IN THE EAT **Appeal No: UKEAT PA/0401/12/SM**

BETWEEN

Ms AA Vaughan

Appellant

-and-

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

Respondent

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 three claims in the London South Employment Tribunal, against the London Borough of Lewisham, Babcock Education and Skills Ltd and several individual respondents, which have been consolidated, for, race discrimination, disability discrimination and PIDA detriment **[C109 – C305]**.

2. This is an appeal on the judgement of the employment tribunal promulgated on 2 March 2012: All the claims of race discrimination, disability discrimination, victimisation, harassment and public interest disclosure detriment are dismissed against all the respondents' **[C1 – C55]**. The ET also denied the appellant her application to submit 'fresh evidence' **[C536 – C537]** and it refused to postpone the PHR/stay the 'stayed' part of claim number 2300254/2011 and Others **[C536 – C537]**.

The Procedural History

3. The history of the action are as follows:

a) The appellant has issued three claims in the London South Employment Tribunal, which have been consolidated, for, race discrimination, disability discrimination and PIDA detriment. The appellant believes that she has been 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.

b) **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 **[S588]**.

c) At a CMD for the main hearing which took place on 9 January 2012, the respondents' again tried to challenge the admissibility of the supporting evidence. On 27 January 2012, Judge Balogun advised parties that the matters relating to the supporting evidence would be dealt with by the tribunal, as opposed to the respondents' assertion and the tribunal's previous decision that those matters would be dealt with as part of the 'stayed' claim at the next hearing.

d) Parties submitted their closing written submissions on 1 February 2012 **[S1201-1243 & 1250 – S1623]**. The respondents' Barrister (Mr Palmer) was due to make oral submissions on the same day, but declined to do so after receiving the appellant's written submissions and requested that proceedings be adjourned until the following day to allow him enough time to respond to the appellant's written submissions. This was granted by the tribunal, despite the appellant's objection. Judge Balogun also stated that this would also give the tribunal an opportunity to read the respondents' written submissions as well.

e) Mr Palmer had previously indicated that his oral submissions would take *4 hours*, however, when parties returned to the tribunal the following day (2

February 2012) Mr Palmer's oral submissions only lasted 30 minutes and he did not directly respond to the appellant's written submissions, except to assert that Deborah Francis was the Managing Director of CEL, but had earlier contradicted himself in his closing written submissions by asserting that she was the Managing Director of Careers and Employability, (a small section of CEL), **[S.1204. para 10]**. The appellant's notes to the respondents' oral arguments can be found at **[S1245 – S1249]**, where he contradicts himself again by applying to Deborah Francis the title of Managing Director of the entire company that I worked for **[S1210.para 34]**. There was no challenge by the Respondent or the Tribunal in relation to the appellant's accurate recording of what occurred during the course of the hearing or the issues, (which the appellant had set out in her written submissions dated 1 February 2012). The appellant had been accompanied by a 'note taker' throughout the entire duration of the hearing. A number of other people had also attended the hearing in order to support the appellant.

f) **On 7 February 2012**, the Tribunal wrote to parties advising them that there was a lack of time in chambers on 8 February 2012 and that the panel would reconvene on 19 0 20 April 2012- the date that had been set for the provisional remedy hearing and/or CMD. Parties were therefore advised not to attend the hearing on 19 and 20 April 2012 **[S1623a]**.

g) **On 8 February 2012**, the Tribunal wrote to parties advising them that they should attend the hearing on 19 and 20 April 2012 **[S1623b]**.

h) **On 11 February 2012**, the appellant e-mailed the Tribunal expressing her confusion over the Tribunal's conflicting correspondence regarding the hearing on 19 and 20 April 2012 **[S1623c]**.

i) **On 14 February 2012**, the Tribunal wrote to parties advising them that it had made an error and that its e-mail of 8 February 2012 was the correct version. **[S1623d]**. The appellant finds the irregularities set out in point 3f – i most concerning.

j) **On 28 February 2012**, the Tribunal wrote to parties advising them that that the judgment will be delayed and sent out by the middle of March 2012 **[S1623e]**.

k) **On 2 March 2012**, the Tribunal wrote to parties dismissing all the appellant's claims under race and disability discrimination and PIDA detriment **[C1 – C55]**.

l) **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 **[C532 – C535]**, including an application for 'fresh evidence', relating to the respondents' perjured evidence, which is documented at **[S202 – S205, 583 – 585, 732, 745, 1004, 1010, 1012, 1015, 1046, 1054, 1118, 1136, 1201, 1210 & 1624 – 1625, 1626 – 1630, 1636 - 1655]** and **[C330- C331.para8]**, **[C399.para20] & [C463-.para 14] & [C519. para 8.1a & b] -***ET3's & Equality form response*. The appellant also made request for the postponement of the PHR/CMD due to take place on 19 and 20 April 2012 and the recusal of Judge Balogun who had indicated that she would be sitting at the PHR and the full hearing for the appellant's next case.

m) **On 5 March 2012**, the Appellant follows up her applications dated 3 March 2012 with an e-mail to the Tribunal **[C532 – C535]**.

n) **On 7 March 2012** the Respondents' e-mail 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 **[S1624]**. The Appellant responds to Respondents' objection to appellant's

request for a review of the judgment (and application for 'fresh evidence') **[S1626]**; and

o) **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 **[S1629]**.

p) **On 12 March 2012** the appellant lodges her Notice of Appeal **[C56 – C108]**.

q) **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 **[C536 – C537]**. The Appellant e-mails the EAT regarding ET's decision on her review application- The refusal **[S1633]**. The Appellant also 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 **[S1636]**. She also attaches evidence supporting her allegations **[S1638 – S1654]**.

r) **On 15 March 2012** the Regional Judge rejects the appellant's recusal application **[C538 – C539]**. Judge Balogun also informs the appellant that the Tribunal will not be referring the matter of the respondents' perjured evidence to the police **[S1655]**.

s) **On 20 March 2012** the Respondents' e-mail the ET making an application for a cost order against the Appellant **[C540 – S547]**.

t) **On 21 March 2012** the Appellant e-mails the ET objecting to the Respondents' application for a cost order **[S1656]**.

u) **On 22 March 2012** the Appellant e-mails the ET her review application regarding its refusal to postpone the PHR listed for 19 and 20 April 2012 **[C548 – C550]**.

v) **On 28 March 2012** the ET rejects the appellant's application for a review of its decision, re postponement of the PHR **[C551 – C552]**.

w) **On 5 April 2012** the Appellants' employer sends her a letter via e-mail informing her that her employment will be terminated on **13 April 2012**. The appellant considers that she was unlawfully dismissed by the first respondent- London Borough of Lewisham. She had presented proof of all of this to her employer, but it was ignored.

x) **On 19 and 20 April 2012**, the parties attend a PHR/CMD. The appellant's claim against Marina Waters is struck out and she is ordered to pay some of the first respondents' costs. The Respondents' make an oral application for all of the Appellant's claims to be consolidated and the Appellant is informed by the judge that it is her provisional view that they should be **[C557]**.

y) **On 20 April 2012**, the appellant e-mails the ET requesting permission to submit recordings.

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

aa) **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 and it asserts that the ET did not give the appellant permission to make written submissions in relation to whether or not there should be separate hearings for the consolidated claims.

bb) **On 24 April 2012** the ET sends parties the order on the PHR/CMD. The ET makes a cost order against the appellant in excess of £10,000, **[C555 - 557]** and the appellant and the EAT correspond regarding this issue **[S1700 – 1701]**.

cc) **On 25 April 2012** the Appellant's sends the ET her amended review application in relation to the cost order **[C559 – C562]**.

dd) **On 27 April 2012** the Appellant sends the ET her second recusal application **[C562b -c]**

ee) **On 18 May 2012** the EAT sends its decision on the appellant's 'Notice of Appeal', rejecting it on papers **[C563 - C564]**.

ff) **On 19 May 2012** the appellant's requests an oral hearing **[C565 - 566]**.

gg) **On 22 May 2012** the EAT sends its E80 Rule 3(7) letter to Appellant **[C569]** and the appellant e-mail's the EAT regarding her availability **[S571]**.

hh) **On 23 May 2012** the Appellant e-mails the EAT' regarding the submission of documents exceeding 100 pages, fresh evidence and directions as to notes of evidence **[C572]**.

ii) **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 **[C574]** and the appellant Appellant sends the ET a forward e-mail regarding her request for a PHR & the respondents' threat of cost orders **[S1714]**.

jj) **On 15 August 2012** the Appellant contacts her former employer to request that it makes the credit monitoring payment that Mr Palmer advised the ET that it would make during the full hearing in January 2012 **[S1715]**. On 16 August 2012 her employer refuses to make the payment **[S1716]**, (via Paris Smith who had previously represented it) and suggests that it should be deducted from the cost award (that had yet to be enforced). The Appellant advises Paris Smith and her former employers (CEL and LBL) that she would take further legal action if the company did not pay **[S1717]** and **[S1718]**.

kk) **On 17 August 2012** Paris Smith e-mailed the appellant again advising that it would send the appellant a cheque for the cost of the credit monitoring only if she confirmed that she would not bring legal proceedings in relation to the credit monitoring issue. The appellant refused and reiterated her position directly to

CEL/Babcock and LBL **[S1719]**. Later that evening at around 8pm, the appellant received another e-mail from Clive Dobbin of Paris Smith's, which had been sent from his i-Phone. He asserted once again that the appellant would need to confirm that she would not bring proceedings in relation to the credit monitoring claim **[S1719]**.

The Present Appeal

4. 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.

5. The grounds of the appellant's appeal are set out in **[C61 - 63. paras 9 – 11]** of her notice of appeal which the appellant lodged on 12 March 2012. The basis of her appeal is set out in **[C63 - 108. paras 12 – 103]** of her notice of appeal.

General principles

6. Perverse findings of fact: The Tribunal failed to make findings of fact on all the principal submissions made and it is submitted that omitting to set out the legal principles and key submissions has led to a consequent error of law and incorrect and incomplete finding of fact. The Employment Tribunal erred by misunderstanding the evidence, leading it to make a crucial finding of fact unsupported by evidence and contrary to un-contradicted evidence, i.e. the oral evidence which emerged through cross-examination and as set out in the

appellants' submissions. The legal points must be considered in the context of the entirety of the proceedings.

7. The Tribunal did not make clear on what primary findings of fact its conclusions were based and it is clear that some of its conclusions were not based on any. In addition, some of its findings of were not based on any evidence at all. In relation to paragraphs 130 -134, 143 – 146 & 152 of the Tribunal's decision from **[C39]**, it accepted the Respondents' evidence, even though this was not set out in the respondents' pleadings. The respondents' failed all together to address these allegations in its ET3, yet they were allowed to rely on this defence at the hearing. The respondents' failed to even advance a defence in relation to paragraph 152 of the Tribunal's judgment, at **[C47]**, until the actual hearing itself, as no reference was made to it at all in any of the Respondents' witness statements **[S732 – S745, S802 – S811, S830 – S840, S880 – S884, S901 - S905, S924 – S929, S955 – S970, S1004 – S1017, S1046 – S1071, S1118 – S1151 & 1191 - 1194]**. It is therefore submitted that the Employment Tribunal were not entitled to take into account the evidence of the Respondent on these matters. It is of significance that a departure from the Respondents' pleaded case, without notice, caused the appellant great prejudice.

8. Applying the burden of proof wrongly or not applying it at all **[C69. para 29]** of the appellants' Notice of Appeal: The Tribunal's failed to take into consideration the inconsistencies, inaccuracies and contradictions between the respondents' witness statements and oral evidence, the pleadings, written correspondence and questionnaire responses, the respondents' perjured evidence. Given the

failure by the Tribunal to address this, it was wrong to attach weight to the respondents' evidence and conclude that it should be preferred. The Judgment of Mr Justice Elias in **Bahl** held that unreasonable treatment without explanation can lead to the inference of discrimination. By so doing the burden of proof passes to the Respondents who failed to provide a satisfactory non-discriminatory explanation for their behaviour. The Respondents clearly failed to discharge the burden of proof.

9. Further to the above, the landscape has now changed, and the approach now to be adopted by Tribunals, as the EAT recognised in ***Barton v Investec Henderson Crosthwaite Securities Limited*** [2003] ICR 1205 **[A3]**, paragraph 25, materially alters the guidance given previously in ***King*** which had emphasised that it was always for a complainant to prove his or her case. The Tribunal failed to direct themselves as to the guidance given by The EAT in the sex discrimination case of ***Barton***, following similar legislative amendments to the Sex Discrimination Act 1975 dealing with the burden of proof, on how Tribunals should now approach the determination of claims of direct discrimination, as follows:

> ***"'We therefore consider it necessary to set out fresh guidance in the light of the statutory changes:***
>
> ***(1) Pursuant to s.63A of the Sex Discrimination Act 1975, it is for the applicant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondents have committed an act of discrimination against the applicant which is unlawful by virtue of Part 11 or which by virtue of s.41 or 42 SDA is to be treated as having been committed against the applicant. These are referred to below as "such facts".***

(2) If the applicant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the applicant has proved such facts that it is unusual to find direct evidence of sex. discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the applicant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word is "could". At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts proved by the applicant to see what inferences of secondary fact could be drawn from them.

(6) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the Sex Discrimination Act from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the Sex Discrimination Act: see Hinks v Riva Systems EAT/501/96.

(7) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining such facts pursuant to s.56A(10) SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(8) Where the applicant has proved facts from which inferences could be drawn that the respondents have treated the applicant less favourably on the grounds of sex, then the burden of proof moves to the respondent.

(9) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed that act.

(10) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(1I) That requires a tribunal to assess not merely whether the respondent has proved an explanation for

the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not any part of the reasons for the treatment in question.

(I2) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.'"

10. The Tribunal failed to consider the ***Barton*** guidelines; (particularly in relation to the last paragraph above- re questionnaire procedure/code of practice), save for the modification to guideline (10) in ***Chamberlin Solicitors v Emokpae*** [2004] IRLR 592 **[A5]** guidelines (10) to (12) it has been quoted by the EAT with approval. The EAT (Judge McMullen QC presiding) dismissed an appeal from an Employment Tribunal's decision in favour of an applicant on sex discrimination. They decided that ***Barton*** remained good law, subject to their comments in relation to guidelines (10) and (12), where they said this, at paragraphs 32 to 38:

"32

…..We take, first, the criticism of the passage in guideline (10) which is founded on the Burden of Proof Directive. It was submitted by Mr Purchase that the tribunal had misconstrued the use of the words 'no discrimination whatsoever' in the Directive: that phrase does not concern the definition of, or the ingredients in, discrimination, but merely the forms of discrimination. We accept that submission. Where the phrase appears both in the Burden of Proof Directive and in the Equal Treatment Directive, it is followed by the words 'either directly or indirectly' which are words qualifying the term 'discrimination.'

33

The EAT in Barton appears to have been led to its conclusion by consideration of Article 2(1) of the Burden of Proof Directive (97/80/EC) which provides as follows:

'For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no discrimination whatsoever based on sex, either directly or indirectly.'

34

That formulation of the principle of equal treatment derives from the Equal Treatment Directive (Directive 76/207/EEC), Article 2(1) where the phrase 'no discrimination whatsoever on grounds of sex ...' first appears. Prior to the change in the burden of proof, pursuant to the Burden of Proof Directive and s.63A, it had already been decided in Nagarajan that there may be a range of causes contributing to discrimination, for Lord Nicholls said as follows:

'decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out.'

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When transposing the Burden of Proof Directive into s.63A of the Sex Discrimination Act, Parliament did not intend to change the forms or the definitions of discrimination. The change in the burden of proof in direct discrimination, at least, is designed to remove some of the obstacles in the way of applicants. In the 1976 Directive the forms are direct and indirect (Article 2), and victimisation (Article 7). In the Act, they include discriminatory practices, instructing and pressurising others to discriminate, aiding discrimination and constructive and vicarious liability for others' discrimination (ss.37-42). Directive 2002/73 amends the 1976 Directive. In it, the forms and definitions include harassment, sexual harassment and instructions to discriminate. It must be transposed into our law by 5 October 2005. In both the earlier Directives where the word 'discrimination' appears, it means any form of discrimination, direct or indirect, and (by reference to Article 7) victimisation. Thus sex discrimination in all its forms is unlawful.

36

Where the respondent produces no adequate explanation for facts which the applicant has proved could amount to discrimination, the burden is transferred to the respondent of proving that it did not commit, or is not to be treated as committing, the act of discrimination. If it fails, it is taken to have 'committed an act of discrimination'. As we have pointed out, since the House of Lords decided Nagarajan, discrimination is unlawful if gender has a significant influence on the decision.

37

Although considering race discrimination, the authorities cited by Lord Nicholls were based on sex discrimination. Given that there should be no difference in treatment of the same statutory language, it follows that for the purposes of sex discrimination, less favourable treatment is unlawful only if gender has a significant influence on the decision. So if it is a very small factor amongst a large number of predominant factors, it will not be a reason for the treatment. The principle of equal treatment in the Equal Treatment Directive applied in the Burden of Proof Directive does not require the eradication altogether of gender in a decision making process, merely its downgrading. In such a case, there will be 'no discrimination whatsoever' because gender had no significant influence on the decision.

