. Now the wider public will also witness this, as LBL have published their defamatory allegations outside of Lewisham. I will also be seeking aggravated/exemplary/stigma damages- (a record of ill health and the fact that I had to take legal action against my employer will debar me from gaining further employment). I wish to clear my name. The recordings don't represent some insignificant sideshow; they represent the true version of the main events in this case, (which are in dispute). The respondents publicly defamed me, slandering me and calling my good character into question. The material I recorded is very much in the public interest and it should be disclosed. It is not in the public interest for the material to remain confidential and I believe that it is my right to be able to prove my claim of discrimination, (Article 6 – Right to fair trial- natural justice), confront the people who subjected me to experiences (that I equate with inhumane and degrading treatment- Article 3), and who have also defamed and slandered me'.

138.3 At paragraph 17 she states the following **[C537.para 7]**:

'17. The individuals involved in making the malicious allegations me knew them to be untrue, (which the recordings prove). The individuals involved were not simply making judgments about my alleged conduct and exchanging e-mails or preparing reports to justly criticise the alleged conduct, they were willfully and maliciously fabricating/falsifying evidence against me and publicly defaming me in the clear knowledge of the severe consequences for me of their actions, i.e. dismissal/financial loss, exacerbation of my health/risk of relapse of my depression, stigma/damage to my reputation, debarment from future employment etc'.

138.4 In her amended pleadings for claim number 2313031/12 **[C582.para 41]** at paragraph 41 she states the following:

'41. I informed LBL that Christine Grice's actions constituted further gross misconduct, disability discrimination, PIDA detriment, defamation of character, libel and slander. I also highlighted the fact that during her presentation she even went as far as to question if I am in fact 'really' disabled. I questioned Chris

Threlfall and Christine Grice during the hearing. Both provided false evidence and were evasive, obstructive and equivocal when answering my questions, which is evidenced by the covert recordings'.

138.5 In her amended pleadings for claim number 2313031/12 **[C5821.para 40 & C583.para 44]** at paragraph 40 and 44 she states the following:

'40…I then asked her if she had completed an investigation report. She informed me that the document that she had just read out was her investigation report'. '44…The covert recording will show that on 28 February 2012 Christine Grice and Elaine Hattam denied that Christine Grice had stated the day before that her SOSR/grievance presentation was also her investigation report. They asserted that Christine Grice had not written an investigation report'.

138.6 In her amended pleadings for claim number 2313031/12 **[C583.para 45]** at paragraph 45 she states the following:

'45. The language that was used by Christine Grice during the course of her investigation interviews, her report, the witness statements of managers and Ralph Wilkinson during the course of the SOSR hearings and his outcome statement and his was clearly intemperate and was designed, to heighten my alarm and cause the maximum amount of distress. You can compare this with the language used by Christine Grice and Ralph Wilkinson with management during investigation interviews and the SOSR hearings, (as is evidence by the covert recordings). This constitutes a form of victimization, PIDA detriment and a breach of my human rights, (in line with my allegations against him, Chrsitine Grice and LBL), and which is also set out in my schedule of claims'

138.7 In her amended pleadings for claim number 2313031/12 **[C584.para 46]** at paragraph 46 she states the following:

'46. The covert recordings evidence the fact that I attended lengthy OH Consultations x3, numerous team meetings and meetings with management, where I even suggested mediation with Elaine Smith (who seemed reluctant). The covert recordings evidence the fact that I also attended investigation interviews x3 and SOSR hearings, which totalled 23 hours in total. It beggars belief as to why a reasonable employer would think it appropriate to subject a disabled employ with a mental health condition to 23 hours worth of interrogation'

138.8 In her amended pleadings for claim number 2313031/12 **[C584.para 47]** at paragraph 47 she states the following:

'47. The recordings clearly prove I am innocent of the allegations that were made against me and show that I was endeavouring to provide every assistance to LBL and work with it, (as I had also evidence in my SOSR bundle that was received by

senior management before the SOSR hearing) and that my alleged conduct during meetings with management and team meetings was impeachable'

138.9 In her amended pleadings for claim number 2313031/12 **[C584.para 48]** at paragraph 48 she states the following:

'48.There is no evidence that I disregarded the central conditions of my contract, but there is ample evidence, (documentary and also audio), that LBL did. It is plain that I had not become 'unmanageable', but that I was merely crying out for help, but that these cry's for help fell on deaf ears. The hearing officer, Barry Quirk and Frankie Sulke deliberately disregarded this, which constitutes a form of victimization, PIDA detriment and a breach of my human rights, (in line with my allegations against them/LBL), and which is also set out in my schedule of claims'.

138.10 In her amended pleadings for claim number 2313031/12 **[C585.para 49]** at paragraph 49 she states the following:

'49.The covert recording will show that during the SOSR hearing on 28 February 2012, Elaine Smith made offensive comments during the hearing, making reference to a schizophrenic former employee who LBL had dismiss, implying that my circumstances should be treated in the same way. This comment is clearly related in some way to my protected characteristic, my mental health condition- depression. It also represents a stereotypical viewpoint. The hearing officer, deliberately ignored this, which constitutes a form of victimization, PIDA detriment and a breach of my human rights, (in line with my allegations against him/LBL), and which is also set out in my schedule of claims'.

138.11 In her amended pleadings for claim number 2313031/12 **[C585.para 50]** at paragraph 50 she states the following:

'50.The covert recording will show that Valerie Gonsalves was particularly aggressive and rude and even refused to answer some questions. I found her behaviour very threatening and I was shocked by it, she was seeking sympathy, as the alleged 'victim', yet her behaviour during my questioning of her was not in line with this. It was clear from her conduct that she was not the victim, but the aggressor- what she and other managers were accusing me of being. Valerie Gonsalves made offensive comments during the hearing, making reference to me having 'lost the plot', (which she had also stated in her investigation interview with Christine Grice). I raised this as an issue during the SOSR process (see paragraph 28 of my analysis of LBL SOSR witness statements). This comment is clearly related in some way to my protected characteristic, my mental health condition- depression. It also represents a stereotypical viewpoint. The hearing officer, deliberately ignored this, which constitutes a form of victimization, PIDA detriment and a breach of my human rights, (in line with my allegations against him/LBL), and which is also set out in my schedule of claims'.