38

We do not consider the EAT in Barton was saying that that account of the law was changed to require the respondent to show gender had no effect whatsoever in the decision. Nagarajan was cited in the skeleton arguments and is anyway the leading authority well-known to the EAT. It was not distinguished. In order to make this clear, for we accept there may be misunderstanding, we respectfully suggest that guideline (10) in Barton should be adjusted to read as follows:

'To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was not significantly influenced, as defined in Nagarajan v London Regional Transport [1999] IRLR 572, by grounds of sex.'

Further, in relation to guideline (12) the EAT stated as follows at paragraph 40:

> ***"40***
>
> ***We are also asked to consider guideline (12) which requires 'cogent evidence' to be adduced by a respondent shouldering the transferred burden, once a prima facie case has been made out by the applicant. The EAT in Barton justified this expression on the basis that the material facts necessary to prove this would be in the hands of the respondent. 'Cogent' means forceful or persuasive. Guideline (12) is the correct statement of the law, if we may respectfully say so, and so is the justification. Facts and arguments which are forceful and persuasive will discharge a burden of proof. The cogency of the evidence required depends on the standard of proof the law requires, and the nature of the allegation made. Lord Nicholls in In Re H and others (minors) (sexual abuse: standard of proof) [1996] AC 563, 586 (a case not cited to us but upon which our judgment does not depend) approved as neatly expressed the proposition that 'the more serious the allegation, the more cogent the evidence required ... to prove it.' In discrimination, the (civil) standard is the balance of probability. Within that standard, the more unlikely the allegation, the more cogent must be the evidence to discharge the civil burden of proof. Once the burden has shifted, if the facts and explanation are not persuasive, the respondent will not discharge it. The respondent must prove its case on the balance of probability. To do so, it will produce evidence which persuades the industrial jury to find for it. It is entirely appropriate, supported by high authority, to describe that evidence as 'cogent'."***

11. The ET should have considered the succinct way in which Bingham LJ put it in ***Malcolm v Lewisham LBC*** [2008] UKHL 43. The task of the ET was to ascertain the real reason for the treatment; the reason that operates on the mind of the alleged discriminator. This may not be the reason given and it may not be the only reason, but the test is the objective one.

12. The failure to identify a comparator and the question of whether or not the appellant did protected acts under the DDA 1995 and EA 2010, as set out in **[C71. paras 33 – 35, 40, 45 & 52 – 61]** of the appellant's notice of appeal and **[C273. para 19 – 20]** of claim number 2300254/2010. The Employment Tribunal failed to direct itself to section 3(4) of the 1976 Act. That subsection provides:

"*A comparison of the case of a person of a particular racial group with that of a person not of that group under section 1(1)...must be such that the relevant circumstances in the one case are the same, or not materially different, in the other*."

13. The question of harassment **[C74. paras 40 – 41]** of the Appellants' Notice of Appeal: In relation to the question of harassment, the Tribunal failed to consider **[S1321. para 21a–d – 25]** of the appellant's written submissions and apply the correct legal test.

14. The question of unconscious discrimination as set out in **[C74. paras 40 – 41 & 50]** of the Appellants' Notice of Appeal: The Tribunal failed to consider whether the treatment in question was consciously or unconsciously motivated on racial grounds.

15. The question of 'reasonable adjustments' as set out in **[C82. paras 62 – 63]** of the Appellants' Notice of Appeal: The Tribunal failed to determine whether any duty arose to make adjustments and consequently failed to decide whether or not any such duty was discharged.

16. The question of inferences, as set out in **[C65. paras 18, 24, 27, 29, 31, 48 – 49, 74 – 75, 86q & 101]** of the Appellants' Notice of Appeal: The Tribunal failed to give adequate consideration to the drawing of inferences. The Employment Tribunal did not have the correct principles well in mind.

17. The question of detriment: Although the definition of victimisation under the Equality Act 2010 makes specific reference to the need for a detriment, there is in fact no definition of what will or will not amount to detriment. However, an Employment Tribunal asked to adjudicate on this point is likely to adopt a fairly broad interpretation, so that if the employer's actions have the effect of placing the individual employee at some kind of disadvantage or worsens their position, then such treatment is likely to be held to be a detriment.

18. The Appellants' supporting evidence: At paragraph 6 of the Tribunal's judgment under issues, it claims that it was agreed that the appellant's supporting evidence would be looked at for the sole purpose of determining whether the respondents' operated a discriminating regime. This is clearly false, as evidenced by the appellant's opening submissions **[S589, S620 – S626]** and **[S627. para 4, 47 & 63 – 64]** of her supplementary witness statement. 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 in. All of the appellant's supporting evidence has a potential to shed some light upon the culture that she suggest, however the tribunal failed to attach any weight to this at all. This was perverse and an error of law, as it failed to look at the totality of the evidence, as set out in **[C107. paras 101 – 102]** of the Appellants' Notice of Appeal.

19. The Employment Tribunal failed to heed certain matters and erred in their approach to some issues. There were many deliberate failures to act by the Respondents' and when these are combined with detrimental acts, the case starts to build. The Tribunal failed to give adequate consideration to this and appears to have been overly influenced by matters that it was not entitled to take into account. It also reached conclusions which were not based on any evidence that it had before it. Therefore it is difficult to comprehend how such a decision could have been reasonably arrived at.

20. The Tribunal perversely failed to take into account substantial areas of evidence. The employment tribunal erred in law by failing to consider add adequate weight to the appellant's supporting evidence (dated January – February 2011) and the supplementary witness statements and oral evidence, for the purposes of determining whether it shed any light on the appellant's claims, as set out in **[C106. para 99]** of the Appellants' Notice of Appeal, along with parties supplementary witness statements **[S627, 1068, 1118 & 1191]** and the appellants' written submissions **[S1590. paras 518 – 528, S1603. paras 559 - 574]**. It was perverse of this 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), their conclusion was perverse.

21. The Tribunal failed to consider the full content of witness statements and of oral evidence, as set out in her submissions **[S1292. paras 3.144 – 3.260)**. Further to this, the appellant submits that the employment tribunal erred in law in failing to do so. **In discrimination cases, oral evidence is of particular importance, and the Tribunal failed to attach adequate weight to this**. The Tribunal also failed to attach adequate weight to the appellant's extensive contemporaneous documents, and her findings in fact set out in her extensive submissions. There was clear evidence in the appellant's written submissions, (about which there was no dispute in that it was unchallenged), which pointed to discrimination.

22. **Insufficient Analysis and Reasons**, as set out in **[C72. paras 37 – 38 & C87. paras 76 – 103]** of the appellants' Notice of Appeal: 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 the Tribunal had made no error of law in reaching its findings of fact. The Tribunals' reasoning was defective and it failed to make appropriate findings of fact on the face of the decision, and, instead, appear to have relied on general impression. It failed to make full findings of fact and it reached conclusions on the issues of fact and on the general findings that no reasonable Tribunal, properly directing itself, could have reached.

23. The Tribunal did not make essential findings of fact for the purpose of considering whether or not the supporting evidence, post-December 2010 shed any light on the appellants' claims/allegations. The appellant contends that an ET cannot begin to assess what the reason was for the treatment she received, if it does not examine all the evidence that is put before it. The appellant therefore

respectfully requests that the EAT examines the evidence put before the ET and the findings in some detail.

24. There is no factual basis contained in the decision for criticising the Appellants' decision to raise the concerns that she did or in perusing the grievance process so robustly as she did to the end, as it is clear from the evidence that those concerns and complaints were well-founded **[S85 – S87, S110 – S116, S131, S137 – S154, S174 – S181, S184 – S188, S211 – S215 & S1527. para 327]- (***grievances & appeals & notes to grievance hearings etc***)** and the action was also in line with the respondents' own OH consultant's recommendations in relation to encouraging improvement in the appellant's health **[S88 – S89]**. The Tribunal failed to consider this, and it determined the appellant's case on this basis. Such error was enormous and there was an error of law in this connection which formed a significant part of the findings of the Tribunal. The Tribunal proceeded on this basis and in doing so it erred. It is plain to the appellant that this Tribunal was in error of law.

25. It seems to the appellant that the Tribunal's conclusions that the appellant was 'unreasonable' and the respondents' 'reasonable' and 'supportive' are not consistent with the evidence. I was accompanied to each of my three grievances and appeal hearings by different union representatives, none of them characterised my approach as being 'unreasonable'. Instead, their comments supported my views **[S211- S215, S131, & S1527. para 327]**. The Employment Tribunal failed take this into account and it failed to examine the overall effect of the way in which the respondents' implemented or failed to implement procedures and the detrimental affect that this had on the appellant. The findings

of the Tribunal failed to deal with steps that could have been taken. The Tribunal failed to take into account ***Balgobin and Francis v London Borough of Tower Hamlets*** **[1987] IRLR 401 EAT**, at **[S.1615 para 590]** in relation to this point, which shows the importance of the employer's systems as part of his defence against claims by employees.

26. The Tribunal came to conclusions on an inconsistent and false basis and by an inconsistent and false process of reasoning. There are 6 areas in particular that required scrutiny:

    a) The Employment Tribunal failed to undertake extensive treatment of the evidence, with no reference at all to the submissions of parties' which it would have recorded together with a list of the authorities cited to it: **[C65. paras 17 – 19, C84. paras 70 – 75, C101. paras 88 -90]**, of the appellant's notice of appeal. The appellant recognises that the test for perversity is very high. There is hardly any reference at all by the Employment Tribunal in its conclusions to anything said by the appellant and the respondents' witnesses during cross-examination, even though the Respondent spent over 25 hours cross-examining the respondents' witnesses **[S730 –S731, S746 – S801, S812 – S829, S841 – S879, S885 – S900, S906 – S923, S930 – S954, S971 – S1003, S1018 – S1045, S1072 – S1117, S1152 – S1190 & S1195 - S1200]**. The comments made by the respondents' during cross-examination indicated their tendency to discriminate against employees with a mental health condition, yet no references to these comments were made by the Tribunal and no inferences made.

b) The failure of the Tribunal to identify a comparator and the question of whether or not the appellant did protected acts under the DDA 1995 and EA 2010 **[C71. paras 33 – 35, C76. paras 48 – 49 & C78. paras 52 – 61]** of the appellant's notice of appeal and **[C273. paras 19 - 20]** of claim number 2300254/2010. The appellant sent several e-mails of complaint relating to her employer's failure to make reasonable adjustments. Some of the appellant's e-mails and all of her grievances and appeals were protected acts, as the appellant was complaining that she was being treated less favourably. The appellant was complaining of direct discrimination as a consequence. That is clearly a complaint pursuant to the relevant sections of the Act being a complaint of discrimination on the ground that she had exercised a statutory right. The appellant's protected acts are also found at **[S63, S65, S68, S85 – S87 S88 – S89, S92 – S100, S110, S119, S124, S126 – S127, S128 – S154, S174 – S181, S182, S184 – S188, S199, S211- S215, S223, S233 – S234, S238, S245, S249, S254, S257- S260, S263 – S265, S267 – S276]** of the supplementary bundle. This evidence was put before the tribunal, as set out in the appellant's witness statement.

c) Particularly in relation to claim number 2300254/2010- the Tribunal's failure to determine whether any duty arose to make adjustments and consequently failed to decide whether or not any such duty was discharged **[C82. paras 62 – 63]** of the appellant's notice of appeal. It is clear from the evidence that the Respondents' failed to make reasonable adjustments because it had not even considered making any adjustments **[C274. paras 23 – 24, 49, 52, 56, 59, 63, 69 – 70, 72 – 73, 76 & 79]** of the appellant's pleadings for claim number 2300254/2010.

d) The Tribunal's failure to take into consideration/make an inference inconsistencies, inaccuracies and contradictions between the respondents' witness statements and oral evidence, the pleadings, written correspondence and questionnaire responses, the respondents' perjured evidence: **[C71. paras 32 & 91 – 101]** of the appellant's notice of appeal. The Tribunal failed to make any findings in relation to this or even the submission of the questionnaires or the respondents' responses and these findings were essential for the purpose of assessing the fairness/reasonableness of the internal investigation, the implementation of procedures and the credibility of the respondents'. There must have been a concerted decision on the part of those witnesses to lie on oath), this means that the Respondents failed to discharge the burden of proof and show on the balance of probabilities that its treatment of the appellant was not tainted by discrimination. The Tribunal also failed to make inferences from the failure of the individual respondents'- Marcus Watson and Alexander Khan to attend and give evidence, even though in their CMD agenda the respondents' had indicated that they would be calling them as witnesses **[S83- S85]**. In **Wisniewski (A Minor) v Central Manchester Health Authority** [1998] EWCA Civ 596 **[A24. para 23 - 24]**, Brooke LJ considered the relevant authorities and derived the following principles:

- In certain circumstances, a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
- If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken

the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

- There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference. In other words, there must be a case to answer on that issue.
- If the reason for the witness' absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his absence or silence may be reduced or nullified.

In ***Lynch v Ministry of Defence*** [1983] NI 216 it was held that if a party to proceedings failed to call a witness who might have been expected to be called and whose evidence might have been available to the Court or Tribunal, then the Tribunal is entitled to show an inference of discrimination. (See also : ***Wasserstein Ltd v Adebayo*** [2005] IRLR 514.) In ***Nayyar and others v Denton Wilde Sapte and another*** [2009] EWHC 3218 (QB) **[A15]**, (three thirds of the way into the judgment), the court held that it was entitled to draw adverse inferences from the failure by Ms Advani, the second defendant, to give oral evidence at trial. Hamblen J considered that Ms Advani had failed to provide an adequate explanation for her failure to support the stark denials of central factual allegations made in her defence. In relation to the perjured evidence regarding who the most senior manager and thus the one making decision about the Appellant's disability related issues. The respondents' falsely asserted that this was Deborah Francis. It is important to note that

the Tribunal paid no attention to the fact that Deborah Francis had stated herself that she had not had any disability training **[S538. para 514]** of the appellant's witness statement, yet according to the Respondents' she was the one who allegedly had been making most of the decisions in relation to the appellant.

e) The failure to give adequate consideration to the 'reason why' issue **[C70. paras 31 & 41]** of the appellant's notice of appeal: The Tribunal failed to take into account **[S1615. para 589]** of the appellant's submissions, '*The Employment Tribunal should distinguish, on the one hand, the grounds for the decisions that the Respondents' made and, on the other, what motivated the decision-makers to make those decisions, as required by the Supreme Court in* ***R (E) v. Governing Body of JFS [2010] IRLR 136***'.

f) The Tribunal's failure to properly examine the respondents' investigations and outcome statements: **[S101 – S109, S155 – S173, S202 – S205]** in relation to the appellant's grievances and appeals and as indicated in the appellant's notice of appeal **[C131. paras 25, 42 -44, 46, 102]**, the appellant's pleadings for claim number 2318353/2010N, **[C214. paras 46, 98 – 99]**, **[C143. paras 55]** and **[S385. para 101, S441. para 259n, S493. para 399a, S494. para 402, S495. para 405, S507. para 431h, S509. para 431o, S521. para 464, S543. para 531, S549. para 546, S572. para 610 – 611 & S578. para 627]** of the appellant's witness statement. The internal investigations by Anthony Marshall, Amanda Duckett and Deborah Francis were fundamentally unreasonable in that they deliberately failed to adequately and fully explore

matters which were the subject of the appellant's applications to the Employment Tribunal. The Tribunal substituted its own standards of what it would have done during the investigation for the standard it could be objectively expected of a reasonable employer. The Tribunal was unduly influenced by the Respondents' personal response to the investigation findings and failed to consider the question objectively.

g) The Tribunal's concluded that the respondents' investigations were reasonable and that the respondents' were entitled to reach the conclusions that they did. This was the result of a substitution of the Tribunal's own view; as set out in **[C43. paraS 141, 146 and 149]** of its judgment. The Tribunal erred in failing to give reasons for its general acceptance that the Respondents' had conducted a reasonable enquiry/investigation and outcome. The Appellant made a number of points about the investigations and related procedures and about what ought to have happened. The Tribunal failed to pay attention to her complaints. The Tribunal erred in law in finding that because of this the respondents' had not discriminated against the appellant or subjected her to any PIDA detriments.

h) In relation to the length of time that the grievance procedure took to complete, there was ample material for the Employment Tribunal to conclude that it was deliberately and unreasonably delayed. The Tribunal ignored the effect of the numerous delays in relation to the grievance process, but the affects of the delays were relevant, both for the severe impact it had on the appellant's health, the light it shows on the ability of Respondent to respond effectively to

a crisis affecting a vulnerable disabled member of staff, its attitude towards alleged bullying, victimisation and harassment and also to the assessment of the reasonableness of its reaction to the eventual decision. The delays made it all the more important that the response when it came was, honest, sensitive, objective, convincing and effective. It could not be said to have been any of these things. The Tribunal failed to take into account **[S1354. para 73u]** of the appellant's submissions; Implied terms of employment contract: To deal promptly with grievances: the employer is under duty to afford employees an opportunity to obtain, reasonably and promptly, redress of any grievance that they may have, **W *A Goold (Pearmark) Ltd v McConnell*** [1995] IRLR 516, EAT. The appellant submitted that this constituted a breach of the implied contractual term of trust and confidence- ***Lewis v Motorworld Garages*** [1985] IRLR 465. By allowing the discrimination to take effect and failing to stop or at least control it or mitigate its effects, the appellant's employer was in breach of its duty not to undermine the mutual duty of trust and confidence. It is submitted that the totality of the delays, was inexplicable and was such that it was simply perverse to find other than that it was discriminatory/a detriment.

27. It is important to note that Andrea Ward stated that decisions regarding the appellant's return to work were being taken by non-CEL employees **[S1299. para 3.198)**. This included BED HR staff and the company solicitors **[S1297. paras 3.183, 3.221, 3.235 – 3.239)**. Benjamin Craig supported this fact **[S1306. paras 3.248 & S1293. para 3.256)**.

28. It is clear that the appellant's former employer had no control over non-CEL staff **[S505. para 431)** of the appellant's witness statement and **[S1307. paras 3.255 – 3.257, S1521. para 310 – 325, S1534. para 342 – 343 & S1598. para 539)** of the appellant's submissions. This constitutes a fundamental breach of the employment contract and the respondents' duty of care to the appellant. It was BED HR staff that directed the appellant to take out grievances, not her employer **[S507. para 431g]** of the appellant's witness statement **[S49]** and **[S1256. paras 3.11, S1293. para 3.150, S1537. paras 351 – 352 & S1550. para 390]** of her submissions. The evidence demonstrates the fact that the appellant's former employer relinquished all responsibility and left her at the mercy of a third party whom it did not exercise any control over. It failed to protect her from discrimination. This in itself was a form of bullying, harassment, victimisation and discrimination, as set out in her pleadings, witness statement and submissions.

29. 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 appellant's grievances and appeals. Debroah Francis was not a CEL employee, and had no control over Anthony Marshall, yet she investigated the appellant's appeal (at the same time that she was making decision with regards to her ET claim **[S1300. para 3.209]**. This fact was not mentioned by the ET in its judgment, even though it formed part of the appellant's claim/allegations of discrimination and detriment.

30. 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 is evidenced in the appellant's submissions **[S1569. para 449]**. There is evidence that Sue Ely perjured herself in relation to this issue **[C519. para 8.1c]** of the respondents' response to the equality form questionnaire and **[S505. para 431a]** of the appellant's witness statement. It is important to point out that the Respondents' grounds of resistance state that CEL had control over HR advisers **[C363. para 9]**.

31. CEL could not apply the Equalities and Diversity Policy to non-CEL staff **[S5]**. It is clear that the entire grievance procedure was just a sham and was never intended to provide the appellant with any redress, as set out **[S1354. para 73u]** of the appellant's submissions. The Managing Directors of CEL (Marcus Watson and Alexander Khan) were not CEL employees, they were employed by BED and they also failed to take any action. The Tribunal erred in law in failing to condemn the investigation. The tribunal did not give proper findings of fact or provide adequate reasons for its decision **[C63. paras 13, 37 – 39, 76 – 85 & 102]** of the appellant's Notice of Appeal.

32. The judgment lacked sufficient reasons to show why the tribunal reached the decision it did. The decision was fundamentally wrong and irrational. The tribunal failed to record the findings of fact that emerged through cross-examination in its judgment and it was a perversion of the course of justice, as set out in **[C62. para 11a]** of the appellant's Notice of Appeal. Where a hearing goes on for so

very long and where there has been the sort of inconsistencies, contradictions and untruths that emerged through cross-examination, this should have been at the very heart of the decision of the Employment Tribunal, but it was completely absent.

33. The appellant did not expect the Tribunal to reiterate evidence heard over many days, but the fact that there was hardly any reference made to it and the fact that it failed to make any inferences at all from it was of great significance and perverse. Careful findings of fact should have been made; however, no such findings of fact or inferences were included within the decision.

Relevant Law

34. 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, and as set out in **[C63. para 12]** of the Appellants' Notice of Appeal:

> **"*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.*"**

35. ***Meek* v *Birmingham City Council***; as set out in **[C63. paras 13, 23 & 83 – 84]** of the Appellants' Notice of Appeal: 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***."

36. 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 cases of (***Meek v City of Birmingham*** and affirmed in ***Llewellyn Ryland Ltd v Jones & Kemp*** [1999] UKEAT/912/99 **[A12. paras 6 - 8]** 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 (see in particular ***Lindsay v Alliance & Leicester plc*** [2000] EAT/1317/98, **[A11. paras 29 to 50, 51 to 55, 62 & 81]**; ***Sands v Greater Manchester Passenger Transport Executive*** [2001] UKEAT/538/00, **[A19. paras 18 - 27)** and ***Dione v DSG Retail Ltd*** [2000] EAT/811/98, **[A6. paras 7 - 10, 23 & 25)**.

37. The Tribunal failed to deal with the specific criticisms that the appellant put before it. The Appellant does not know if parties were to conclude that the Employment Tribunal had rejected the evidence and submissions that the ET made no reference to. 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. For an example of this see paragraph 156 of the ET

judgment, where the ET states that my complaint in '*unfounded*', but fails to say why.

38. ***Flannery & Anor v Halifax Estate Agencies Ltd*** [2000] 1 WLR 377 **[A9. paras 6 - 12]** and as set out in **[C90. para 85]** of the Appellants' Notice of Appeal: This calls for the judge to identify and record matters critical to the decision and if a critical issue involves fact a brief explanation is needed as to why one witness is preferred over another. The ET judgment neither articulated the issues as fully as rule 30(6) requires, nor did it set out the facts relating to those issues adequately, nor explained its reasons for reaching its conclusions adequately, ***DSG Retail Ltd - v - Mr Manmoham Bawa*** [2002] EAT/1485/99 **[A7. paras 37, 101 – 102, 107, 112 & 117]**.

39. The extent of the duty, where the facts are in dispute, the judge must enter into the issues canvassed before him and explain why he prefers one case over the other. The judge must explain why he has reached his decision, transparency should be the watchword. It is submitted that the ET patently failed the "Flannery" test and was therefore vitiated. 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.

40. ***Yeboah* v *Crofton*** [2002] EWCA Civ 794 and ***Mowlem Technical Services (Scotland) Ltd* v *King*** [2005] CSIH 46, 2005 1 SC 514 **[A14. paras 9, 14 & 18]**; as set out in **[C64. paras 14, 23, 83 & 88 – 89]** of the Appellants' Notice of Appeal. ***Yeboah* v *Crofton*** **[A23. paras 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*."

52. ***Yeboah v Crofton***, 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*."

41. ***Mowlem Technical Services (Scotland) Ltd* v *King*** [2005] at **[A14. paras 10 & 16]** also makes references to the omission of the Tribunal to the substance of the appellants' evidence/submissions, as is the case in the Tribunal's decision in relation to its omission to the substance of the appellant's the five questionnaire responses **[C414- C418, C419- C421, C457- C465, C466- C480 & C507- C528]** and the supporting evidence: the respondents' oral evidence, as set out the appellant's submissions **[S1590. paras 518 – 528, S1603. paras 559 – 574]** and **[C??. para 99]** of the Appellants' Notice of Appeal; the supplementary witness

statements **[S 1068- S1071, S1146 – S1151, S1091 – S1094 & S627 – S648]** and the appellants' opening submissions **[S620 – S626]**.

42. In the tribunals' findings of fact there is an absence of any findings on the extensive oral evidence. The Tribunal's decision is terse, paragraph 122 says nothing more than, for instance, would a comment such as: "Having regard to the law, X wins." At **[C38. para 122]** under the heading 'Submissions', the Tribunal states that it has read the appellants' submissions and considered the relevant authorities and gives no detail on how it applied the law, (particularly the authorities cited by the appellant and in relation to the oral evidence set out in it). At **[C38. para 123]** under the heading 'Conclusions', it states that it has considered the appellant's submissions and gives no further detail on the conclusions drawn from it, (particularly in relation to the oral evidence set out in it). That 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.

43. ***Piggott v Jackson*** [1992] ICR 85, 92D, per Lord Donaldson MR, as set out in **[C88. paras 79 – 82]** of the Appellants' Notice of Appeal and upheld by ***Symonds (T/A Symonds Solicitors) v Redmond-Ord*** [2011] [2011] UKEAT 0028/11/ZT **[A22. para 2]**: The Employment Tribunal made findings of fact which were unsupported by or contrary to the evidence. Those errors; failing to make full findings of fact and making findings which were unsupported by the evidence on which they relied, was integral to the Tribunal's reasoning and materially undermined what followed.

44. A person will be in contempt of court if he presents a deliberately false statement of case, witness statement, (under CPR part 31). The court can also dismiss a claim or defence if there has been a deliberate destruction or falsification of evidence. In ***Arrow Nominees Inc v Blackledge*** [2001] BCC 591, [2000] All ER (D) 854 C.P. Rep. 59 **[A2]**: the Court of Appeal allowed the appeal on the basis that the respondent's production of fraudulent documents led to a substantial risk of injustice, had been such that he should have been deprived of the right to pursue his case, and made it impossible for the parties to be placed on an equal footing, that it had added significantly to the costs of the proceedings, and that it had occupied a great deal of the court's time to the detriment of other litigants.

45. It is submitted that the respondents' committed an abuse of the ET's process in consequence of giving false testimony. This was extraordinary audacity on the part of the respondents' to confound the judicial process; this is particularly disturbing as the conduct complained of by the appellant did affect the outcome of the case.

46. It is submitted that the Respondents' conduct and the ET's failure to take this into account, inhibited the ability of the ET to dispose fairly of the case. The appellant relies upon the Court of Appeal's decision in Arrow Nominees for the proposition that the ET's decision should be overturned. It is submitted that the Respondents' did not 'play by the rules' and strived to undermine the judicial process.

47. The fairness of proceedings had been put in jeopardy and the Respondents' subverted the ET's process, which led to all her claims being dismissed. In the

appellant's view, the Respondents' dishonest conduct is a compelling reason so as to satisfy the granting of the appellants' appeal. The fairness of proceedings was compromised as a consequence of the misconduct of the Respondents' and the judgment was obtained by fraud.

48. ***Robson v Inland Revenue Commissioners*** [1998] IRLR 186 EAT **[A18. paras 5 - 7]** and as set out in **[C105. paras 96 & 98]** of the Appellants' Notice of Appeal: This demonstrates that the perjured evidence of the Respondents' is sufficient on its own for the case to be decided in the appellant's favour. It was shown the Tribunal erred in law by preferring the evidence of the Respondents on the basis of a reason which should not have given any weight nor taken into account at all, particularly in light of the fact that the Tribunal contradicted itself with regards to the issue of whom was managing Director- at **[C36. para 110]**.

49. ***Stenning v Jarman and London Borough of Hackney*** [200] EAT/1288/99 **[A21. paras 22 & 24 - 25]** and ***Marks and Spencer v Martins*** [1998] ICR 1005; [1998] IRLR 326 **[A13. paras 7, 17 – 18 & 21]**and as set out in **[C71. paras 33 – 35]** of the Appellants' Notice of Appeal: Failure to make any comparisons or any proper comparisons or to carry out the three-stage test for direct discrimination as required by section 3(4) RRA 1976. It also failed to carry out the correct legal test for establishing whether or not the Respondents' applied a provision or practice which placed the appellant at a substantial disadvantage. On the question of reasonable adjustments it is submitted that the Tribunal mis-stated the law, mis-applied the law and failed to make the necessary findings to address the appellant's case.

50. ***Boyce v (1) Wyatt Engineering (2) S J Tapsell Ltd (3) Black & Veatch Ltd*** [2001] EWCA Civ 692 **[A4. paras 10, 15, 20 - 21, 29 -30, 32, 36 - 38]**. As was highlighted in this case, the Tribunal paid too much attention and/or alternatively gave too much weight to the respondents' evidence, the appellant also believes that this applies to her case, thus resulting in the granting of the respondents' unreasonable and vexatious application for a cost order. The Tribunal never considered whether there were breaches of duty and if there were failures to implement procedures properly and it concluded that the Appellant had suffered no detriment, she was entirely unreasonable, she was the cause of the events and that the respondents' were entirely reasonable and not at any fault, as set out in **[C67. paras 24 -25, 44 – 46, 49 – 50, 62, 102]** of the appellants' Notice of Appeal.

51. 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, particularly in light of ***Dattani v Chief Constable of West Mercia Police*** **[2005] IRLR 327, EAT**, see the summary and **(paras 41 – 45)**, which was cited by the appellant in her written submissions at **[S.1622, para 608]** and which the Tribunal failed to take into account.

52. In ***Cumbria County Council v Carlisle-Morgan*** UKEAT/0323/06/CEA; [2007] IRLR 314, **(para 29)**, as set out in **[S1349. para 69]** of the appellants' submissions: the Tribunal found that the revelation by Mr Shaw to Mrs Horsman,

and by Mr Greasley to Mr Shaw respectively, constituted detriments in themselves as they did not do 'anything at all to protect the Claimant against victimisation' and thereby placed the Claimant at the risk of harassment. Therefore it was entitled to take the view that these matters amounted to detriments in law. The appellant did not gain from my disclosures, rather she suffered detriments which are directly related to the protected disclosure that she made. The respondents' did nothing to "look after" her, as required by any whistle-blowing policy, as set out in **[S1354. para 73u]** of the appellants' submissions and **[S493. para 399]** of the appellants' witness statement.

53. It seems to the appellant that upon a proper analysis of the extensive documentary and oral evidence and the appellant's submissions that it was not open to the Employment Tribunal to dismiss all of her 43 allegations, particularly as there had clearly been numerous breaches by the respondents':

    a) Data protection breach, as set out in **[S355. paras 20 – 21 & S369. para 57 – 58, & S506. paras 431(b, l)]** of the appellant's witness statement, her grievances and appeals **[S85 – S87, S110 – S116, S129 - S136, S137 – S154, S174 – S181, S184 – S188, S211 – S215 & S1527. para 327]** and **[S1292. paras 3.148 – 3.151, S1351. para 73c, S1357. para 79i, S1407. para 122b, S1430. para 150, S1433. para 156 & S1537. paras 351 - 352]**, of the appellants' written submissions.
    b) Health and safety breaches, as set out in **[S407. para 159, S436. paras 246 – 259, S447. para 270, S483. para 374, S485. paras 377 - 378, S486. paras 382 - 383, S494. para 402, S508. para 431k, S516.**

paras 451 - 452, S544. para 533 & S572. para 612], of the appellants' witness statement and **[S1349. paras 68, S1351. paras 73(e – i, t), S1357. para 79ii, S1391. para 96a-p, S1430. para 150, S1449. para 167j, S1458. paras 171 – 173 & S1524. para 319]**, of the appellants' written submissions.

c) Breaches of the grievance policy/procedure, as set out in **[S378. paras 81, 101, 124 – 126, 137 – 138, 145, 161, 178, 182 - 183, 188, 191 - 192, 205, 208 - 209, 228, 230, 237 – 239, 241 - 243, 245, 259n, 283, 376, 394, 398 - 399, 402 - 405, 408 - 412, 431(a, g- l & n -o), 464, 496, 502, 531, 534, 546 - 547, 563, 603]**, of the appellants' witness statement and **[S1297. para 3.186, S1314. para 14j, S1318. para 17h, S1351. paras 73(a, k, m –q), S1357. paras 79(p, x & ii), S1372. para 81s, S1399. paras 101 – 102, S1421. para 147v, S1430. paras 150 - 155, S1449. para 167kk, S1524. para 319, S1561. paras 423 -424, S1561. paras 426 – 430, S1564. para 433, S1568. para 446 & S1618. para 598]**, of the appellants' written submissions. Equal Opportunities were not followed in relation to the procedure: As set out in **[S1421 & 1428 paras 147cc & ee]** of the appellants' submissions, in *Anya v. University of Oxford and another* [2001] EWCA Civ 405, at (para 378) it was held that, ***'when equal opportunities procedures are not followed when they should have been it may point to the possibility of conscious or unconscious racial bias having entered the process****;*

d) Breaches of trust and confidence, as set out in **[S436. paras 245, 255, 335 & 374]**, of the appellants' witness statement and **[S1342.**

paras 54, S1349. para 68, S1351. para 73(t &u) & S1524. para 319], of the appellants' written submissions.

e) A breach of the appellants' privacy/confidentiality, as set out in **[S430. para 232 – 235, 561 - 562]**, of the appellants' witness statement and as set out in **[S1357 & S1362. para 79x, S1439 & S1441. para 164f, S1568. para 447 & S1576. paras 470 - 471]**, of the appellant's submissions.

f) Breaches of the sickness absence policy, as set out in **[S381. paras 90 – 94, 98, 127, 254 - 255, 266 - 267, 259n, 271, 324, 331 -340, 342 – 343, 360, 364, 372, S489. paras 389- 391, 415, 431(f, j, m), 526 - 529, 552, 578 - 579, 604 - 605]**, of the appellants' witness statement and as set out in **[S1298. paras 3.187, S1303. para 3.232, S1306. para 3.248, S1308 & S1311. para 6j, 6l, 6o, S1314 & S1317. para 14i, S1318 & S1320. para 17g, S1321. para 21c, 21d, S1324. paras 28a, 28i, 28o, S1326 & S1328. paras 29i, 29j, 29m, 29o, S1329. paras 30d, 30g, S1332. para 33a, 33d, 33g, S1334. paras 37a, 37d, 37g, S1351. para 73(d,f-h, s), S1357. paras 79(g,ii) S1372. paras 81(k, p, t), S1399. para 101, 103 – 104, S1421. para 147z, S1449. para 167h, S1469. para 197, 211, 360, 451 – 452, 500, 521 – 522, 524, 536 & 572]**, of the appellant's submissions.

g) Persistent failures to make reasonable adjustments', as set out in **[S383. paras 97 – 98, 117, 153 - 154, 158, 160, 164, 168, 171, 175, 195, 223, 229- 230, 308, 313, 315, 336, 345, 347, 351, 355, 361, 363, 366, 371 - 372, 384 - 385, 392, 394, 400- 401, 405, 530, 532, 535, 540, 544, 551 - 552, 554, 557 - 558, 577, 583, 590 – 592, 594, 606]**, of the appellants' witness statement and in **[S1351. paras 73j, S1357.**

para 79ll, S1439. para 164t, S1449. para 167(g, q w), S1460. paras 176 – 177, 184 – 191, 221 – 224 & 262 - 269], of the appellant's submissions.