138.12 In her amended pleadings for claim number 2313031/12 **[C586.para 51]** at paragraph 51 she states the following:

'51. The covert recording will evidence that Valerie Gonsalves advised me that she never made any complaints about me (also at pages 78 & 79 of LBL SOSR minutes), this contradicts what Christine Grice advised me during the investigation interview on 25 October 2011 (and as the covert recording will show). The covert recording will evidence that the hearing officer questioned the relevance of many of my questions and showed anger when I enquired if Valerie Gonsalves was okay before I began questioning her. He allowed Valerie to avoid answering my question adequately and fully, which constitutes a form of victimization, PIDA detriment and a breach of my human rights, (in line with my allegations against them/LBL), and which is also set out in my schedule of claims'

138.13 In her amended pleadings for claim number 2313031/12 **[C586.para 52]** at paragraph 52 she states the following:

'52. The covert recording will evidence that Valerie Gonsalves stated that I criticized her during our meeting in which she undertook two risk assessments and that I refused to sign both. In its equality form questionnaire response, LBL contradicts Valerie Gonslaves evidence and asserts that she carried out a number of risk assessment, referring to four separate assessments, and its states that I refused to sign them. It is important to note that in its equality form response LBL highlights the fact that I requested copies of office based assessments and that I was provided with a copy of the individual risk assessment undertaken by Valerie Gonslaves, which I refused to sign, yet it does not provide copies of the other risk assessments which I also allegedly refused to sign. In any event, the covert recording will show that LBL's assertions in relation to the numerous unsigned assessments are false. The hearing officer, deliberately ignored this, which supports my allegations of victimization, PIDA detriment and a breach of my human rights against him (and her/LBL) and which is set out in my schedule of claims'.

138.14 In her amended pleadings for claim number 2313031/12 **[C587.para 53]** at paragraph 53 she states the following:

'53.Valerie Gonsalves also stated that my colleague Ahmed Abdi (who was present, but not interviewed as part of the investigation by LBL), was embarrassed by my alleged conduct. The covert recording will show that he was clearly not embarrassed by my alleged behaviour, but that he in fact made complaints of his own during the course of that very same meeting. This supports my allegations of victimization and PIDA detriment against her'.

138.15 In her amended pleadings for claim number 2313031/12 **[C587.para 54]** at paragraph 54 she states the following:

'54.The covert recording will show that the evidence that all three witnesses gave contradicted each other and also contradicted the evidence of Christine Grice. Christine Grice had stated that she was not aware of the alleged 'fear' that Valerie had of me and that this had not come out until her investigation. Valerie advised me that she had informed Christine Grice of this before I was suspended. This contradicts her earlier statement, where she asserted that she had never made complaints about me (at pages 78 & 79 of LBL's SOSR minutes). However, during the course of Valerie's evidence she had stated that she had not made any complaints about me. This also contradicts what Christine Grice informed me during my investigation interview- she told me that Valerie had made several complaints about me, even as far back as April 2011. This supports my allegations of victimization, PIDA detriment (and a breach of my human rights), against the individual respondents'/LBL'.

138.16 In her amended pleadings for claim number 2313031/12 **[C588.para 55]** at paragraph 55 she states the following:

'55. Valerie stated during the SOSR hearing that she had not made any complaints before my suspension, but if she allegedly felt so bullied, it is far from clear to me why a self-confident and assertive manger for 23 years (according to her- see her witness statement), would not make any complaint in that situation and see that those complaints were addressed to her satisfaction, particularly given her concerns about the alleged affects of my alleged behaviour on the rest of the team and managers ability to run the service. The hearing officer, deliberately failed to consider this, which supports my allegations of victimization, PIDA detriment and a breach of my human rights, against him (and her/LBL) and which is set out in my schedule of claims. It is important to note that this alleged complaint was not raised with me during the investigation interviews, or my alleged poor work output, (as evidenced by the covert recordings)'.

138.17 In her amended pleadings for claim number 2313031/12 **[C588.para 56]** at paragraph 56 she states the following:

'56. All the managers that were questioned referred to my alleged inappropriate conduct during team meetings. The covert recordings do not support the allegation and the hearing officer was not been presented with any documentary evidence to the contrary. During the SOSR hearing on 28 February 2012, when I asked Kate Parsley (who was the note taker at team meetings) to point out in the minutes to the meetings where this alleged conduct was evidence, she was unable to do so, (as is evidence by the covert recording). The hearing officer, deliberately failed to take this into account, which supports my allegations of

victimization, PIDA detriment and a breach of my human rights against him/LBL and which is set out in my schedule of claims'.

138.18 In her amended pleadings for claim number 2313031/12 **[C588.para 57]** at paragraph 57 she states the following:

'57. When I questioned Kate Parsley on the absence of this alleged conduct in the notes to the meetings, all she could say was that the notes were not verbatim, (as evidence by the covert recordings). It is clear from the recordings that I was not guilty of the things that I have been accused of. I was no bully. The respondents' made a series of wild and unsustainable allegations. I was the victim of a malicious, protracted campaign of bullying by the LBL management team'.

138.19 In her amended pleadings for claim number 2313031/12 **[C589.para 58]** at paragraph 58 she states the following:

'58. The covert recording will show that during my hearing Kate Parsley informed me that there had been two managers leading the team up until my suspension. If this was the case, it is implausible that management would still be struggling to run the service properly. Having two managers doing the same job was also a deplorable waste of tax payers money'.

138.20 In her amended pleadings for claim number 2313031/12 **[C589.para 59]** at paragraph 59 she states the following:

'59. When I questioned Valerie Gonsalves about the delay in referring me to OH she advised me that this was because LBL were waiting on documentation from Babcock, (as is evidenced by the covert recording). When I asked her what documentation, she was unable to say. It is clear that this was a lie. The only documentation that LBL were waiting on was advice on our terms and conditions, which Elaine Smith alleged was needed to review roles and responsibilities, not make OH referrals. The hearing officer, deliberately failed to take this into account, which supports my allegations of victimization and PIDA detriment against him and which is set out in my schedule of claims'.

138.21 In her amended pleadings for claim number 2313031/12 **[C589.para 60]** at paragraph 60 she states the following:

'60. Elaine Hattam had received the necessary information from Babcock on 31 March and 1 April 2011, but had suppressed this evidence. I only found about it when Babcock's legal representative disclosed this fact on 5 April 2012. Elaine Hattam remained quiet and failed to disclose this fact whilst I questioned Valerie Gonsalves during the SOSR hearing about this issue (as, is evidence by the covert recording). This supports my allegations of victimization, PIDA detriment

and a breach of my human rights against her, Ralph Wilkinson and LBL, and which is set out in my schedule of claims'.

138.22 In her amended pleadings for claim number 2313031/12 **[C590.para 61]** at paragraph 61 she states the following:

'61.The covert recording will show that Valerie also advised me that Christine Grice had not advised her that Cathy Robinson had made a complaint about her. This is obviously implausible and even if it were true it demonstrates that senior management knew that there were issues with Valerie's conduct towards staff but deliberately failed to address it. There were clearly difficulties in her working relations with key workers, such that individuals complained about her behaviour. This supports my allegations of victimization, PIDA detriment and a breach of my human rights against Ralph Wilkinson and LBL and which is set out in my schedule of claims'.

138.23 In her amended pleadings for claim number 2313031/12 **[C591.para 63]** at paragraph 63 she states the following:

'63. A service plan was not in place at the relevant time and Christine Grice informed me herself during my SOSR hearing (as the covert recording will show), that she had been following the service plan from the previous year, even though it was supposed to be a new service that I had joined'.

138.24 In her amended pleadings for claim number 2313031/12 **[C591.para 64]** at paragraph 64 she states the following:

'64. On 6 March 2012 I attended the last day of the SOSR hearing. The covert recording will show that I was asked a large number of questions and that the hearing officer was particularly hostile towards me and tried to twist my words/put words in my mouth. It was clear that it was his intention to make proceedings as difficult and unpleasant as he could for me. He persistently asked repetitive questions and asked me questions relating to my work output, even though I was not being investigated for capability. I informed him that I believe that he was treated me less favourably than others who had attended the hearing to give evidence and explained to him the effect that this was having on me, but he chose to ignore this and continued in the same manner. I was extremely distressed, threatened and intimidated by his conduct. It felt like a disciplinary hearing to me. There is a clear inconsistency between my treatment and that of management's. This supports my allegations of victimization, PIDA detriment and a breach of my human rights against Ralph Wilkinson/LBL, and which is set out in my schedule of claims'.

138.25 In her amended pleadings for claim number 2313031/12 **[C592.para 65]** at paragraph 65 she states the following:

'65. During the SOSR hearing the hearing officer went into entirely irrelevant or extraneous material, for example allegations of poor work output, which had not been put to me during the investigation process and which I was interrogated by the hearing officer about (as the covert recording will show), even though on 28 February 2012 he categorically stated that the case against me was not about this, (as the covert recording will also show). I raised this during the SOSR hearing, but the hearing officer ignored this point and proceeded to question me about this subject. This supports my allegations of victimization, PIDA detriment and a breach of my human rights against Ralph Wilkinson/LBL, and which is set out in my schedule of claims'

138.26 In her amended pleadings for claim number 2313031/12 **[C592.para 66]** at paragraph 66 she states the following:

'66. The covert recording will also show that the hearing officer also kept me waiting for an unreasonable amount of time during a break, (40 minutes instead of 10). When I complained about this, he simply dismissed me (attempting to shut me down when I tried to discuss it) and failed to acknowledge that it was unreasonable. I was really upset by this. The long wait had made me feel more anxious and significantly increased my stress levels. The hearing officer inappropriately and persistently questioned me about my work output, which was not what I was being investigated for (as clarified by him on 27 February 2012). He continued to question me on this subject, even though I advised him that I was distressed by his conduct. The Hearing Officer had prevented me from asking Valerie Gonsalves about her false allegations in relation to this. This supports my allegations of victimization, PIDA detriment and a breach of my human rights against Ralph Wilkinson/LBL, and which is set out in my schedule of claims'.

138.27 In her amended pleadings for claim number 2313031/12 **[C593.para 67]** at paragraph 67 she states the following:

'67. In February/March 2012 during the SOSR hearings, (which were covertly recorded), it proves that all the managers gave contradictory and false evidence. It shows aggressive and rude conduct on their part with managers even refusing to answer some of my questions. It is clear from the recording that the hearing officer was particularly hostile towards me and tried to twist my words/put words in my mouth. He also persistently asked repetitive questions and asked me questions relating to my work output, even though I was not being investigated for capability. During the hearing, the presenting officer (Christine Grice), made a number of false accusations against me (and some of these were relied on as reasons for my dismissal), including but not limited to the following;

a) I allegedly refused to discuss suggested reasonable adjustments with my line manager; I was rude and aggressive in team meetings, (going into 'attack mode'): and
b) my behaviour was unacceptable and inappropriate; and
c) I was abusive and combative; and
d) I had told a manger that she was 'not a good manager'; and

e) There was no evidence of my work; and
f) I prevented LBL from making reasonable adjustments' and my grievances were vexatious.
It is important too note that there is no mention of the type of rude and abusive language allegedly used. This supports my allegations of victimization PIDA detriment, and a breach of my human rights against the individual respondents' and LBL, and which is set out in my schedule of claims'.

138.28 In her amended pleadings for claim number 2313031/12 **[C596.para 73]** at paragraph 73 she states the following:

'73. The minutes that Susan Funnell (from Brook Street Agency) took were inaccurate and not a true reflection of what took place. If you compare the transcripts/covert recording to her alleged short-hand notes, it is clear that Susan Funnell omitted crucial statements that I and other attendees had made, inserted her own sentences and words, (to include statements that I did not make) and she also included personal comments, i.e. her opinion on an individuals feeling and actions, which clearly is not a requirement when you are simply hired to take minutes'.

138.29 In her amended pleadings for claim number 2313031/12 **[C596.para 74]** at paragraph 74 she states the following:

'74. LBL forced the use of a short-hand note taker from an external agency upon me, even though I had made it clear to them that I did not consent to this, and that I believed that it was a breach of my privacy and confidentiality. They responded by informing me that confidentiality was covered (as is evidenced by the covert recordings). I saw no evidence of this. I do not believe that any confidentiality agreements were signed. It is clear from this state of affairs that the use of a professional note taker served absolutely no purpose at all, but in fact simply aided LBL in its efforts to discriminate against me, paint a false picture of me and the situation and enable it to publicly defame and unfairly dismiss me. It supports my allegation that the use of a note taker from an outside agency was a discriminatory act, as LBL would have had the chance to review the notes before they were published and sent out and therefore supports my allegations- as set out in my schedule of claims'.

138.30 In her amended pleadings for claim number 2313031/12 **[C597.para 75]** at paragraph 75 she states the following:

'75. The allegations made against me were not supported by facts which were accurate and the damaging comments have now been disseminated to a wider audience, (inside and outside of LBL). I believe that the allegations will not have been kept confidential by LBL, particularly in light of the comments made by Nick French at the full time workers meeting when I first transferred, during the full-time workers meeting, '…pit of malicious rumours' that is in serious jeopardy of running individuals' personal and family lives and career prospects' and the

comment made by Jackie Lynham (Unison rep) during the investigation process, 'nothing in LBL is confidential' (as evidence by the covert recording) and the comments made by my former colleague Cathy Robinson at a key workers team meeting on 8 June 2011, regarding her concerns about the lack of confidentiality at LBL'.

138.31 In her amended pleadings for claim number 2313031/12 **[C599.para 80]** at paragraph 80 she states the following:

'80. In his dismissal letter (at page 4) Ralph Wilkinson stated, 'I took into account your statement at the hearing, when I asked if you would do anything differently if it were possible to redeploy you. You replied that you would behave in the same way'. The covert recording proves that this is false. This supports my allegations of victimization, PIDA detriment and a breach of my human rights against him/LBL, and which is set out in my schedule of claims.'

139. If LBL and any of its employees believed that the Appellant is making untrue/false allegations against them, they would not hesitate to initiate defamation proceedings against her. The Appellant submits that the reason that they have not done so or even threatened to do so, is that they are fully aware that her evidence (which it is trying to suppress) proves/supports her claims/allegations. The Appellant is prepared to take the witness stand under oath and repeat her allegations, as all the statements that she has made are not only truthful, but are also supported by her critical evidence.