54. ***Ali v Pindersfield Hospital NHS Trust*** [1997] UKEAT184/97 **[A1. page 1]** and as set out in **[S1351. paras 73q]** of the appellants' submissions: Where Codes of Practice have been issued under appropriate sections of the anti-discrimination statutes, they are admissible in evidence, and, if any provision of such a Code appears to a tribunal or court to be relevant to any question arising in the proceedings, it has to be taken into account. Under the DDA 1995 s53(6) an ET must take into account any relevant provision. The ET failed to take this authority into account.

55. ***Prentice v Hereward Housing Association and Another*** [2001] EWCA Civ 437 **[A17. paras 10, 26 – 27, 29 – 30 & 34 - 36]**: The interest of justice requires a retrial where it is shown that the trial judge/tribunal was wilfully misled by the winning party, as set out in **[C89. paras 82, 86r, 91 – 98]** of the appellants' Notice of Appeal. The Employment Appeal Tribunal will not overturn a decision based upon a breach of natural justice unless it could be shown that the breach was not simply technical and that the party concerned had suffered something which was 'seriously irregular and unfair'; ***Mayo Deman v Lewisham College*** [2003] UKEAT/0104/02 should be applied. This should also be applied to the ET's failure to cite, take into account and/or make inferences from the appellant's written submissions, the questionnaires and responses, the oral evidence, the respondents' failure to call two crucial witnesses (Marcus Watson and Alexander Khan) and the respondents' perjured evidence.

56. ***R Plettell v British Aerospace (Operations) Ltd*** [2001] UKEAT 446/2007 **[A16. paras 14, 16 & 20]**: The Tribunal's failed to grapple with the inferences from the questionnaire responses. There were no findings of fact made in relation to the questionnaires or the respondents' responses. The appellant carefully and painstakingly analysed the questionnaire responses in great detail, highlighting the sections where the responses were evasive, equivocal and obstructive and the inaccuracies, inconsistencies and contradictions with the pleaded case and evidence **[S511 – S571]**. However, the Tribunal made no reference to the 5 questionnaire response at all. They were simply ignored. The Tribunal subsequently failed to make proper assessments on the respondents' witnesses. It is submitted that this seriously weakens the Tribunal's finding of fact in relation to them and their evidence, as set out in **[C17. paras 32 & 91 – 101]** of the appellants' Notice of Appeal, and in particular her argument relating to the fact that it failed to give adequate consideration to her submissions **[C26. para 73)** of her Notice of Appeal, in relation to **[S510. paras 433 – 607]** of her witness statement.

57. ***Fecitt & Ors v NHS Manchester*** [2010] UKEAT/0150/10/CEA, **[A8]**, where HHJ Serota QC on behalf of the EAT said this:

> **"64.** ***We accept the submission that what amounts to causation in cases of victimisation in discrimination claims is the same as that that should apply to victimisation for whistle-blowing and to other forms of discrimination*****.**
>
> **65.** ***We also recognise that Igen v Wong was a case that concerned race discrimination (as in fact was Nagarajan) where the European Directive applied. Such cases therefore differ from whistle-blowing cases where the legislation is entirely home-***

grown. We were, however, impressed by the argument as to the assimilation of the law of victimisation in discrimination cases and victimisation in whistle-blowing cases. Peter Gibson LJ held that the appropriate test required the employer to prove that the treatment [discrimination] and was "in no sense whatever" on the grounds of the Claimant's race or sex as the case may be. The same would apply to detriment suffered on the ground that the Claimant had been (whistle-blowing) and thus done a protected act. As we have noted Peter Gibson LJ held that this test did not differ from Lord Nicholls' formula in Nagarajan; a "significant" influence was an influence which was more than trivial.

66. ***We bear in mind that, in the legislation relating to whistle-blowing, Parliament has sought to offer protection to whistle-blowers. We consider that we should take a broad view of provisions for their protection. Further, the decision of the Court of Appeal in Igen v Wong is binding upon us. The Court of Appeal considered the relevant earlier authorities and so far as we are concerned its decision is both definitive and binding upon us. Accordingly in our opinion, once a detriment has been shown to have been suffered following a protected act the employer's liability under section 48(2) is to show the ground on which any act or deliberate failure to act was done and that the protected act played no more than a trivial part in the application of the detriment. That is the meaning of the test in Igen v Wong. Put another way, the employer is required to prove on the balance of probabilities that the treatment was in no sense whatever on the ground of the protected act.***"

The Tribunals' approach to causation: the Employment Tribunal erred in law in respect of the causative element of the statutory question, **[C20. paras 46 – 50, 68]** of the appellant's notice of appeal. The correct approach to causation is conveniently set out above.

The Tribunal's Error

58. The appellant applies to adduce the fresh evidence. She submits that it would make all the difference to the Tribunal's findings. A finding of discrimination would

inevitably be made. The appellant relies on ***Ladd v Marshall*** [1954] 1 WLR 1489 - that is, whether the evidence in question would probably have had an important influence on the outcome of the case and whether it is apparently credible.

59. The test which the Appeal Tribunal applies is found in the Appeal Tribunal's 2008 Practice Direction. Paragraphs 8.1 and 8.2 provide:

> ***"8.1 Where an application is made by a party to an appeal to put in, at the hearing of the appeal, any document which was not before the Employment Tribunal, and which has not been agreed in writing by the other parties, the application and a copy of the documents sought to be admitted should be lodged at the EAT with the Notice of Appeal or the respondent's Answer, as appropriate. The application and copy should be served on the other parties. The same principle applies to any oral evidence not given at the Employment Tribunal which is sought to be adduced on the appeal. The nature and substance of such evidence together with the date when the party first became aware of its existence must be disclosed in a document, where appropriate a witness statement from the relevant witness with signed statement of truth, which must be similarly lodged and served.***
>
> ***8.2 In exercising its discretion to admit any fresh evidence or new document, the EAT will apply the principles set out in Ladd v Marshall [1954] 1 WLR 1489, having regard to the overriding objective, i.e.:***
>
> ***8.2.1 the evidence could not have been obtained with reasonable diligence for use at the Employment Tribunal hearing;***
>
> ***8.2.2 it is relevant and would probably have had an important influence on the hearing;***
>
> ***8.2.3 it is apparently credible.***
> ***Accordingly, the evidence and representations in support of the application must address these principles."***

60. In the appellant's view, the first limb of the test is satisfied. The appellant could not have obtained the evidence as the evidence would have been unavailable to her at the time of the ET hearing, as she was prevented from submitting evidence post-February 2011 in support of her claim and the fresh evidence came into existence after this date, in October 2011.

61. The appellant was not cross-examined by the respondent about her assertion that Deborah Francis' was not the Managing Director. The Tribunal also failed to question the appellant regarding this **[C1]**. Deborah Francis' own evidence in relation to this point was untested in re-examination and the Tribunal failed to ask any questions on this specific point. It follows if there are disputed facts, as would have been identified by the Tribunal following submissions of parties, it is under an obligation to determine them if they are relevant to the decision, as they were.

62. In the case of ***Levy v Marrable & Co Ltd*** [1984] I.C.R. 583 it was held that it is the duty of the Employment Tribunal to articulate why it had reached a conclusion on disputed factual matters; see the judgment of Waite J at 587D-H at paragraph 38 of the judgment:

"What is our duty in those circumstances? We think the principle involved is the following: where there has been a conflict of evidence at the hearing before an industrial tribunal on a significant issue of fact, then the industrial tribunal's finding (i.e. their acceptance or rejection of such evidence) must be made plain one way or the other. Express words are not necessary. That is clear from Union of Construction, Allied trades and Technicians v. Brain [1981] I.C.R. 542, and in particular the judgment of Donaldson LJ at p.551. But the language must be sufficiently full and clear to make it possible for anyone to tell from a reading of the decision as a whole whether the members have believed the relevant witnesses or not. Failure by the industrial tribunal to provide that indication, expressly or by reasonably clear implication from the overall language of their decision, amounts to an error of law: see Alexander Machinery (Dudley) Ltd v. Crabtree [1974] I.C.R. 120, 122. This principle has not, we think, been affected - indeed it derives implicit support from - the recent decision of the Court of Appeal in Varndell v. Kearney & Trecker Marwin Ltd [1983] I.C.R. 683. Application of that principle to the circumstances of the present case has driven us to the conclusion, on the grounds already indicated, that the industrial tribunal failed to make it sufficiently clear, on a plain reading of their decision as a whole, whether they accepted (and if so to what extent) or whether they rejected the evidence on the one side or the other. Thereby they fell into an error of law which it is our duty to redress."

63. The appellant could not find a copy of the above judgment, but it was cited in ***Greenwood v NWF Retail Ltd*** (2011) UKEAT/0409/09/JOJ. The Tribunal made no reference at all in its judgment to this issue that was clearly in dispute. The ET neither set out the competing factual contentions nor indicated how they had been resolved. It made contradictory findings as to who was the Managing Director of CEL at **[C36. para 110]** and **[C 46. para 151]**, the latter finding was not based on any evidence and therefore constitutes a perverse finding. It is submitted that the evidence was not available, and that it does not become reasonably available by virtue of these factors and the fact the appellant did not know at the time that the Tribunal had accepted the respondents' unsubstantiated evidence, particularly as she had provided substantial evidence to support her assertion.

64. In the light of fresh evidence it is the appellant's view that the hearing was not fair and a review could have cured the unfairness, however, the Tribunal refused to review its decision. The ET would have been aware that the evidence could genuinely not have been obtained earlier and so it was unjust of it to refuse the appellant's application for a review.

65. It is submitted that the Tribunal misapplied the law, and/or reached a perverse conclusion, in relation to its decision to dismiss the application for Review under Rule 34(3)(d). The first limb of ***Ladd v Marshall*** was plainly satisfied, and the Tribunal ought to have, but did not, turn to consider the second limb, which is of course that "*the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive*". The evidence satisfied the second limb in ***Ladd v Marshall*** (and was apparently

credible) such that the application for Review should have been granted under Rule 34(3)(d) and not refused. The evidence plainly went to the issue of credibility- as four witnesses perjured themselves in relation to this issue, and that undermined all of their evidence. Therefore the evidence would have had an important influence on the hearing. Credibility on one issue must inevitably spill over into findings on other issues (see ***Lifely v Lifely*** [2008] EWCA Civ 904 **[A10]** (unreported) at paragraph 43 per Ward LJ). The third limb is also satisfied: the evidence is a genuine document.

66. The Appellant asserts that the ET's decisions amount to or contain errors of law. The procedural decisions are also not sound in law. The 'fresh 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.

67. The appellant also applies to adduce additional fresh evidence, as set out in paragraph 3jj. She submits that it would have made all the difference to the Tribunal's findings and that it will make all the difference to the EAT's findings. A finding of discrimination would inevitably be made. It demonstrates clearly that the Respondents' were not genuine with their apologies regarding the credit monitoring payment and that they fully intended to continue to avoid making the payment for a long as possible and inflict as much distress as possible on the appellant. The appellant believes that this constitutes a continuing act, in line with ***BHS Ltd & Anor v Walker and Premier Model Management Ltd*** [2005] UKEAT 0001_05_1105. For obvious reasons, the evidence was not available to

the appellant at the time of the hearing. As before the appellant relies on ***Ladd v Marshall*** [1954] 1 WLR 1489 - that is, whether the evidence in question would probably have had an important influence on the outcome of the case and whether it is apparently credible.

68. The appellant's carefully set out her claims relating to the CRB loss in her pleadings, schedule of claims, witness statement and written submissions. She made it clear that following the Respondents' failure in 2009 to safeguard her personal, confidential and sensitive data she was subjected to detrimental treatment. The appellant had completed her CRB form on 19 February 2009, when asked.

69. Through no fault of her own, she was permitted to continue to work without an updated CRB check for the next seven months. After being sent another CRB form to complete by the Respondents', she had contacted her line manager Benjamin Craig on 7 September 2009 to enquire about what had happened to her first CRB form and asked for a full investigation. The Respondent had waited nearly seven months before sending her another CRB form, with no cover letter or explanation. The appellant was mortified that the company had not adhered to the data protection act principles and that they did not utilize the CRB online tracking service that was launched in January 2007 to monitor the progress of CRB applications, from receipt through to issue.

70. When the appellant had asked for the matter to be investigated and she followed it up with a request for credit monitoring assistance on 16 November 2009, this was refused and she was directed to take out a grievance rather than the matter

being treated as a protected disclosure. The appellant was never advised about the existing whistleblowing procedure/policy/guidance at the time.

71. The appellant advised the ET that she was discriminated, victimised and harassed as a result of following the company's direction to take out a grievance and that the company had tried to deter her from pursuing it, hence why the entire procedure took ten months to complete, by which time the situation had impacted severely on her health.

72. The Operations manager's failed to discuss, acknowledge or respond to her e-mails raising concerns about the loss of her personal, sensitive and confidential information, (that she had been copied into) and the company even tried to justify this lack of communication/response. The Respondent failed to offer support to deal with the aftermath of the data breach; i.e. damage limitation / protection from identity theft. The appellant was offered no form of support or advice on how to deal with the consequences of this data loss, (how to deal with the anxiety, worry and stress in relation to potential of identity theft or how to protect herself from the potential threat of identity theft).

73. Instead of helping the appellant, the Respondents' were unsympathetic and refused to assist her with credit monitoring. Adam Buckby's email which contained the refusal was also very insensitive, enquiring how a meeting about the CRB loss would bring back the appellant's ID or change her situation. The Respondent dismissed the appellant's complaints about this. She was already suffering from stress at work and this incident added to that stress. The Respondent stated that it did not accept liability for the CRB loss, as a document

being sent by first class post is a reasonable medium for delivery, (an argument that they have maintained throughout). However, this was not the company view. Their own company magazine quotes the Security Director Julie Moore, '*VT has an obligation to protect the data it manages as its loss can have severe repercussions-loss of confidence, breach of contract, financial penalties, negative publicity and loss of reputation*'. She goes on to state that '*as part of security arrangements, information should be sent by the most appropriate secure method'* (recorded delivery).

74. With regards to the data protection breach, the Respondent was insufficiently proactive in helping the appellant in what was an unfortunate predicament not of her own making. The failure to fully appreciate the significance of the facts that the appellant disclosed and the actual impact on her, and indeed the future potentialities materially contributed to the downward spiral of events. It was a key event in the change of attitude on the part of the Respondents'.

75. When the appellant first raised the grievance about the CRB issue, (following her employer's instruction to do so), things became materially worse for her. The appellant advised the ET that grievance was not dealt with quickly, and that it was interfered with by those against whom the complaints were made and as a result of the matter taking so long to be resolved, her medical condition was exacerbated and she experienced two bouts of long-term sick and lost pay.

76. During the main hearing in January 2012, Judge Balogun asked Adam Buckby, (Babcock's HR officer) whether or not the HR staff had day to day contact. He confirmed that they did. Judge Balogun then asked if the HR staff had

discussions about the grievances. He stated, '*not until it escalated from the CRB loss in January 2010*'. He stated that by the middle of February 2010, 'pretty much everybody in HR would have known the case.

77. During the Respondents' re-examination of Anthony Marshall (a senior member of Babcock's management), their Barrister, Mr Palmer reminded him of the appellant's question- '*Do you agree that the CRB was handled badly and that she suffered a detriment?'* He asked him to answer the fullness of the question, whether the appellant suffered a detriment as a result of matters concerning the CRB process. Anthony Marshall's response: '*she was obviously upset about the whole process, said it caused her stress, I don't disagree with her… yes*'.