140. It is important to note that during the internal SOSR hearing, no employee that the Appellant accused was able to particularise as to what exactly they felt that the Appellant had said about them that was untrue. Similarly the hearing officer, in his dismissal letter was unable to do so **[S84]**.

141. In light of the above it is submitted that the ET's decision that the covert recordings were not probative was not a finding that the Judge was entitled to make, particularly given the failure by the ET to take into account the Appellants' disability and the procedural irregularity which

occurred in relation to the failure to appoint a full panel. The ET's approach was not just and equitable.

Recusal Application and Conduct of the Tribunal- Improper Conduct, Procedural Irregularity and an appearance of pre-judgement

142. The Appellant addressed this issue in her PHR written submissions in response to the Respondents' e-mail to the ET dated 19 June 2012, which essentially accused her of 'Judge shopping' **[C818]** and unreasonable behaviour. It is also in response to the CMD agenda point 4.3, which poses the question, '*Are there any issues under the Human Rights Act or EU Law?*' Recusal applications should never be countenanced as a pretext for judge-shopping. It is clear that the judge in question has already pronounced on an actual, live, concrete and highly relevant issue in question. In this case part of that pronouncement relates to the credibility of a key witness, (the Appellant) concerning the very issues in dispute and has expressed a judgement on a significant feature of the new matter, not by way of articulating a general philosophical position, but by way of making a finding on the very matter in issue.

143. The Appellant submits that the judge should have recused herself because there is an appearance of pre-judgement. The Appellant is concerned with questions of substantial and apparent unfairness. By the time that the Appellant had made her initial recusal application, she had been under increasing pressure, stress and anxiety as a result of conducting the case on her own, the stress of being subjected to continued discrimination by the respondents' and engaging in her former employer's internal procedure which resulted in her unfair dismissal.

144. The issue of the constitution of the Tribunal had been put to the Appellant by the Judge at the end of the previous hearing in January 2012. However at that point she had no reason to

object, but had indicated that she would reserve her right to was object at a later stage. This point was acknowledged by the Tribunal and was witnessed by 5 witnesses who had accompanied her to the last day of the hearing.

145. On 15 March 2012, the ET refused the Appellant's first recusal application. Since that time the Appellant had experienced been signed of sick with depression by her GP and had the dosage of her medication increased. She had also been referred for counselling. Following the Tribunal's decision on the cost order and after the Appellant had received the respondents' CMD agenda and written submissions dated 20 April 2012, the Appellant had the opportunity to re-assess her situation which resulted in her making another recusal application, this time making her grounds clearer. However, it is submitted that the ET would have been fully aware of these grounds when it made its previous decision on 15 March 2012. The Appellant is unwell and her concerns are real and pressing. She would therefore be disadvantaged at the hearing if the same panel sits, because of the strength of her feelings.

146. The grounds for the Appellant's recusal application is set out in her e-mails to the ET dated 15 and 27 April 2012. In the Appellant's view, it is clearly inappropriate for the same panel to sit on the Appellant's next full hearing and it is submitted the ET is aware of this fact. Even though the judge and the panel are seeking to reconsider matters afresh at the full hearing, in light of all the evidence, there is nothing provisional about the findings that have been made by the Tribunal thus far and it throws doubt on the judge's ability to try the issue with an objective judicial mind. One only has to look at the order on the PHR dated 23 April 2012, **[C809]** page 4, paragraphs 9 - 11 & 14- which in a nutshell states that the Appellant's claims were 'misconceived from the outset' and 'unmeritorious'. It is important to note that these findings were made by the panel in spite of the supporting evidence, (post-December 2011), that was

put before the panel at the previous hearing and which will be re-submitted and the subject of the full hearing.

147. The respondents' are not even seeking to submit new witness statements in relation to the stayed part of claim number 2300254/2011, they indicated at the PHR on 20 April 2012 (by way of submissions, that they will be using the witness statements that were submitted for the previous hearing. They also indicated that they will not be submitting any new evidence, asserting that all the evidence has already been presented to the Tribunal. The Appellant believes that this state of affairs is evidence of pre-determination, that it vitiated the ET's decision on the cost order and was integral to the Tribunal's reasoning and materially undermined what followed. She believes that this is an unjust process and a violation of the relevant norms of the Employment Tribunal and finds this most troubling and distressing.

148. Judge Balogun had also expressed very clear views during the PHR on 20 April 2012 in relation to the Appellant's allegations regarding Marina Waters' and her alleged inducement by LBL, stating on page 2 & 3, paragraph 8 of the order on the PHR/CMD dated 23 April 2012 **[C807 – C808]**:

'*..it is difficult to see how that gives rise to a disability discrimination complaint. On the conspiracy allegation, there are no primary facts pleaded that remotely establish a prima facie case of discrimination under the EQA*'.

This firm conclusion was made by the Judge without her having seen/heard all the evidence. The Tribunal did not state that the view was provisional only and it clearly was not. Against that background it is necessary to consider the Appellant puts her case on the issue of defamation and malice. Central to it are serious allegations of conspiracy and corruption. The problem in this case is rooted in the fact that the Judge has already committed herself on issues to which the other members of the Tribunal are, expected to consider afresh.

149. In its judgment the Tribunal stated that the respondents' costs were largely incurred by Lewisham Council and that they cannot afford this in times of cost cutting and austerity measures and in those circumstances ***'it cannot be right for the claimant to walk away with no financial repercussions'*** and that she should therefore pay a third of the respondents' costs **[C809.para 14]**. It is clear from this comment that the judge was unable to disabuse her mind of any irrelevant personal beliefs or predispositions. In light of all of this, the Appellant is therefore of the view that she cannot have any confidence that she was given a fair hearing.

150. The ET persistently failed to make deposit orders in relation to the Appellant's claims and this is a familiar patter which has continued since the ET's cost order dated 23 April 2012. On 28 May 2012, the ET failed to list a PHR to determine the issue of a deposit order for her on-going claims **[C816]**, even though the Appellant had requested this on 23 May 2012 **[C124 - 126]** and the respondents had asserted in their ET3's dated 15 May 2012 that the Appellant's claims (**2302643/12 & 2302645/12**) have no reasonable prospect of success and threatened costs if the Appellant's claims failed **[C515.para 67 & C527.para 32]**. The EAT is entitled to have regard to this fact, as it is clear evidence that the Appellant has been prejudiced by the ET's persistent failure to assist her as an unrepresented disabled claimant and aid her in assessing how serious she should take the respondents' numerous costs threats.

151. The Appellant received the ET's refusal on her application on 20 June 2012 **[C822]**, which was not sufficiently clear to her straight away **[S824]** and she made an application for a review of it decision on the same day, clarifying her concerns and highlighting the impact of the decision on her health. She pointed out that the case which was due to be heard involved the same issues and witnesses in the previous case, definitive opinions on the issues to be heard had been expressed by the judge, whose recusal was sought, and the judge in question had

expressed strong views (which the Appellant has previously set out), destructive of the Appellant's credibility (a witness who is crucial to both hearings). She went on to state that if a judge sits to hear a case at first instance after he/she has, in a previous case and/or situation, expressed clear views either about a question of fact which constitutes a live and significant issue in the subsequent case or about the credit of a witness whose evidence is of significance on such a question of fact, it could not constitute a fair trial/process.

152. The Appellant made it clear that she would also be prevented from receiving a fair hearing because she would be at a substantial disadvantage as a result of her medical condition, which had been exacerbated by the state of affairs and that she believed that the issue had been unnecessarily protracted- the decision taking nearly two months to be sent out and the end result being that as well as giving the appearance of pre-judgment, Judge Balogun would have by now, a personal/prejudicial interest, which was clearly prejudicial to the Appellant.

153. The Appellant believes that a reasonable person would say that a judge should not sit in a matter where she or he has already pronounced on the live and central facts in issue. The saying that not only must justice be done, it must be seen to be done, is a well worn one, and for good reason. An ET's and EAT's work involves continuing defence of such a simple quality.

154. It is the Appellant's view that this process does not exist in a vacuum. It exists to dispense justice according to law and ensure that public confidence is maintained by the openness and transparency of the process. The Appellant's recusal application was primarily about maintaining the public's confidence and trust in the justice system by verifying the judge's impartiality and thereby his/her independence.

155. During the PHR Judge Balogun stated very clearly that she '*would not listen to the recordings*' even if they were admitted **[S279]** & **[C834.para 1]**. The Appellant believes that the ET's decision was vitiated by an appearance of pre-determination and a closed mind. The covert recordings support her claims and are crucial to ensuring the just disposal of proceedings. The judge's comment does not demonstrate that the judicial body hearing this case is creating the impression of impartiality. It is clear that material parts of the recordings would have to be listened to in order to ensure the just disposal of proceedings- as set out in the Appellant's written submissions and e-mails to the ET. It is also clear that if either party disagreed with the transcriptions, the recording would obviously need to be played.

156. It is said that having regard to its decision, the employment tribunal has already made up its mind, on the face of it, in relation to all the matters before it; and as such, it may well be a difficult if not impossible task to change it; there is a real risk/possibility that the panel will not be able to bring to bear, on the determination of the matters in dispute in this case, an open mind and objectivity which is required in the discharge of judicial office and in any event there must now be the very real risk of an appearance of pre-judgment if it is remitted to the same tribunal.

PRACTICE AND PROCEDURE

157. The Violations of the Legal and European Norms in this case are:

a) The refusal by the Tribunal to permit the Appellant's supporting evidence post-February 2011 and permit covert recordings/transcripts is in direct contradiction with The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004. This must be an administrative error. Interpretation: —hearing" means a case management discussion, pre-hearing review, review hearing or Hearing (as those terms are defined in Schedule 1) or a sitting of a chairman or a tribunal duly constituted for the purpose of

receiving evidence, hearing addresses and witnesses or doing anything lawful to enable the chairman or tribunal to reach a decision on any question. This interlocutory decision is necessary, as an Appellant must be entitled to produce the evidence which he/she feels supports his/her case, unless it is patently inappropriate or irrelevant. This is also necessary in order to further the overriding objective' of the procedural rules to enable the tribunal to deal with cases justly.

b) In addition, under rule 10(1) of the Tribunal Rules 2004, a tribunal chairman is empowered to give orders on any matter arising in connection with the proceedings before him or her as appear appropriate. This includes ordering parties to provide their opponents with information. Rules 10(2)(b), (c), (d) and (f) give tribunals specific powers to make orders in respect of the provisions of additional information, witness statements, and other evidence, written answers and disclosure.

c) To the Appellant's mind this interpretation of rule 13(2) accords with its natural meaning and furthers the overriding objective set out in reg 3 of the 2004 Regulations. It is part of the duty of employment tribunals to ensure, so far as practicable, that a case is dealt with expeditiously and fairly and deal with cases justly (including ensuring that the parties are on an equal footing): reg 3(2). This duty cannot be performed without taking into account all of the above. All these factors are in direct contradiction with The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004. This must be an administrative error. In relation to the last ground, the tribunal should act in the way they consider is best in the interests of justice in each individual case. The Appellant's consider that she will suffer a great injustice as a result of the Tribunal's decision.

d) The Appellant does not believe that the decision taken by this Tribunal was within the range of responses that a reasonable Tribunal might make, in the exercise of its powers

to control its own proceedings, to an application to rely on covert recordings and the arrangements for transcribing the material.

e) In the exercise of its Case Management powers, the Tribunal should have allowed the Appellant to transcribe the evidence herself and/or adopt her approach, for the reasons advanced by the Appellant.

f) The ET's failure to apply the proper rules regarding 'further and better particulars'. It is clear that the Employment Tribunal adopted an unfair, procedural approach against the Appellant, operating in favour of the Respondents' (see paragraphs 4.59, 4.65 – 4.66 & 181).

g) The ET's failure to issue directions in relation to the PHR on 2 August 2012, despite the Appellant's request for it to do so, (see paragraph 180).

h) The European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 clearly states that the Appellant has a right to a fair trial. This embraces the principles of equality of arms and the right to adversarial proceedings and requires judge Balogun and the panel members recusal and that the Appellant should be permitted to submit supporting evidence and covert recordings/transcripts to enable her to prove her case. The prejudice from the refusal of the Appellant's recusal application and the failure to allow her documentary and audio evidence was greater than any prejudice to the respondents' flowing from granting the Appellant's applications; and

<u>Perjured Evidence of the Respondents' and Making up Evidence against the Appellant During Proceedings</u>

158. The exclusion of the supporting evidence post-February 2011, 'without prejudice' communication and the covert recordings and transcriptions would cloak acts of discrimination

and perjury. It would also leave her at great risk of yet another extreme cost order, because she will be prevented from being able to prove her case. The Appellant has previously had a cost order made against her by the ET for more than **£92,000**, (a third of the Respondents' overall costs of over £260,000), as a result of her previous claims being dismissed, allegedly for producing no evidence to support her claims of discrimination **[C809.para 9]**, despite the fact that it was documented by the ET that she submitted the Appellant had submitted extensive evidence and written submissions, **[CS14.paras 3, 7, 8 & 122]**, including 5 questionnaires & responses, (which the ET made no mention of in its judgment). Therefore she is clearly very anxious that she should not be accused of this once again, and suffer another extreme cost order, especially as she is now being denied the opportunity and her right to admit crucial evidence, (supporting evidence post February 2011, 'without prejudice' communication and covert recordings and transcripts) and the Respondents' have threatened costs on several occasions **[C515.para 67, C527.para 32 & C553.para 27]**.