78. During the appellant's cross-examination of Amanda Duckett (also a senior member of Babcock's management), the appellant asked her why she didn't offer an apology about the CRB issue when she first became aware of it at the end of October 2009. Her response was, '*I didn't think it was relevant for me to have a direct conversation with you about it at that point*'.

79. Anthony Marshall advised the appellant during her cross-examination of him that the decision to refuse the credit monitoring prior to her being directed to take out a grievance had been made with Amanda Duckett. However, Amanda Duckett's oral evidence, contradicted this and she claimed that she was not part of that decision-making process.

80. Paragraph 14 of Anthony Marshall's witness statement read, 'Ben could not categorically confirm that he had sent the Claimant's CRB form to HR because

he kept no written records of outgoing post'. This contradicted Adam Buckby's witness statement, at paragraph 3, which read, 'Ben confirmed to the Claimant that he had sent her form to central HR by post at the time (see page 741 of the Bundle)'.

81. During the appellant's cross-examination of Beverley Bannister (also a senior member of Babcock's management), the appellant asked her why she didn't make an apology in September 2009 when she was alerted to the CRB loss. First she claimed that she wasn't working in Lewisham at that time, then she accepted that she was, then she stated that it wasn't brought to her attention until much later and the appellant then had to remind her that she brought it to her attention at the relevant time. She then stated that the company would have wanted to investigate it first. She then went on to state, 'I can only make an apology for not making an apology'. She could not explain why the appellant did not receive her credit monitoring payment after she submitted her expense form.

82. In the course of her oral evidence Beverley Bannister also confirmed that the decision to refuse the credit monitoring was made with Amanda Duckett, this contradicts Amanda Duckett's oral evidence, whereby she claimed that she was not part of that decision-making process.

83. The appellant brought all this to the attention of the ET in February 2012 and presented it to the ET in the form of written submissions which incorporated the oral evidence which emerged during cross-examination. However, after considering all the appellant's documentary evidence, witness statements and written submissions the ET failed to take into account the contradictory evidence

and in paragraphs 132 – 134 of the Tribunal's judgment, it questioned whether the CRB loss was actually a breach of the data protection principles. This clearly is not the issue, the fact is the appellant had reasonable belief that it was.

84. In paragraph 152 of its judgment the ET stated the following, '*We heard evidence that the Claimant sent her expenses form requesting payment to BB who then sent it by post to payroll. BB said that it would be and had been paid in the normal course. There was no evidence that the claimant reported the fact of non-payment to BB or anyone else in management. Nor was there evidence to suggest that there was a deliberate act by BB, or indeed on anybody else, to deprive the claimant of payment. The Respondents' were unable to say whether or not the payment had been made but their Counsel informed us that if payment had not been made, they would rectify this*'.

85. The appellant had pointed out in her written submissions that the respondents failed to address the allegation in its ET3 or even any of its witness statements and therefore should not have been permitted to rely on this defence at the hearing. In paragraph 83 of the appellant's written submissions the appellant pointed out that the Respondents' pleadings failed to address her complaint relating to the company's failure to follow the whistleblowing procedure and the failure to make the credit monitoring payment.

86. The appellant has been working with young people and vulnerable adults for more than a decade and she knows the significance of CRB's and the importance of having a CRB in order to work with this client group. The appellant has always been very concerned about the safety and security of how her CRB is

handled (as most people are), in terms of the personal information and how that information could be exploited if it falls into the wrong hands. After the appellant learned of the CRB, on 18 November 2009 a company wide email from the Managing Director of Babcock was sent out to staff regarding CRB's. He was advising staff that VT were committed to safeguarding children and informed staff that he had recently given assurance to customers that '*where a CRB check is not available staff will not be permitted to work unsupervised with children and will where it is appropriate be accompanied by a CRB cleared member of staff*.' The appellant felt that this was ironic, in the context of the concern that she had raised about the CRB loss and the manner in which she was dealt with.

87. During the appellant's former employer's internal procedure, the GMB representative Tony Smith also commented on the company's failure to offer an apology and how the CRB issue was generally handled. Around the time of the loss of CRB's there had been numerous incidents reported by the media about data protection breaches, including involving the government losing social security data, 5000 prison staff also having their data lost and 25 million people's having their child Benefit details lost. This meant that there was a heightened public interest into the issue of employee personal data security, yet the appellant's employer dealt with the loss of staff data in a very casual manner.

88. The appellant's former line manager Benjamin Craig, the Operations Manager Beverley Bannister and the London Executive Amanda Duckett were all aware that the CRB's had been lost. Neither Beverley Bannister nor Amanda Duckett offered an apology. In addition to this, it seems that Marcus Watson was acutely aware that the CRB situation had harmed company business, which is why he

sent out a group wide e-mail in November 2009. It is important to note that Marcus Watson did not contact affected staff directly or offer any sort of apology for the CRB loss, nor did Amanda Duckett, even though, by her own admission, she had become aware of the issue between the beginning of September and the end of October 2009. It is clear that more that three years later, this case has come full circle and that the respondents have not learned from their deplorable conduct.

89. The appellant respectfully requests that the decision in the Review application judgment be quashed, and that the EAT should substitute its own conclusion, being the only conclusion reasonably available to a tribunal properly directing itself, that the Appellant's application for a Review be allowed.

90. The tribunal made a totally flawed decision. 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 and it failed to correctly apply the law to the facts. It failed to set out the legal principles it relied upon and to explain how they were applied specifically to the facts. It is submitted that the failure to set out legal principles extends to the following, (which is not an exhaustive list):

91. The correct test for justification- please also refer to **[C27. para 77]** of the appellant's Notice of Appeal.

92. ***Hereford and Worcestershire County Council v Neale*** **[1986] IRLR 168**, as authority for the proposition that a party should know the case it had to meet, Ralph Gibson LJ having said at page 175:

,,, **"… it would be unwise and potentially unfair for a tribunal to rely upon matters which occur to members of the tribunal after the hearing and which have not been mentioned or treated as relevant without the party, against whom the point is raised, being given the opportunity to deal with it unless the tribunal could be entirely sure the point is so clear that the party could not make any useful comment in explanation."**

This argument was set out the appellant's submissions at **[S1385. paras 83, S1449. para 165 & S1619. para 600]**: Evidence relied on at the hearing which was not advanced by the respondents' in its ET3/pleadings, as set out in **[C16. paras 26 & 100]** of the appellants' Notice of appeal. A party must be made aware before the full hearing of the essence of the defence being put forward. The appellant was not made aware of this in relation to allegation no.1a, 7, 8, 10b, 15, 16 & 24 of claim number 2318353/2010, as set out in her schedule of claims **[S286]**.

93. ***Burton v. De Vere Hotels Ltd.*** **[1997] ICR 1**, **(*per* Smith J. at page 7, p10 A-B)**, as set out in **[S1345. para 58 & 59]** of the appellant's submissions. The Tribunal's approach to establishing the question of detriment was an error of law: The position on the current authorities is that an employer subjects an employee to a detriment if he causes or allows the detriment to occur in circumstances where he can control whether it happens or not.

94. ***Waltons & Morse v Dorrington*** **[1997] IRLR 488:** as set out in **[S1458. para 171]** of the appellant's submissions: This case supports the appellant's contention that the failure to carry out an assessment resulted in a detriment to her that would amount to unlawful discrimination.

95. ***Day v Pickles*** **[1998] UKEAT IRLR 217** and ***Hardman v Mallon ta Orchard Lodge Nursing Home*** **[2002] IRLR 516, EAT**, as set out in **[S1459. para 172 - 173]** of the appellant's submissions: it was held that an employer is required to conduct a risk assessment particularly when employer becomes aware of an instance of occupationally induced ill health.

96. ***Environment Agency v Rowan*** **UKEAT/0060/07; [2008] IRLR 20** at **(paragraph 27)**, as set out in **[S1460. para 174]** of the appellant's submissions: it was held that … '*It should be borne in mind that identification of the substantial disadvantage suffered by the Claimant may involve a consideration of the cumulative effect of both the provision, criterion or practice applied by or on behalf of an employer" […] so it would be necessary to look at the overall picture…*

97. ***Barry v Midland Bank*** **[1999] ICR 859***,* **(pages 10 – 17)**, as set out in **[S1476. para 214]** of the appellant's submissions: In seeking to show that its actions were proportionate, an employer does not need to show that there was no alternative course of action, but must demonstrate that the measures taken were 'reasonably necessary'*.* The actions will not be considered reasonably necessary if the employer could have used less discriminatory means to achieve the same

objective, ***Kutz-Bauer v Freie und Hansestadt Hamburg*** **[2003] IRLR 368 (ECJ)**, **[S1476. para 214]**.

98. The decision of the Court of Appeal in ***Taylor v. OCS Group Ltd.*** **[2006] ICR 1602** and specifically to the observation in the judgment of the Court given by Smith LJ **(at para. 72)** and ***Igen Ltd. v. Wong*** **[2005] ICR 931**, as set out in **[S1477. para 215 – 216]** of the appellant's submissions: It is clear that the Appellant was treated differently for a reason which was related to her disability and that she established a *prima facie case*- that the respondents' knowledge of her disability influenced its judgment/actions. The appellant's treatment was an indication of the mindset on which the respondents' decisions were based.

99. An employer cannot justify any less favourable treatment of a worker for a reason related to his/her disability, unless s/he has already made any reasonable adjustments that are required.

100. ***City of Glasgow Council*** **v** ***Zafar*** **[1998 SC] (HL) 27**, ***King*** **v** ***Great Britain - China Centre*** **[1991] IRLR 513**, ***Oyarce*** **v** ***Cheshire County Council*** **[2008] ICR 1179**, ***Anya*** **v** ***University of Oxford*** **and** ***The Law Society*** **v** ***Bahl*** **[2003] IRLR 640** affirmed in ***Bahl*** **v** ***The Law Society*** **[2004] IRLR 799]**, as set out in **[C65. para 18]** of the appellants' Notice of Appeal: The Tribunal failed to consider whether the unreasonable treatment in relation to the claim of victimisation and the inference that there were racial grounds for that treatment having regard to these cases, as set out in **[C16. paras 27, 30 – 31, 45, 48- 50 &**

74] of the appellants' Notice of Appeal. The Employment Tribunal misdirected itself in relation to the application of section 54A(2) of the 1976 Act *and* section 3A of the Act.

101. ***Shamoon* v *Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337** at para 7, ***Qureshi* v *Victoria University of Manchester* [2001] ICR 863** at 875 and as set out in **[C14. paras 21, 30 - 32 & 87]** of the appellants' Notice of Appeal: The appellant believes that she satisfied the test that number one- she had been treated less favourably than the appropriate comparator ("less favourable treatment" issue); and, number 2- that the less favourable treatment was on racial grounds (the "reason why" issue). This authority was also relevant for the issue of identifying a comparator, as set out in **[C18. para 35]** of the Appellant's Notice of Appeal, and identifying PIDA detriment, as set out in **[C25. para 66 – 69]** of the Appellant's Notice of Appeal, which the Tribunal failed to do.

102. ***Clark -v- TDG Ltd t/a Novacold* [1999] IRLR 318**, as set out in **[C23. para 58]** of the appellants' Notice of Appeal: The Tribunal failed to follow this authority in relation to the wider test- "on the grounds of" or "by reason of". The tribunal also failed to consider discrimination arising from disability and harassment under the DDA/EA and apply the correct legal test in relation to this.

103. ***Smith v Churchhill Stairlifts PLC* [2006] IRLR 41**: The Tribunal failed when assessing whether a step was reasonable to apply the objective standard contrary to this authority, **[S1458. para 170]**.

104. ***Cumbria County Council v Carlisle-Morgan*** **UKEAT/0323/06/CEA; [2007] IRLR 314**, **(para 29)**: The Tribunal failed to take into account the fact that the respondents' failure to adequately deal with the alleged bullying, constituted detriments in themselves as the respondents' did nothing at all to protect the appellant against victimisation' and thereby placed the appellant at the risk of harassment, **[S1349. para 69]**. ***Coyne v Home Office*** **[2000] EAT/244/97**, **[S.1431 para 152]** : The Tribunal failed to take into account this authority where it was held that the employee was discriminated against by reason of the employer's failure to properly investigate the an employee's complaints and the tribunal's view that there was no material difference between a failure to prevent harassment occurring and a failure to deal properly with a complaint of harassment, *'since the natural consequence of a failure to deal with a complaint will be a risk of continuation of the same conduct'*, **(para 9)**.

105. In addition to the above, the Tribunal failed to take into account ***British Aircraft Corporation v Austin*** **[1978] IRLR 332, EAT**: The Tribunal ignored the fact/failed to take into account that employer owes a duty to employ a competent and safe workforce and environment, (including a duty to prevent bullying at work), safe plant and equipment, to have safety systems at work and to pay attention to employee's' complaints in relation to safety matters, **[S1354. para 73t]**. The Tribunal also failed to take into account ***Canniffe v East Riding of Yorkshire Council*** **[2000] EOR93C**, at **[S.1525 para 321]**, where the EAT ruled that an employer does not satisfy the defence for liability for sexual harassment merely by showing that there was nothing it could have done to stop the harassment from occurring. In order to satisfy the statutory defence, an employer

must show positively that it took such steps as were reasonably practicable, **(paras 14, 22 – 23)**.

106. ***Goodwin v Patent office*** **[1999] IRLR 4, EAT ICR 302- (page 8)*; Clark v TDG Ltd (trading as Nova Cold)*** **[1991] IRLR 318*; [1999] 85 EOR 46, CA.- (bottom of page 7))***: The Tribunal failed to take into account the relevant provisions of the Codes of Practice, **[S1353. para 73q]**.

107. ***Richmond Pharmacology Ltd v Dhaliwal*** **[2009] IRLR 336 EAT, (paragraphs 10 and 11)**: The Tribunal failed to take this authority into account, **[S1398. para 100 & 101]**, with particular relevance to the following, '*It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question.* It was clear from the evidence that was put before the Tribunal that the appellant had persistently informed the respondents' that she felt harassed, humiliated and that the conduct was unwanted and causing offence. ***Gilbank v Miles*** **[2006] IRLR 538, CA**, **(paras 54 – 56)**: The Tribunal failed to consider the concept of 'consciously encouraging a discriminatory atmosphere', **[S. 1434para 160]**.

108. ***Chessington World of Adventures Ltd. v. Reed*** **[1997] IRLR 556**, The Tribunal failed to take this authority into account, **[S1415. para 134]**, where it was held that an employer would be liable if it was aware of a campaign of harassment against an employee, but took no adequate steps to prevent it although it was in a position to exercise control.

109. It seems to the appellant that upon a proper analysis of the statutory questions, it was not open to the Employment Tribunal to reach a conclusion favourable to the Respondents' on each of her heads of complaint.

The interests of justice: the Employment Tribunal denied the appellant her right to a fair trial contrary to Article 6 of the ECHR

110. It is part of the duty of employment tribunals to ensure that it acts in the way that it considers 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 **[C551]**.

111. 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 that she should be permitted to submit 'fresh evidence' to enable her to prove her case. The prejudice from a refusal to allow 'fresh evidence' would be greater than any prejudice to the respondents' flowing from permitting such evidence. The appellant was denied this – **[C72. paras 36 & 97]** of the appellant's Notice of Appeal and the appellant's request for a review **[C532]**; and

112. The appellant was also denied her application to authenticate evidence during the proceedings, as set out in **[C86. para 75]** of her Notice of Appeal and **[C529 - 531]**.

113. 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 **[C62. paras 11c, 26, 49, 72, 86p, 91a, 93 & 100]** of the appellants' notice of Appeal.

114. The ET's decisions were not in line with Article 6 (The right to a fair hearing). Article 14 (non-discrimination) of the European Convention on Human Rights should also be taken into account. The appellant does not believe that its decision was just or equitable. This will present an additional barrier and prevent her from being able to properly conduct/prove the 'stayed' part of her case.

115. The European Convention on Human Rights. article 6(1) provides:- "In the determination of his civil rights and obligations ..... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.....".

116. The Human Rights Act 1998 came into force on 2nd October 2000 and requires the English courts and tribunals to construe domestic legislation in accordance with the Convention rights "so far as it is possible to do so". It also makes it unlawful for a public authority (as widely defined) to act in a way which

is incompatible with a Convention right (see notes at Human Rights/Human Rights Act 1998). Similar rules have applied in Scotland since May 1999.

The Tribunal's Fact Finding and Conclusions

117. The appellant is not satisfied that the Tribunal properly carried out its fact finding role so as to fully explain its judgment and conclusions. The appellant therefore regards the fact finding and conclusions as perverse. They were not conclusions within the province of a fact-finder based on the evidence the Tribunal had heard and the submissions made by the appellant, as set out **[C65. paras 18, 79 - 86a-c, 87 & 103]** of the appellant's Notice of Appeal and in the following examples, which illustrate that the tribunal the Employment Tribunal dismissed all of the appellant's 43 claims under race and disability discrimination and PIDA detriment:

118. ***Paragraphs 130 - 134***: The respondents failed to address the allegation in its ET3; therefore the respondents' should not have been permitted to rely on this defence at the hearing. Please also refer to **[C68. para 26]** of the appellants' notice of appeal.

119. The tribunal rejects the appellant's complaint **(no.1 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this **[S355. paras 20 – 26, 28 – 29, 31 – 32, 48, 51, 53 – 54, 56 – 58, 60 – 67, 69, 72 – 73, 77 – 78, 81, 83, 86, 104, 130 – 133, 155 – 157, 182, 189 – 190, 193, 222, 376, S492. paras 398, 399, 431L, 439**

– 440, 454 – 463, 465, 473,477, 480 – 486 & 543] of her witness statement and it fails to take into account the appellants' submissions **[S1292. paras 3.148 – 3.151, 3.155 – 3.157, 3.159 - 3.163, 3.165, 3.169, 3.205, 3.214, 3.223, S1308. para 6a, S1313. paras10, 11, S1345. para 58 -71, 72, 73a, 73c, S1355. paras 75 – 78, S1357. para 79(i, k- l, qq), S1385. para 83, S1390. para 95, S1407. para 122b, S1417. paras 138 – 140, S1421. paras 147(g, s, cc, ff- gg), S1449. para 165, S1523. para 315, 350 – 352, 359, 362, 364 – 365, 368 – 370, 381, 382, 384, 389 – 390, 399, 401, 403, 405, 411 – 412, 474, 479, 491, 494, 549, 589 & 600]**.

120. At paragraph 11 of its findings the Tribunal states that the Whistleblowing policy was not introduced until January 2010. This is false, as set out **[S1293. paras 3.150 & 3.165]** of the appellant's submissions. It states that it was more advantageous for the Appellant to take out a grievance. This completely disregards the fact that I wasn't given the option, which is part of the appellant's complaint. Taking out a grievance clearly wasn't advantageous for her, as the subsequent events since then proved. This is an example of the Tribunal substituting its own view.

121. The Employment Tribunal failed to take into account the fact that the respondents' initially informed the appellant that it would only pay for credit monitory if the grievance found that they had been negligent in some way **[S64a]**, yet even though they did not uphold the appellant's grievance or appeal in relation to this, they subsequently offered to pay for credit monitoring anyway, (which was never paid). This demonstrates that payment could and should have been made without the appellant having to take out a grievance, which resulted

in her being subjected to numerous detriments as a result of doing so. In that factual context, the respondents' direction for the appellant to take out a grievance was none unreasonable and unnecessary. The Tribunal's conclusion was not justified and it erred in failing to conclude that this was discrimination.

122. It is important to note that the appellant would not have been aware that any other members of staff had also received a chase e-mail on 5 November 2009 and other members of staff who also had outstanding CRB's, (but who had not raised concerns about lost CRB's), were not informed by Adam that they were breaking the law. The Tribunal failed to consider the actions of the respondents' and judge them in the light of the context that their action occurred- namely how the appellant would have perceived this action, having no knowledge that other individuals had allegedly received similar e-mails and taking into account the treatment that she had been receiving up until that point.

123. The Respondents' had been evasive about identifying other members of staff who had been sent a chase e-mail **[S1390. paras 95 & S1550. para 390]** of the appellant's submissions **[S1577 paras 473 & 480]** of the appellant's witness statement, right up until disclosure in September 2011.

124. In light of the fact that the appellant was in the situation through no fault of her own and the company was already aware of the stress that it was causing the appellant **[S1581. para 486]** of her witness statement, it is clear that this comment was not appropriate or sensitive, but designed to cause the appellant alarm. Paragraph 131 of the judgment is not in line with the test for determining what a 'detriment' is- ***Shamoon v Chief Constable of the RUC*** [2003] ICR 337

HL and **[S1552. para 398 & S1554. para 406]** of the appellant's witness statement. In paragraphs 132 – 134 of the Tribunal's judgment **[C40]**, it questions whether the CRB loss was actually a breach of the data protection principles, this clearly is not the issue, the fact is the appellant had reasonable belief that it was. Please also refer to **[C68. paras 26 & 67 & 86 d]** of the appellants' notice of appeal and **[S1-** *whistleblowing policy***]**; and

125. ***Paragraph 135***: The tribunal rejects the appellant's complaint **(no.2 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this **[S358. paras 27, 30, 33 – 36, 50, 55 – 56, 59, 63, 64 – 66, 68 – 72, 73d-g, 73 – 77, 81, 84, 88 – 89, 90 -99, 102, 105, 107 – 108, 110 – 116, 118 – 120, 127 - 130, 134, 151 – 154, 158, 159, 164, 168, 171, 180, 186 – 187, 195, 200, 207, 223, 229, 231, 234, 236, 237, 246, 248 – 256, 259(f-h & o), 265, 275, 282 – 283, 299, 301, 374, S485. paras 377, 384, 394, 394 – 397, 399 – 401, 405, 410, 412 – 414, 431j, 439, 440, 442 – 443, 452, 478 – 479, 526 – 529, 533, 535, 540, 543, 548 – 549, 551 – 552, 557 – 560, 604 – 605, 608 – 610, 612 – 626 & 628 – 630]** of her witness statement.

126. It also fails to take into account the appellants' submissions **[S1291. paras 3.142, 3.145, 3.152 – 3.153, 3.155, 3.156, 3.168, 3.202, 3.204, 3.206, 3.210, 3.226 – 3.228, 3.231 – 3.233, 3.248, 3.250, 3.251, 3.254, 3.256, S1308. para 6b, S1313. paras 10, 11, S1345. paras 58 – 72, 73d, 73f-h, S1355. paras 75 – 78, S1372. para 81k, S1391. para 96(f, l & o -p), S1403. paras 113 – 114, S1417. paras 138 – 140, 148, S1433. para 157- 160, 162, S1439. para 164(c, l - m & p), S1449. paras 167g -h, S1458. paras 171 - 173, S1478. para 217,**

S1525. para 320 – 321, 333 – 334, 345- 347, 349, 356 – 358, 360, 362 – 364, 371 - 373, 402, 465 – 466, 500, 506, 508, 513, 548, 558 & 589]. The Tribunal states that the appellant was redeployed to the centre and that she did not consider them to be necessary interventions at the time. It is important to note that according to ***Project Management Institute v Latif*** [2007] IRLR 579 EAT, which the appellant cited in her submissions at **[S1464. para 184]**, it is not essential that the proposed adjustment was identified at the time. It might not be identified until the tribunal case. In certain circumstances, eg with an unrepresented claimant, it may even be appropriate for the tribunal to raise the suggestion itself, as long as the employer has a proper opportunity of answering the point.

127. The Tribunal did not find that the appellant had no need for such interventions, and in any event the tribunal erred in forming their own view as to whether she did, rather than whether the employer could have made the interventions, particularly in light of **[S1347. paras 64 – 68]** of her submissions. No reasonable Tribunal, properly directing itself, could conclude that the appellant could not properly form the view that the Respondent should have taken such action, bearing in mind the evidence before it (the respondents' knowledge of the appellant's work related stress since June 2009) **[S350. paras 10 -13]** and the respondents' duty of care towards the appellant and obligation to adhere to health and safety legislation.

128. The issue is that these interventions were not made by the appellant's employer when they should have been, **[S1347. paras 64 - 66]** of the appellant's

written submissions and that the centre was a stressful environment, so it did not alleviate her condition, it exacerbated it **[S1538. paras 354, 506 & 558]** of the appellant's written submissions and **[S547. para 540]** of the appellant's witness statement and **[S277]**. The Tribunal failed all together to address this issue and the fact that there were no regular one to ones, as was required and part of managements responsibilities **[S1588. para 508]** of the appellant's written submissions and **[S368. para 55]** of her witness statement. In the Appellant's view, the ET simply does not appear to have grappled with the precise wording and nature of the allegation; and

129. ***Paragraph 136***: The tribunal rejects the appellant's complaint **(no.3 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this **[S351. paras 14, 37 – 47, 54, 105, 151, 159, 166, 184 – 185, 190, 193a & c, 215, 247, 257 – 259, S513. para 443 – 453, 466, 518 – 519, 536 & 538 – 539, 541]** of her witness statement and it fails to take into account the appellants' submissions **[S1295 paras 3.167, 3.224 – 3.225, 3.241- 3.242, S1308. para 6c, S1313. paras 10, 11, S1345. paras 58 -72, 73l, 73t, S1355. paras 75 – 78, S1368. paras 80e –f, S1372. paras 81e-g, S1391. paras 96(b - c & n), S1417. paras 138 – 140, S1431. para 150 – 151, S1551. paras 395 – 397, S1556. para 410, 496, 503 - 506, 532 – 533, 545 – 546 & 589]**.

130. In addition, the tribunal took into account matters that it should not have taken into account, namely that the respondents' did not consider it to be a serious incident. The Tribunal failed to take into account ***Burton v. De Vere Hotels Ltd.*** **[1997] ICR 1**, **(*per* Smith J. at page 7, p10 A-B)**, as set out in

[S1345. para 58] of the appellant's submissions. The respondents' clearly had control over the factors complained about. Please also refer to **[C68. paras 26 & 86f]** of the appellants' Notice of Appeal; and

131. ***Paragraphs 137 & 138***: The tribunal rejects the appellant's complaint **(no.4 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this **[S370. paras 61 -66, 69, 72 – 73, 77- 78, 82 – 83, 101, S496. paras 408, 431h & o, 464]** of her witness statement and it fails to take into account the appellants' submissions **[S1308. para 6d, S1313. paras 10, 11, S1314. para 14b, S1345. paras 58 - 72, 73i, 73k, 73m, S1355. paras 75 – 78, S1357, S1360 & S1367. paras 79n & qq, S1417. paras 138 – 140, S1421. para 147ff, S1431. paras 152 – 153, S1525. para 321, 323 – 324, 326, 374, 367 -368, 374 – 375, 390 - 391, 480, 498, 539, 589 & 604]**. The tribunal fails to understand that the appellant is not complaining about the fact that she received a letter from HR, her issue is with the fact that it should not have come from Adam Buckby and the tribunal totally fails to get to grips at all with the second part of the appellant's allegation- he should not have been investigating someone more senior to him and the fact that this was not in line with the grievance policy **[S33]**. Please also refer to **[C68. paras 26 & 86g]** of the appellants' notice of appeal; and

132. ***Paragraphs 139 & 140***: The tribunal rejects the appellant's complaint **(no.5 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. The Tribunal fails to deal with the specific allegation, (part a). It fails to properly examine the pleadings, all the evidence in relation to this **[S353. paras 19b, 63 – 64, 69, 74 – 76, 83, 91, 93, 96 – 98, S541. paras 526 – 527 & 552]** of her

witness statement and it fails to take into account the appellants' submissions **[S1308. para 6e, S1313. paras 10, 11, S1324. para 28a, S1326. para 29a, S1332. para 33a, S1334. para 37a, S1345. paras 58 -72, 73(d, f-h), S1355. paras 75 – 78, 79g, S1372. paras 81h, S1399. para 101, S1417. paras 138 – 140, S1449. paras 167h, S1473. paras 205 – 206, 217, S1536. para 349, 500, 536 & 589]**. Please also refer to **[C68. paras 26 & 86h]** of the appellants' Notice of Appeal.

133. In relation to part b), it also fails to properly examine the pleadings and all the evidence **[S389. paras 110 – 115, 510]** of her witness statement and it fails to take into account the appellants' submissions **[S1345. paras 58 – 72, S1355.para 75- 78, S1391. paras 96(a-f, i-k, o,), S1417. paras 138 – 140, S1439. para 164m, S1527. para 327, 393, 497, 535 & 589]**. The Tribunal implies that the office based risk assessment **[S50 – S60 & S70 – S80]** did not have that much relevance to the appellant's health, not only is this incorrect, as set out in **[S1351. paras 73e, 1372. paras 81f- h & S1500. paras 260 – 263]** of the appellant's submissions and **[S375. paras 74, 102, 105, 116, 118 – 119, 187, 246 -247 & 249 – 252]** of her witness statement, but it is a further example of the Tribunal substituting its own view and taking into account a matter that it should not have taken into consideration, and the appellant had clearly been obstructed from accessing the risk assessments **[S1584. paras 497 & 535]**.

134. The tribunal states that there was confusion over which type of assessment she was seeking. This was another example of the Tribunal substituting its own view, and it was also a perverse conclusion as the evidence clearly demonstrates that Beverley Bannister had informed the appellant that all

the risk assessments were 'generic' **[S391 para 115]** of her witness statement. This of course was a lie, because the respondents' would later reveal that Beverley Bannister had conducted specific risk assessments for the office in November 2009 and January 2010 **[S396. paras 129 & S441. para 259h]** of the appellant's witness statement and **[S1549 paras 387, 464 & 506]** of her submissions. Please also refer to **[C68. paras 26 & 86h]** of the appellants' Notice of Appeal; and

135. ***Paragraphs 141 & 142***: The tribunal rejects the appellant's complaint **(no.6 & 14 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this **[S357. paras 24, 38 – 49, 78, 82, 101 – 106, 121, 124 – 133, 182 – 187, 193 – 194, 259e, S497. para 411- 412, 431h, 431j, 431o, 437 – 487, 504, 528, 531, 536 – 539, 542 & 558]** of her witness statement and it fails to take into account the appellants' submissions **[S1295. paras 3.165, 3.167, 3.168 – 3.169, 3.215, 3.226, S1308. para 6f, S1313. paras 10, 11, S1314. para 14c, S1318. para 17a, S1345. paras 58 -71, 72, 73b, 73i, 73k, 73m, 73u, S1355. paras 75 – 78, 79bb, 79v, S1368. para 80m, S1372. paras 81k, 81m, S1385. para 83, S1389. paras 93 -95, 96o–p, S1417. paras 138 – 140, S1421. paras 147h, 147m, S1439. para 164i, S1449. para 165, S1527. para 327, 366, 370, 378, 384, 387 -388, 390 – 391, 393, 395 – 398 – 408, 410 – 412, 480, 529, 532, 589, 598 & 600]**.

136. The Tribunal stated that AM's grievance outcome was a reasonable one, despite the fact that it had been presented with evidence supporting the fact that AD's subsequent appeal outcome **[S155 – S170]** indicates what are obviously numerous flaws in it, it contradicted it and the appellants' witness statement,

extensive documentary evidence and submissions, i.e, **[S1551. para 397 & S1555. para 407]** highlighted even more. The Tribunal failed to deal with the specific allegation regarding fairness and impartiality. Please also refer to **[C68. paras 26 & 86i]** of the appellants' Notice of Appeal; and

137. ***Paragraphs 143 & 144***: The respondents failed to address the allegation in its ET3; therefore the respondents' should not have been permitted to rely on this defence at the hearing. Please also refer to **[C68. para 26]** of the appellants' notice of appeal. The tribunal rejects the appellant's complaint **(no.7 & 15 of claim number 2318353/2010)** in her schedule of claims.

138. It rejects the appellant's complaint about PK dated February 2010 as being a protected disclosure and that his treatment of the appellant was a detriment. It is clear that this was a protected disclosure and that she suffered a detriment. The Tribunal failed to properly examine the pleadings, all the evidence in relation to this **[S358. paras 27, 133, 135 – 143, 145 – 148, 182 – 183, 191 – 192, 220, 242, S496. paras 410, 431i, 488 – 502, 534 & 555 – 556]** of her witness statement and it fails to take into account the appellants' submissions **[S1296. paras 3.171 – 3.173, 3.205, 3.213, S1308. para 6g, S1313. paras 10, 11, S1314. para 14d, S1318. para 17b, S1321. para 21b, S1345. paras 58 -71, S1355. paras 75 – 78, S1372. para 81l, S1385. para 83, S1399. para 102, S1417. paras 138 – 140, S1421. para 147d, S1449. para 165, S1543. para 366, S1557. para 414 – 420, 463, 478, 589 & 600]**.

139. The Tribunal takes into account a matter that it was not entitled to- it accepted the respondents' false assertion that PK did not mean that the

appellant should send her appeal by post and that the appellant took it too literally. It is clear that PK did instruct the appellant to send he appeal by post, as he states that she should 'put it in writing in the form of a letter' **[S117]**. The respondent confirmed during cross examination that he asked her not to send anymore e-mails after sending that instruction **[S1559. para 418]** of the appellant's submissions. He also stated in his questionnaire response that after reading her e-mail to him on Saturday, that he realized that she was following his instruction, (to send it by post), **[S530. para 490]** of the appellant's witness statement.

140. The Tribunal also failed to take into account the contradictory evidence in relation to this. **[S1296. paras 3.172, 3.213, S1372. para 81l, S1557. para 415, 418 & 478]** of the appellants' submissions. The Tribunal proceeded on a wholly different sequence of events. In light of this, it was not open for the Tribunal to conclude that it preferred the respondents' evidence. In those circumstances the Tribunal were not entitled to take the view that the respondents' investigation was reasonable. No reasonable and honest employer would conduct itself in such a manner. Please also refer to **[C89. paras 82 & 85]** of the appellants' Notice of Appeal.