159. The Appellant believes that the respondents' evidence has to be treated with great caution. The ET is fully aware that the Respondents' are prepared to say things which are clearly untrue, as evidenced by the fact that they have previously provided perjured evidence. In January/February 2012 the respondents' perjured themselves during the proceedings in relation to the question of Deborah Francis' alleged status as Managing Director of CEL at the relevant time **[S2.para 431a, S6. para 9, S8.para 449, S11.para 10, S12.para 34, S19.para 151, S23 – S45, S47 & S72 – S73]** and **[C641. para 8.1c & C793 – C798]**. The Respondents' claimed that Deborah Francis was the Managing Director of CEL at the time. However, the evidence that the Appellant submitted to the ET proves that she did not take up this post until October 2011 **[S34]**. The respondents' Counsel also supported the respondents' perjured evidence **[S12.para 34]**, yet when it Responded to the Appellant's allegations following the full hearing, it did not deny them **[S23]**.

160. The Tribunal contradicted itself with regards to the issue of whom was managing Director- at **[C17.para 110 & C19. para 151]** of the judgment dated 2 March 2012. The respondents' Barrister also contradicted himself in relation to this issue. Mr Palmer's assert in his closing written submissions that Deborah Francis was the Managing Director of Careers and Employability, (a small section of CEL), **[S11. para 10]**. He then contradicted himself by applying to Deborah Francis the title of Managing Director of the entire company that the Appellant worked for - CEL **[S12.para 34]**. The Appellant also wrote to the ET about this matter in the context of her review application dated 3 March 2012 **[C793]** and raised it again during numerous e-mail correspondences **[S23 – S45]** and PHR's in April **[S46 – S47, S71 - S77, S98.paras 15, 17, 24d & 30]** and August 2012 **[S169.para 16c]**, where she links it to the continuing issue of their lack of credibility **[S169.para 56 - 57]**.

161. Sue Ely (Babcock's HR partner) also lied under oath- as set out in the Appellant's written submissions to the ET dated 1 February 2012 **[S8. para 449]**. Sue Ely initially stated that CEL would not be able to apply its own policy and procedures to HR staff because they would have their own policies and procedures and they have different terms and conditions. However, after questioning from Judge Balogun regarding the logic of this, she retracted this assertion and stated that CEL policies applied to non-CEL staff. It is important to note that this contradicts the assertion that Benjamin Craig made in relation to his evidence- that 'CEL managers did not have control over HR staff' **[S8. para 449]**.

162. In relation to the internal grievance process which was conducted by CEL and BED (Babcock Education and Skills Ltd), it is a fact that even if those investigating the Appellant's grievances and appeals did have control, CEL policies and procedures could not be applied to non-CEL staff because non-CEL staff had their own separate policies and procedures, which

could only be implemented and applied by their employer. This line of questioning was evidenced in the Appellant's written submissions to the ET. Sue Ely perjured herself in relation to this issue, as is demonstrated by the respondents' response to the equality form questionnaire **[C641. para 8.1c]** and the Appellant's ET witness statement dated 2 December 2011 **[S2. para 431a]**, which clearly evidences the fact that CEL could not apply its policies and procedures to non-CEL staff. It is important to point out that the Respondents' grounds of resistance for claim numbers 2318353/2010 and 2330171/2010 state that CEL had control over HR advisers **[C4. para 9]**.

163. It is clear that the Appellants' former employer CEL had no control over non-CEL staff. CEL could not apply the Equalities and Diversity Policy to non-CEL staff. It is clear that the entire grievance procedure was just a sham and was never intended to provide the Appellant with any redress, as was set also out in her ET written submissions. It follows that if the Appellants' former employer did not have any control over non-CEL staff, then the grievance procedure was fundamentally flawed. Anthony Marshall had no control over BED's HR staff (Adam Buckby, Ruth Johnson and Paul Kelly) or CEL managers Beverley Bannister and Benjamin Craig, yet he investigated the Appellant's grievance. Amanda Duckett had no control over non-CEL employees, yet she investigated the Appellants' grievances and appeals. Deborah Francis was not a CEL employee, and had no control over Anthony Marshall, yet she investigated the Appellants' appeal.

164. As explained at paragraph 31 of her skeleton argument for case number UKEAT PA/0401/12/SM- the Appellant's appeal against the dismissed claims, (which has been consolidated with this case), the Appellants' CEL could not apply the Equalities and Diversity Policy to non-CEL staff. The Tribunal erred in law in failing to condemn the investigation. The

Appellant contacted Barry Quirk (Chief Executive of Lewisham Council) and Peter Rogers (Chief Executive of Babcock) in August 2012 and asked them to investigate her allegations of perjury, but both refused to do so. To date, no steps have been taken by the Respondents' (either LBL or Babcock) to instruct their legal representatives and/or to notify the ET that its witnesses had provided perjured evidence to it and misled the ET. These acts have been supported by the Respondents' counsel Martin Palmer of Littleton Chambers and the Solicitors firm Paris Smith.

165. The Appellant submits that the Tribunal did not pay attention to the Appellant's extensive documentary evidence or the oral evidence and placed its decision to dismiss the Appellant's claims upon the respondents' false, contradictory, inconsistent and perjured evidence a weight which it could not possibly bear. The Appellant raised these issues in her PHR written representations dated 16 April 2012 **[S382 – S425]**. This is also demonstrated in the Appellant's Notice of Appeal dated 12 March 2012, (which the EAT is also dealing with) and the related evidence that the Appellant sent to the Tribunal in relation to this.

166. It is submitted that the Respondents' perjury and the ET's failure to take this into account, inhibited the ability of the ET to dispose fairly of the Appellants' application to admit covert recordings, supporting evidence post-February 2011 and 'without prejudice' communication.

167. The Appellant believes that the Respondents' will knowingly give what they know to be false witness statements, and lie on the witness stand during the forthcoming hearing. The Appellant's evidence is therefore critical, as it plainly goes to the issue of the credibility of the Respondents'. Therefore the evidence will have an important influence on the hearing.

Credibility must inevitably spill over into findings on other issues. A person will be in contempt of court if he presents a deliberately false statement of case, witness statement (under CPR part 31). The Appellant also fears that the Respondents' intend to, (as they have done before), mislead the ET, by using evidence unlawfully obtained against the European Convention and to also use the evidence to unlawfully make an application for a cost order against her. The Appellant will be powerless to prevent this improper, unreasonable and dishonest violation of the court's directions and rules as well as the law, unless her critical evidence is admitted. The Appellant would like to highlight the fact that the court can also dismiss a claim or defence if there has been a deliberate destruction or falsification of evidence. The Appellant will not be able to show this if her evidence is not allowed.

<u>The Respondents' Amendment Application</u>

168. The Appellant objected to the nature of the Respondents late amendment application **[S239]**. The Respondents' amendment is not one of minor matters, it substantial alters its defence **[C828]**. The Appellant made it clear the ET that the Respondents' never wrote to her in order to request further and better particulars and the ET never ordered her to provide further and better particulars **[S239]**, a fact which had previously been brought to the ET's attention on 19 June 2012 **[S141.para 1]**

169. The ET had indicated that it believed that the Respondent needed further details from the Appellant before it would be able to provide a full response **[C556.para 9 & C309.para 3]**, however, the Appellant was never asked to or ordered to provide further and better particulars and it is clear that the Respondents' never required any further details in order to provide a full response and therefore could and should have provided one within the normal time limits, which was 28 days.

170. The Respondents' original grounds of resistance state that it is unable to provide a full response until internal procedures were completed **[C310. para 11 - 12]**. It is important to note that the internal procedures were completed in April 2012.

171. An amendment should only involve the additions of factual details and/or the addition or substitution of other labels for facts already pleaded to. However, the Respondents' are seeking to make an entirely new defence which changes the basis of its existing pleadings. It is seeking to add the defence, 'that it had suspected that the Appellant had been covertly recording meetings', (which was obviously not a fact known to it at the time- between August to November 2011, the period which the pleadings cover), because it is clear that this line of defence is not mentioned in any of the Respondents other pleadings, (either the one that proceeded it, 2375023/2011 **[C429]**, the three subsequent pleadings, 2302643/2012 **[C474]**, 2302645/2012 **[C516]** & 2313031/2012 **[C542]**, its Equality form questionnaire response **[C685 - C719]**, or its grounds of dismissal **[S84]**. This fact was also brought to the attention of the ET **[S239]** in the Appellant's letter objecting to the nature of the amendment.

172. The Respondent only became aware of the covert recordings following the Appellant's application to submit the recordings on 21 April 2012 and it is clearly trying to take advantage of knowledge gained many months after the period that the pleadings cover, August - November 2011. The Respondents' reference to the covert recordings and the removal of the Appellant's and union reps' coats from the room without consent, is a perfect example of why the covert recordings should be permitted **[C561.para 21L]** -

'***The Respondents' admit that the Claimant's coat was removed from an investigation meeting due to the fact that they suspected that the Claimant was seeking to covertly record these meetings and other discussions in circumstances where the Claimant had denied that she was making recordings and had been unequivocally told that consent had not been given to record meetings. The interview room did not have coat stands in***

the room but had a wardrobe outside where coats were usually hung for meetings. The Claimant's coat was placed in this wardrobe. In light of the Claimant's applications to the Tribunal and the reference to covert recordings in case number 2313031/2012A the Respondents' submit that these suspicions were reasonable and well founded'

173. The covert recordings reveal that this incident is not properly reflected in LBL's notes. The covert recording demonstrates that it took the Appellant several minutes to resolve the issue with management. The Appellant's coat had valuables in the pocket. When the Appellant advised them that she was not happy that they had removed her coat, they took issue with her concern and the issue was debated for several minutes before the Appellant was permitted to retrieve her valuables. This interchange is not properly reflected in the minutes to the interview.

174. The covert recording is evidence of what really took place and one has to ask, why did Christine Grice and Cynthia Maxwell remove the Appellant's belongings? If an employer is acting fairly and in a non-discriminatory manner, with nothing to hide, it would not take such action and behave in such a way when challenged about it. LBL also states that they had suspected that the Appellant had been covertly recording meetings. If this was the case, why was this not one of the charges brought against Appellant and why would LBL behave in the unlawful manner which it did, telling lies which it knew that the Appellant would be able to disprove by adducing the recordings, if this was really suspected.

175. In reaching its decision, the Tribunal took into account matters which it was not proper to take into account, namely the Respondents' original pleadings making reference to the provision of 'further and better particulars', (which was irrelevant because the evidence proves that it did not prevent the Respondents' from providing a full response without the unreasonable delay) and the ET's letter dated December 2011 regarding the need for further details from the Claimant.

176. The ET concluded that the amendment (in the form submitted by the Respondents') should be allowed. It is submitted that the Appellant will be prejudiced by its late addition (because the full response has been outstanding since December 2011, clearly for no apparent reason) and as a result, has presented the Respondents' with an opportunity to make reference to new evidence gained since that time. This argument had also advanced by the Appellant in her letter to the ET objecting to the application **[S239]**.

177. In addition, it is now extremely close to the hearing and it is clear that the Respondent could have and should have, (in line with its own rationale), made the amendment as soon as the internal procedures were completed on 5 April 2012, but it did not and chose instead to wait nearly four more months to make the amendment, despite the Appellant having raised it as an issue with the Respondent and the ET several times since December 2011, (including in the form of oral submissions at the PHR in April 2012, her e-mail dated 23 May 2012 at 8.42 **[S125.point 6]**, her PHR written submissions, which were sent to the Respondents' and the ET on 23 July 2012 **[S168]** and in her draft CMD dated which the Respondent made reference to **[S237]** in its e-mail to the ET. This is not in line with the 'overriding objective' of the procedural rules to enable the tribunal to deal with cases justly and it clearly puts me at an unfair advantage.

178. The Appellant submits that the Respondent is now trying to use its newly-gained knowledge, (that she made covert recordings), as a line of defence. However, it is clear that this is new evidence, which has been gained unfairly by the Respondents', many months after the period in question. Further to this, it does not relate to the any of the Respondents' original pleaded case, in any of its 5 grounds of resistance or even the grounds of the Appellants' dismissal. It is clear that the Respondents' are trying to use the amended pleadings to try to

introduce the new evidence, in order to set up an entirely new ground for its defence and the Appellant's dismissal, which is of course impermissible.

179. The tribunal had to decide whether it was right, in the interests of justice and the overriding objective, to grant an application to the party who had failed to provide a full response for 8 months, notwithstanding the fact that it clearly could have done so within the normal time limits. This involved a broad assessment of what is in the interests of justice, and the factors which may be material to that assessment will vary considerably according to the circumstances of the case and cannot be neatly categorised. They will generally include, but may not be limited to, the reason for the default/delay, and in particular whether it is deliberate; the seriousness of the default; the prejudice to the other party and whether it will cause hardship to the other party.

180. The ET granted the respondents' application and that decision is extremely prejudicial to the Appellant who has now been put at an enormous disadvantage. The ET failed to carry out the proper balancing exercise, taking into account all the surrounding circumstances and giving due emphasis to the degree of prejudice caused to the Appellant and the Respondents unreasonable behaviour in relation to the way in which it had been conducting proceedings, (including its failure to provide her with its written PHR submissions and authorities at least 7 days before the PHR and the late provision of it bundle of evidence and as set out in the Appellant's e-mail to the ET dated 24 June 2012 **[S236]** and her letter objecting to the application **[S239]**. It is important to note that the ET had failed to issue directions in relation to the PHR, despite the Appellant specifically requesting this on 11 July 2012 **[S143]** and she highlights the fact that she did not receive this in her e-mail to the ET dated 23 July 2012 **[S168]**.