141. The Tribunal also took into account a matter that it was not entitled to- namely that the appellant was allegedly 'bombarding' the respondent. The appellant could not have known that the respondent would be working late on a Friday evening. Had he not have been doing so, he would not have felt bombarded, as he would have seen all the e-mails upon his return to the office

on Monday morning. In any event the respondent had been advised in advance that she would be sending more e-mails **[S399. para 135]** of the appellant's witness statement, so he should not have been surprised by the amount of information coming through.

142. In the factual context, PK allegedly feeling 'bombarded' should not have been taken into account and his instruction was unreasonable and unnecessary, because the appellant had clearly been instructed by her employer to send all her supporting evidence within 5 days and she was advised that she could do so by e-mail **[S109]**. Therefore the appellant was simply following the instructions that the respondents' had given her, but as a result of doing so she was subjected to a detriment. Please also refer to **[C91. para 86j]** of the appellants' Notice of Appeal; and

143. ***Paragraphs 145 & 146***: The respondents failed to address the allegation in its ET3; therefore the respondents' should not have been permitted to rely on this defence at the hearing. Please also refer to **[C68. para 26]** of the appellants' notice of appeal. The tribunal rejects the appellant's complaint **(no.8 & 16 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this **[S402. paras 145 -148, 183, 191 – 192, 196, 242 – 243, 307, S496. para 408, 410, 502 & 534]** of her witness statement and it fails to take into account the appellants' submissions **[S1296. paras 3.174 – 3.180, S1308. para 6h, S1313. para 10, 11, S1314. para 14e, S1318. para 17c, S1345. paras 58 -72, 73k, 73m, S1355. para 75- 78, S1357. para 79q-r, S1372. para 81o, S1385. para 83, S1417.**

paras 138 – 140, S1421. para 147n, 147q, S1434. para 160 – 161, S1449. para 165, S1561. para 423 – 427, 429, 589, 598 & 600]. Please also refer to **[C91. para 86k]** of the appellants' notice of appeal.

144. At paragraph 145 of its judgment **[C44]**, the tribunal states that the grievance **[S33]** and bullying and harassment **[S17]** processes are broadly similar. This is false, it is clear that it would have been more appropriate for the bullying and harassment procedure to be followed as this was the correct procedure to deal with such issues and stage 3 **[S21]** would have required the appellant's employer to ensure that working relationships were monitored and improved. This would have also been in line with the recommendations of its OH consultant 'Medigold' **[S88 – S89]**. No such requirement formed part of the grievance process. In fact the grievance process simply allowed the investigating officers to decide that no bullying and harassment had taken place and simply leave the matter there, not addressing the issue of working relationships and thus allowing further bullying and harassment to take place; and

145. ***Paragraphs 147 - 150***: The tribunal rejects the appellant's complaint **(no.9, 17 & 18 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this and **[S357. paras 24, 101, 134, 151, 157, 168 - 169, 182 – 194, S496. paras 410 - 412, 504, 541 & 543]** of her witness statement and it fails to take into account the appellants' submissions **[S1300. paras 3.210 – 3.215, 3.170, 3.172, 3.179, 3.223, S1308. para 6i, S1313. para 10, 11, S1314. para 14f-g, S1318. para 17d-e, S1345. paras 58 -72, S1351. para 73b, 73i, 73k, 73m, 73u, S1355.**

para S1355. para 75 – 78, 79bb, 79v, S1372. para 81e, S1390. para 95, 96e, 96k, 96o, S1417. paras 138 – 140, S1439. para 164i, 164k, S1449. para 167j, S1543. para 366, 384, 415, 428, 474, 476 – 480, 495, 498, 589 594f & 598]. Please also refer to **[C68. para 26 & 86l]** of the appellants' Notice of Appeal- in relation to matters that the Tribunal took into account when it should not have done so. The Tribunal stated that AD's grievance and appeal outcome were reasonable, despite the fact that it had been presented with evidence supporting the fact that DF's subsequent appeal outcome **[S202]** contradicted it and the appellants' witness statement and extensive documentary evidence highlighted numerous flaws; and

146. ***Paragraphs 151 & 152***: The tribunal rejects the appellant's complaint **(no.10, 20 & 24 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. In relation to part a, it fails to properly examine the pleadings, all the evidence, **[S430. paras 232 – 240, 243, 298 & S541. para 526]** of her witness statement and it fails to take into account the appellants' submissions **[S1308. para 6j, S1313. para 10, 11, S1314. para 14i, S1318. para 17g, S1345. paras 58- 72, 73(d, f-g), S1355. para 75- 78, 79x, S1368. para 80p, S1372. para 81p, 81q, S1399. para 103, S1417. paras 138 – 140, S1421. para 147y, S1568. para. 471 & 589]**. Please also refer to **[C68. paras 26 & 86m]** of the appellants' Notice of Appeal- in relation to matters that the Tribunal took into account when it should not have done so. In the factual context, the disclosure of the respondents' e-mail address to the respondents' without her consent was none the less unreasonable and unnecessary because the information could have been conveyed to them without the need to do that.

147. In relation to part b of the allegation, it fails to properly examine the pleadings, all the evidence, **[S370. paras 60 – 61, 69, 127, 131, 149, 165, 262 – 263, S517. para 454, 459, 463, & 550]** of her witness statement and it fails to take into account the appellants' submissions **[S1302. paras 3.223, S1308. para 6j, S1314. para 14m, S1318. para 17k, S1345. paras 58 -72, S1355. paras 75 – 78, 79t, S1368. paras 80b, 80u, S1372. paras 81b, 81u, S1417. paras 138 – 140, S1421. para 147g, S1421. para 147t, S1433. para 156, S1449. para 167r, S1544. para 369, 376, 479, 494 – 495 & 589]**. The respondents failed to address the allegation in its ET3; therefore the respondents' should not have been permitted to rely on this defence at the hearing. Please also refer to **[C68. para 26]** of the appellants' Notice of Appeal. The Tribunal failed to take into account the appellants' submissions **[S1292. paras 3.144, S1385. para 83, S1449. para 165 & S1619. para 600]**. Please also refer to **[C68. paras 26 & 86m]** of the appellants' Notice of Appeal- in relation to matters that the Tribunal took into account when it should not have done so, namely that this was the appellant's fault. The appellant raised the issue in her ET1's and her PHR submission, but the respondent (in the period of more than a year after the payment was promised), never made any attempt to make the payment. It was the Respondent's responsibility to deal with the matter, as this was a finding of its own grievance/appeal outcome; and

148. ***Paragraph 153***: The tribunal rejects the appellant's complaint **(no.12 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence, **[S370. paras 60 – 66, 72 – 74, 78, 98, 130 – 133, 189, 239, 254 – 255, 374 – 375, S511. para 440, 454, 456 – 463, 465, 482 – 484 & 486]** of her witness statement and it fails to take into

account the appellants' submissions **[S1293. paras 3.154 – 3.157, 3.162, 3.185, 3.205, S1314. para 14a, S1357. para 79k, S1368. para 80d, S1372. para 81d, S1388. paras 89 – 94, S1421. paras 147g, 147s, S1541. para 362, 364 – 365, 368 – 370, 380, 397, 444, 463 & 589]**. Please also refer to **[C??. paras 26 & 86n]** of the appellants' Notice of Appeal. The Tribunal failed to follow test set out by the House of Lords in ***Shamoon v Chief Constable of the RUC*** **[2003] ICR 337**, as set out in the appellant's submissions **[S1346. para 60]**. The Tribunal concludes that in no way could the e-mail be intimidating or offensive, but the respondents' themselves had characterized it as being, sharp **[S397. para 131 & S433. para 239]** and **[S1544. para 368 & S1574. para 463]** of the appellants' submissions; and

149. ***Paragraph 154***: The tribunal rejects the appellant's complaint **(no. 13 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence, **[S358. paras 27 – 29, 31 – 32, 60 – 61, 63 – 66, 69, 72 – 74, 76 – 78, 81- 83, 86 – 87, 98, 189, 239, 374 – 375, S496.para 408, 431h, 439, 474 – 476, 525 & 553]** of her witness statement and it fails to take into account the appellants' submissions **[S1294. paras 3.159, 3.162, 3.185, 3.205, S1308. para 6d, S1314. para 14b, S1357. para 79k, 79o, S1390. para 94, S1421. para 147o, S1541. para 362, 365, 367, 374 – 375, 380, 444, 463, 539, 589 & 594]**. Please also refer to **[C68. paras 26 & 86o]** of the appellants' Notice of Appeal; and

150. ***Paragraph 155***: The tribunal rejects the appellant's complaint **(no. 19 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence, **[S430. paras 232 – 233, 236,**

240, 284 – 286, S497. para 412 & 561] of her witness statement and Cliffe Obaseki's witness statement. The Tribunal also failed to take into account the appellants' submissions **[S1292. para 3.143, S1314. para 14h, S1318. para 17f, S1357. para 79x-y, S1368. para 80r, S1372. paras 81p, 81q, 81r, S1421. paras 147x-y, S1435. para 163q, S1439. para 164f, S1518. para 305 – 306, 421, 441, 470 & 589]**. It is submitted that the tribunal placed unnecessary emphasis on the status of Cliffe Obaseki. It is clear from the evidence that the appellant and Cliffe Obaseki were not trying to conceal this. This is an example of the Tribunal substituting its own view, particularly in light of the fact that this had not been pleaded by the respondents'.

151. The Tribunal questioned Cliffe Obaseki''s integrity in a manner which was wholly unjustified and it coloured its approach to appellants' case. It affected its view of his credibility and reliability and indeed its decision to dismiss the appellants' allegation. In addition, the reason the tribunal rejected the appellant's allegation was based on erroneous information, which had not been advanced before the hearing. In the factual context, the breach of her confidentiality was none the less unreasonable and unnecessary because the respondents' were of the view that they did not want to make any settlement offers to the appellant **[S810. para 31]** of Sue Ely's witness statement and **[S1013. para 36]** of Deborah Francis' witness statement. Please also refer to **[C68. paras 26 & 86p]** of the appellants' Notice of Appeal; and

152. ***Paragraph 156***: The tribunal rejects the appellant's complaint **(no. 21 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence, **[S419. paras 194, 198, 237 –**

239, S485. para 378, 526 & 562 – 563] of her witness statement and it fails to take into account the appellants' submissions **[S1297. paras 3.186, 3.232, S1314. para 14j, S1318. para 17h, S1368. para 80s, S1372. para 81s, S1399. para 103, S1421. para 147v, S1535. para 344, 431, 446, 456, 489, 585 – 586 & 589]**. The Tribunal fails to explain how and why it arrives at this conclusion. Please also refer to **[C68. paras 26 & 86q]** of the appellants' Notice of Appeal; and

153. ***Paragraphs 157 - 159***: The tribunal rejects the appellant's complaint **(no. 22 of claim number 2318353/2010 & no.1 of claim number 233017120/20)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this **[S.418 paras 192, 223 – 224, 241 – 259, 263, 279, 298, S505. para 431j, 504- 521, 528 & 543]** of her witness statement and it fails to take into account the appellants' submissions **[S1295. paras 3.170, 3.179, 3.203 – 3.209, 3.232, S1308. para 6k, S1313. para 10, 11, S1314. para 14k, S1318. para 17i, S1345. paras 58 -72, 73b, 73i, 73k, 73m, 73u, S1357. para 79w, 79bb, S1372. paras 81k, 81o, S1421. paras 147h, 147dd, S1449. para 167jj, S1548. para 384, 415, 428, 431, 446, 462 – 473, 589, 594c, & 598]**.

154. The Tribunal stated that DF's grievance outcome was a reasonable one, despite the fact that it had been presented with evidence supporting the fact that AM's and AD's previous grievances and appeal outcomes **[S101 – S109 & S155 – S173]** contradicted it and the appellants' witness statement and extensive documentary evidence highlighted numerous flaws in them.

155. Please also refer to **[C68. paras 26 & 86r]** of the appellants' Notice of Appeal- in relation to matters that the Tribunal took into account when it should not have done so. The Tribunal also accepts the perjured evidence of the respondents'- namely that Deborah Francis was the Managing Director of the company that the appellant worked for, (even though there was not evidence in the bundle to support this) and it had asserted at paragraph 110 of the judgment that Alexander Khan was **[C36]**. The Tribunal clearly contradicted itself in this respect and it fails to explain why the respondents' evidence was preferred in relation to this. The Tribunal mentions the fact that because the appellant was offered credit monitoring it is hard to see how the raising of the CRB issue was a detriment. This was a matter that should not have been taken into account, as the credit monitoring payment was subsequently never made, and the respondents' clearly never intended to pay it, (as is evidence at paragraph 3jj). It is important to note that Deborah Francis had previously stated in her response to the appellant's equality form questionnaire, that she was Head of Careers and Employability **[C463. para 14]**. She accepted that the internal and external processes were separate and should be dealt with separately **[C 463. para 15]**, but yet she was dealing with both matters.

156. ***Paragraph 160 & 161***: The tribunal rejects the appellant's complaint **(no.23 of claim number 2318353/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence, **[S.446 paras 266 – 273, 326, S505. para 431f, 431m & 552]** of her witness statement and it fails to take into account the appellants' submissions **[S1298. paras 3.187 – 3.188, 3.232, S1314. para 14l, S1318. para 17j, S1321. para 21d, S1351. para 72, 73(d, f-g), S1357. para 79gg, S1368. para 80t, S1400. para 104, S1421. paras 147z,**

147aa, S1449. para 167ff, S1564. para 434, 451, 555 & 589]. In her witness statement, the appellant had clearly explained the reasons why she felt that she was discriminated against- part a) of the allegation, yet the tribunal failed to examine this. Her allegation is not just that she was contacted before the four weeks had lapsed. The tribunal states that there is nothing in the evidence to suggest that AW's involvement with the tribunal claims affected the way that she dealt with the appellant. This was a perverse finding, as the appellant's witness statement clearly sets this out and cites numerous documentary evidence to support this fact, **[S218 – S221, S246 – S248 & S253 – S256]**. The Tribunal states that it found AW to be an 'impressive' witness, but it fails to set out the reasons why; and

157. ***Paragraphs 162 - 164***: The tribunal rejects the appellant's complaint **(no.3 of claim number 2330171/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence, **[S368. paras 53 – 56, 59, 63 – 66, 68 – 71, 73e, 73 – 77, 81, 84, 88 – 89, 90 -99, 102, 105, 107 – 108, 110 – 116, 118 – 120, 127 - 130, 134, 151 – 154, 158, 159, 164, 168, 171, 180, 186 – 187, 195, 200, 207, 223, 229, 231, 234, 236, 237, 246, 248 – 256, 259(f-h & o), 265, 275, 282 – 283, 299, 301, 374, S485. para 377, 384, 394, 394 – 397, 399 – 401, 405, 410, 412 – 414, 431j, 439, 440, 442 – 443, 452, 478 – 479, 526 – 529, 533, 535- 536, 540, 543, 548 – 549, 551 – 552, 557 – 560, 604 - 605, 608 – 610, 612 – 626 & 628 – 630]** of her witness statement.

158. The Tribunal also failed to take into account the appellants' submissions **[S1291. paragraphs 3.142, 3.145, 3.155, 3.156, 3.202, 3.206, 3.210, 3.226 – 3.228, 3.231 – 3.233, 3.248, 3.250 - 3.251, 3.254, 3.256, S1324. para 28a,**

S1326. para 29a, S1329. para 30a, S1331. para 31, 32, 33a, 34- 37a, 38 -41, S1347. para 64 – 69, 72, 73d, 73f-h, S1372. para 81k, S1391. para 96(f, l & o), S1403. paras 113 – 114, S1429. para 148, S1439. para 164(c, l - m & p), S1449. para 166, S1449. paras 167(g -h, o, oo-qq), S1457. para 168 – 178, S1465. para 186 – 187, 190, 204, 203- 208, 217, 333 – 334, 345 – 347, 349, 360, 362 – 364, 371 - 373, 402, 465 – 466, 500, 506, 508, 513, 531, 536, 548, 558 & 589]. The company's sickness absence policy also clearly states that the appellant's line manager should have contacted her to ascertain whether a risk assessment needed to be undertaken **[S16g– S16h]**. This was not done. Please also refer to **[C68. paras 26 & 86u]** of the appellants' Notice of Appeal. In relation to matters that the Tribunal took into account when it should not have done so. The tribunal fails to address altogether the issues relating to there being no back to work plan, no 1-2-1's or risk assessments being implemented 'in good time'. In the Appellant's view, the ET simply does not appear to have grappled with the precise wording and nature of the allegation. In addition the Tribunal failed to take into account ***Tarbuck v Sainsbury Supermarkets Ltd*** **[2006] IRLR 664**, as set out in **[S.1457. para 168]**.