181. The way in which the ET handled the Respondents' amendment application should be looked at it conjunction with the ET's order for the Appellant to provide 'further and better particulars'. An application to the tribunal was not made by the Respondents' via notice to the Appellant. It is important to note that the Respondents' failed to follow the normal procedure, which is to put questions to the Appellant; and then, if they were not answered or not answered adequately, request the ET to issue an order. The Respondents' failed to follow the ET rules, i.e. writing to the Appellant, giving her 14 days to reply. Nonetheless the ET made the order and it is submitted that in all the circumstances of this case the tribunal failed to apply the rules of procedure that should have been followed- see paragraph 4.65 – 4.66 of the Appellant's submissions and **[C602a]** and **[S297]**. The Respondents' accused the Appellant of 'unreasonable conduct' and abusing the process, but it is clear that they are the only party guilty of this. The Appellant also brought this issue to the attention of the ET **[S298]**.

CONCLUSION

182. In conclusion, there is ground for upholding the Appellant's applications and the Appellant urges the EAT to grant her applications. The Appellant respectfully requests that the EAT allow her to amend her 'Notice of Appeal' to include any grounds/arguments advanced in her skeleton arguments, which have not been cited in her 'Notice of Appeal'. In light of the comments made by the ET at the PHR where the cost order was made- see 'the Appellant's submissions in relation to '*Practice and Procedure*' and '*Recusal Application and Conduct of the Tribunal- Improper Conduct, Procedural Irregularity and an appearance of pre-judgment*' and *Perjured Evidence of the Respondents' and 'Making up Evidence against the Appellant During Proceedings'*.

183. The Appellant believes that there has been substantial unfairness and an appearance of pre-judgment and a ‘closed mind’ in this case. In addition the Appellant believes that the ET’s handling of the case was wholly flawed and completely mishandled. The Appellant believes that in particular, the ET’s decision/approach in relation to the issue of the covert recordings will discourage dispute resolution. If the ET’s decision is allowed to stand it will set a dangerous precedent and it will result in a breach of the Appellants’ right to a fair hearing and vindication. This is clearly a very important appeal for the Appellant in view of the nature of the allegations against her and their possible effect on her career. The Employment Tribunal erred its approach to this matter.

184. The ET’s approach in relation to the engagement of a transcription company, if endorsed will actively discourage the early settlement of disputes and will increase the likelihood of claims proceeding to a full hearing. Far from encouraging the early settlement of disputes, the approach will have the opposite effect. As the costs are all front-loaded for the claimant, employers are likely to adopt a ‘wait and see’ position in the expectation that the claimant will be deterred by the requirement to pay upfront costs/fees. The approach will result in a further bar to a claimants’ ability to enforce their employment rights, which are already being eroded. The respondents’ are a big local authority and a big FTSE 100 company’s subsidiary; the Appellant is just one person, unrepresented. It’s like David and Goliath. This is not just about the Appellant’s rights, but about the rights of others too.

185. Accountability and truth is the only way forward. We need to denounce corruption and discrimination by servants of the government for what it is. It is an abuse of their position of trust. The covert recordings will demonstrate the fact that the Appellant was unrelentingly punished and vilified and had numerous malicious false allegations made against her by the Respondents’. Just because the Appellant blew the whistle and she was unwilling to permit the

undoing of her legislative, human rights and dignity, they concocted despicable untruths and savaged her reputation. Everything the Appellant worked for, for so many years has been taken away by Lewisham Council. Devastated just doesn't go far enough, it doesn't some it up. There has been serious and widespread misconduct by these servants of the government. Trying to discredit those that are prepared to expose those that lie and cheat within the system will never lead to the provision of a fair and just legal system nor a safe and efficient council service for vulnerable children and young people, and it will represent an ambushing of justice.

186. The EAT is invited to allow the appeal and substitute the decision of the ET. The Appellant believes that the matters that she has outlined in this appeal indicate that the Employment Tribunal did violate its own regulations. The Appellant has found the decisions to be most troubling and distressing, thus undermining the trust of the public. It would reassure the Appellant that the EAT is committed to equal treatment and ensuring just outcomes and the overturning of the ET's decisions would reassure her that the EAT understands the vital role it plays in ensuring that that a disability does not amount to a handicap to the attainment of justice and would further the overriding objective in dealing with this matter in the most expeditious, efficient and fair way possible and in a way that enables her to fully participate in the tribunal process to the best of her ability and without being put at a disadvantage.

187. As such, the Employment Appeal Tribunal should take utmost care in making sure that its overriding objective as defined in the Employment Appeal Tribunal Rules 1993 Overriding objective 2A. (1) The overriding objective of these Rules is to enable the Appeal Tribunal to deal with cases justly. (2) Dealing with a case justly includes, so far as practicable– (a) ensuring that the parties are on an equal footing; (b) dealing with the case in ways which are proportionate to the importance and complexity of the issues; (c) ensuring that it is dealt with expeditiously and

fairly; and (d) saving expense. (3) The parties shall assist the Appeal Tribunal to further the overriding objective is achieved.

188. There is no reason to believe that by allowing the Appellant's application to submit covert recordings and transcripts that the hearing date will be lost. At the PHR on 2 August 2012, the judge advised parties that a hearing would not take place before next May. On 7 August 2012 the ET wrote to parties asking them to provide it with dates to avoid from 1 May 2013 over a period of 26 weeks in order to assist in the listing of the case **[S282]**. The Respondents' (LBL) responded, citing availability only from 18 May to 26 May 2013, 1 June - 24 July 2013 and after 3 September 2013 **[S285]**.

ORDERS SOUGHT

189. In order to expedite the case in a fair and just way, the Appellant urges the Employment Appeal Tribunal to issue the following necessary orders:

a) Permission to admit the covert recordings and transcripts as evidence (allowing the Appellant to transcribe the material herself), in line with her submissions, or in the alternative, permit her suggested approach which was communicated to the ET on 2 , 3 and 4 August 2012 and to issue directions in relation to this. The Appellant submits that the hearing date need not be vacated providing that she is permitted to transcribe the recordings herself. This will save time, as the Appellant can provide the covert recordings and transcripts to the Respondents' by the end of November 2012 and thus avoid the loss of the hearing date; and

b) Permission for the Appellant to rely on 'without prejudice' communication (as set out in the section of her submissions entitled '*Without prejudice communication')*; and

c) Permission for the Appellant to submit supporting evidence post-February 2011, as listed in her e-mail to the ET dated 1 August 2012 at 11.31; and

d) To set aside the judgment of the ET on the Respondents' amendment application, excluding any reference to covert recordings, only permitting the addition of factual details, (known to it at the time) and/or the addition or the substitution of other labels for facts already pleaded to and requiring the Respondent to track the changes between documents, underlining any new paragraphs; and

e) Directions as to notes of evidence if the EAT deems this necessary in order to dispose of the case fairly.

Ms AA Vaughan

23 September 2012