159. ***Paragraphs 165 & 166***: The tribunal rejects the appellant's complaint **(no. 4 of claim number 2330171/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence in relation to this **[S388. paras 107 – 108, 113 - 114, 118 – 120, 254, S494. para 401 & 527]** of her witness statement and it fails to take into account the appellants' submissions **[S1324. para 28b, S1329. para 30b, 33b, 37b, 38 -41, S1351. para 73e, S1439. para 164j, S1449. para 166, S1449. paras 167p & oo - qq, S1461. para 178, S1465. para 186, 409, 515 & 589]**. The appellant's employer received the OH

report on 10 February 2010 **[S91a]** and unreasonably delayed sharing it with her. This was not done until 2 March 2010. **[S408. para 160]**, even though her employer was aware that she was experiencing severe difficulties and requesting support **[S92]**.

160. Please also refer to **[C68. paras 26 & 86v]** of the appellants' Notice of Appeal. In relation to the comments made by the Tribunal in paragraph 166 **[C1]**, this merely demonstrates the appellant's point that the respondents' had been under a duty to undertake a risk assessment since October 2009 when the appellant first brought it to their attention that she was suffering from work-related stress and even more so when she subsequently went off sick for ten weeks due to a related issue, yet no risk assessment was done when the appellant returned to work between 21 January until her request for one on 12 February 2012 was implemented; and

161. ***Paragraph 167***: The tribunal rejects the appellant's complaint **(no.6 of claim number 2330171/2010)** in her schedule of claims, **[S286]**. It fails to properly examine the pleadings, all the evidence, **[S360. para 33- 36, 171, 175, S494. para 401 & 532]** of her witness statement and it fails to take into account the appellants' submissions **[S1324. para 28e, S1326. para 29d, 30b, 33b, 37b, 38 – 41, S1368. para 80i, S1372. para 81i, S1435. para 163e, 163o, S1439. para 164e, S1449. para 166, S1449. paras 167q & oo - qq, S1461. para 178, S1465. para 186, S1500. para 260 & 589]**. Please also refer to **[C68. paras 26 & 86w]** of the appellants' Notice of Appeal- in relation to matters that the Tribunal

took into account when it should not have done so; and

162. ***Paragraph 168***: The tribunal rejects the appellant's complaint **(no.7 of claim number 2330171/2010)** in her schedule of claims, **[S286]**. The respondents failed to address the allegation in its ET3; therefore the respondents' should not have been permitted to rely on this defence at the hearing. Please also refer to **[C68. para 26]** of the appellants' notice of appeal. It fails to properly examine the pleadings, all the evidence, **[S420. paras 196 - 197, 203, 205, 208 – 210, 216 – 217, 221, 376, S490. para 394, 399, 547 & 611]** of her witness statement and it fails to take into account the appellants' submissions **[S1297. paras 3.181, S1324. para 28f, S1326. para 29e, S1351. paras 73a, 73u, S1372. para 81n, S1385. para 83, S1399. para 101, S1432. para 154 - 155, S1449. para 166, S1449. paras 167oo – qq, S1461. para 178, S1500. para 260, 319c, 336, 430, 433, 459 & 589]**. Please also refer to **[C91. para 86x]** of the appellants' Notice of Appeal- in relation to matters that the Tribunal took into account when it should not have done so; and

163. ***Paragraphs 169 - 170***: The tribunal rejects the appellant's complaint **(no.8 of claim number 2330171/2010)** in her schedule of claims, **[S286]**. The Tribunal failed to properly examine the pleadings, all the evidence, **[S392. paras 117, 153 – 154, 345, 354 - 355, S543. para 530 & 614]** of her witness statement and it fails to take into account the appellants' submissions **[S1324. para 28g, S1326. para 29f, 30c, 33c, 34 – 36, 37c, S1435. paras 163d, 163p, S1439. paras 164d, 164p, 164t, S1449. para 166, S1449. paras 167oo - qq, S1500. para 260, 514 & 589]**. Please also refer to **[C68. para 26 & 86z]** of the appellants' Notice of Appeal. The Tribunal failed to take into account ***Meikle v***

Nottinghamshire County Council **[2004] IRLR 703 CA**, as set out in **[S1446. para 164t]** of the appellant's submissions; and

164. ***Paragraph 171***: The tribunal rejects the appellant's complaint **(no.9 of claim number 2330171/2010)** in her schedule of claims, **[286]**. The Tribunal failed to properly examine the pleadings, all the evidence, **[S428. paras 228 – 231, 241, 376, S487. para 384, 394, 399, 547 & 611]** of her witness statement and it fails to take into account the appellants' submissions **[S1351. paras 73a, 73u, S1372. para 81n, S1385. para 83, S1399. para 101, S1432. para 154 - 155, S1449. para 166, S1449. paras 167oo – qq, S1461. para 178, S1500. para 260, 319c, 336 & 589]**. Please also refer to **[C68. para 26]** of the appellants' Notice of Appeal. The Tribunal fails to deal with the allegation- that it triggered her breakdown / second period of long-term sickness absence, as set out in **[S429. para 229, 231, 265, 274 – 275, 282 - 283, 295 – 296, 299, S491. para 395]** of the appellant's witness statement and **[S189 – S198, S200 – S201, S206 – S210, S216 – S217, S222, S224- S232, S235 – S237]** and **[S1404. para 114, S1433. para 158, S1449. para 167g]** of her submissions and the respondents' persistent failure to make 'reasonable adjustment'; and

165. ***Paragraphs 172 - 173***: The tribunal rejects the appellant's complaint **(no.1 & 6 of claim number 2300254/2011)** in her schedule of claims, **[S286]**. The Tribunal failed to properly examine the pleadings, all the evidence, **[S457. paras 301 – 302, 305 - 307, 312 – 315, 317 - 372, S488. para 386, 388 – 389, 393 – 397, 416, 418 – 420, 570 – 607, 613 & 624]** of her witness statement, **(S644. para 52]** of her supplementary witness statement and it fails to take into account the appellants' submissions **[S1298. paras 3.189, 3.191- 3.193, 3.195 –**

3.202, 3.219, 3.222, 3.237 – 3.238, 3.248, 3.253, S1308. para 6l, S1313. para 10, 11, S1324. para 28n, S1326. para 29n, 30d, 32, 33d, 36, 37d, 40 – 41, S1345. paras 58 -72, 73(d, f-g), S1355. para 75 – 78, S1417. paras 138 – 140, S1449. para 166, S1449. paras 167(s, v, w, cc – ff, hh –ii, nn & oo- qq), S1461. para 178, S1469. para 197 – 198, 201 - 202, 207 – 216, 219 – 223, 228 – 231, 259 – 281, 283 – 287, 452 – 454, 483, 493, 517, 519, 538, 556, 574 & 589].

166. The appellant was not able to provide information about Cathy Robinson's return to work because the respondents' had removed medical evidence from the bundle and she was prevented from having them put it back. The evidence that the appellant wished to submit was a GP fit note for Cathy Robinson which contained recommendations for reasonable adjustments, which the respondents' made without question or a OH report. Please also refer to **[C68. para 26]** of the appellants' Notice of Appeal**.**

167. The Tribunal fails to deal with a hypothetical comparator, as set out in **[S1332. para 33e]** of her submissions. The tribunal fails to properly deal with the appellant's allegation that the OH process was abused and that she was treated less favourably under the process because she brought legal proceedings. It fails to deal with her allegation that she was unduly pressurised. The fact is that the appellant complied with two occupational health referrals before being allowed to return to work (something which the respondents' admitted that no other employee had been subjected to), **[S1298. para 3.190 & S1570. para 452]**, and

threats of disciplinary action still continued to be made after she complied; and

168. ***Paragraph 174***: The tribunal rejects the appellant's complaint **(no.2 & 7 of claim number 2300254/2011)** in her schedule of claims, **[S286]**. The Tribunal failed to properly examine the pleadings, all the evidence, **[S466. paras 327 – 341, 359 – 362, 364 – 370, 372 – 373, S488. para 386 - 397, 415 - 416, 418 – 420, 570 – 607, 613 – 614 & 624]** of her witness statement and it fails to take into account the appellants' submissions **[S1298. paras 3.191 – 3.195, 3.199 – 3.202, 3.212, 3.216 – 3.217 – 3.222, 3.236, 3.237 – 3.238, 3.248, 3.252 – 3.254, S1308. para 6m, S1313. para 10, 11, S1329. para 30e, 32, 33e, 36, 37e, 40 – 41, S1345. paras 58 -72, S1351. para 73(e, j, r & q), S1355. para 75 – 78, S1368. para 80x, S1372. para 81x, S1417. paras 138 – 140, S1435. paras 163s, S1439. paras 164s, S1449. para 166, S1449. paras 167(x-y, aa, cc- ee, gg, nn & oo- qq), S1458. para 169 – 170, 174 – 185, 188 – 189, 191 – 202, 206 – 216, 221 – 223, 225 – 226, 228 – 231, 258 – 281, 283 – 287, 432, 453 – 454, 457 – 458, 481 – 483, 486 – 488,492 – 493, 511 – 517, 538, 556, 572, 574 & 589]**. Amanda Ducket failed to answer direct questions that the appellant put to her in an e-mail the day that she instructed the appellant to go home **[S257 – S259a]**.

169. The Tribunal fails to deal with her allegations (a & b), it clearly does not address all the issues. In the Appellant's view, the ET simply does not appear to have grappled with the precise wording and nature of the allegation. The Tribunal states at paragraph 174 **[C53]** that the appellant knew that the respondents' had asked her not to return to work before she had been assessed by an OH

consultant. It took into account a matter that it was not entitled to. This conclusion is not based on any evidence, and in fact that appellant evidence contradicts this in her witness statement **[S470. para 338].**

170. The Tribunal also failed to take into account the relevant authority: ***Aylott v Stockton on Tees Borough Council*** **[2010] EWCA Civ 910**, which emphasised that stereotyping may be a legitimate basis for claiming direct discrimination, providing there is appropriate evidence and ***Regina v. Immigration Officer at Prague Airport and another ex parte European Roma Rights Centre and others*** **[2004] UKHL 55** which said that stereotyping can be direct discrimination, as set out in **[S1467. paras 193 – 194]** of her submissions; and

171. ***Paragraphs 175 - 177***: The tribunal rejects the appellant's complaint **(no.3 & 8 of claim number 2300254/2011)** in her schedule of claims, **[S286]**. The Tribunal failed to properly examine the pleadings, all the evidence, **[S472. paras 342 – 373, S488. para 386, 393 – 397, 415 – 416, 418 - 420, 570 – 607, 613 – 614 & 624]** of her witness statement and it fails to take into account the appellants' submissions **[S1298. paras 3.189 – 3.195, 3.198, 3.200 – 3.202, 3.219, 3.221 – 3.222, 3.235 – 3.236, 3.237 – 3.238, 3.240, 3.248, 3.253 – 3.254, 3.256, S1308. para 6n, S1313. para 10 – 11, S1324. para 28o, S1326. para 29o, S1329. para 30f, 32, 33f, 36, 37f, 40 – 41, S1345. paras 58 -72, S1351. para 73 (d, j, q & s), S1355. para 75 – 78, S1368. para 80 y – aa, S1417. paras 138 – 140, S1435. paras 163t-v, S1439. paras 164t-v, S1449. para 166, S1449. paras 167(t, w, cc-ee, hh-ii, nn & oo – qq), S1458. para 169 – 170, S1460. para 174 – 185, 188 – 189, 191 – 202, 206 – 216, 221 – 223, 225 – 226, 228 –**

231, 258 – 281, 283 – 287, 432, 436, 439, 452 – 454, 457 – 458, 483, 493, 516 – 517, 531, 538 - 539, 556, 572 – 574 & 589].

172. At **paragraph 175 [C1]** the Tribunal states that the respondents' were justified to withhold pay because it had good reason to believe that the appellant was not fit for work and it had no evidence of her fitness for work and the appellant was preventing them from obtaining such evidence. This was perverse and is not supported by the evidence and yet another example of the Tribunal substituting its own view. The evidence clearly demonstrated that the appellant fulfilled her responsibilities under the sickness absence procedure by providing the respondents' with a GP fit note on 9 December 2010 and OH report on 15 December 2010 **[S472. para 344]** of the appellant's witness statement, which demonstrated that she was able and willing to work **[S261 – S262]**. From this date the respondents' had a duty to pay her at full rate and allow her to return to work. The Tribunal failed to take into account **[S1608. para 572]** of the appellant's submissions and **[S562. para 582]** of her witness statement. It also failed to take into account **[S1475. paras 211 - 215]** of the appellant's submissions, which includes the following: '*Under the Equality Act 2010 and in accordance with paragraph 4.28 of the Employment Code **[2348]**, 'the health, welfare and safety of individuals may qualify as legitimate aims provided that risks are clearly specified and supported by evidence*'. In addition, the Tribunal failed to take into account ***Meikle v Nottinghamshire County Council*** **[2004] IRLR 703 CA**, **[S.1446. para 164t]**.

173. At paragraph 176 **[C54]** the Tribunal stated that the appellant's employer was entitled to seek clarification from its own medical advisers as to the appropriateness of the appellant's requests for reasonable adjustments. This is a matter that was irrelevant and should not have been taken into account. In the factual context, unreasonable and unnecessary, because as the respondents' made no mention of the appellant's requests for reasonable adjustments' in its referral to PHC **[S277 – S282]**. Please also refer to **[C68. paras 26 & 86dd]** of the appellants' Notice of Appeal. Provided an adjustment would be reasonable, an employer has no defence of justification for not carrying it out. In addition, the Tribunal also failed to take into account ***Southampton City College -v- Randall*** **[2006] IRLR 118**, at page **[S.1480 para 224]**, which held the duty could, depending on the facts, extend to the creation of a new post for the disabled employee, **(para 22)**- this is in relation to the appellant's request that the respondents identify an alternative role for her whilst it investigated whether or not it could implement the 'reasonable adjustments', which ended up taking took two months to conclude.

174. The Tribunal also failed to acknowledge the fact that the second referral was, in that factual context, unreasonable and unnecessary, because the appellant made it clear to the respondents' that most of the 'reasonable adjustments' that she was seeking were not actually reasonable adjustments, but things that the respondents' should have done as a matter of course and that her only request was frequent breaks **[S269, S274]**. The Tribunal also failed to take into consideration Benjamin Craigs e-mails*, i.e. 'the company can and should make reasonable adjustments'* **[S252]** and **[S247 – S248]**. He was unable to

comment on what reasonable adjustments could or couldn't be made during cross examination **[S1598. para 538]** of the appellant's submissions, but it is clear from this e-mail that he had a good idea; and

175. The Tribunal failed to take into account the relevant authority: The Equality Act makes it clear that an employer should give consideration to suggestions that employee makes regarding what might alleviate his work problems, which was also held in the case of ***Fu v London Borough of Camden*** **EAT [2001] IRLR 186**, **(paras 21 & 24 - 25)**. This area is dealt with in the Employment Code para 6.24 which says: '*There is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask). However, where the disabled person does so, the employer should consider whether such adjustments would help overcome the substantial disadvantage, and whether they are reasonable*', as set out in **[S1479. para 222]** of the appellant's submissions.The Tribunal also failed to take into account ***Leeds Teaching Hospital NHS Trust v Foster*** **[20011] UKEAT/0552/10/JOJ**, at **(para 17)**, at **[S.1501.para 263]**.

176. ***Paragraph 178***: The tribunal rejects the appellant's complaint **(no.4 & 9 of claim number 2300254/2011)** in her schedule of claims, **[S286]**. The Tribunal failed to properly examine the pleadings, all the evidence, **[S472. paras 344 – 345, 350 – 358, 364 – 373, S485. para 378, 381 – 383, 385 – 386, 388 – 390, 392 – 397, 415 – 416, 420, 570 – 607, 613 – 614 & 624]** of her witness statement and it fails to take into account the appellants' submissions **[S1308. para 6o, S1313. para 10 – 11, S1324. para 28p, S1326. para 29p, S1329. para**

30g, 32, 33g, 36, 37g, 40, 41, S1345. paras 58 -72, S1351. para 73i, 73k, 73m, S1355. para 75 – 78, S1417. paras 138 – 140, S1435. paras 163r, S1439. paras 164r, S1449. para 166, S1449. paras 167kk, S1458. para 169 – 170, S1460. para 174 – 185, 188 – 189, 191 – 202, 206 – 216, 221 – 223, 225 – 226, 228 – 231, 258 – 281, 283 – 287, 344, 456, 517, 572, 574, 585 – 586].

177. The Tribunal concluded that AD's e-mail [at page] was not intimidating or offensive and it fails to consider it in relation to the cumulative effect. Please also refer to **[C68. para 26 & 86ee]** of the appellants' Notice of Appeal- in relation to matters that the Tribunal took into account when it should not have done so. It also failed to take into account **[S1472. para 204]** of the appellant's submissions; When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially, the Equality Act 2010, **Sch. 8, para 20(1)(b)**.

178. In considering the facts that could have given rise to such conclusions, the appellant submits that they were not capable of such construction by a reasonable Tribunal directing itself in accordance with the law. Many of the conclusions amount to the Tribunal substituting their own view for that of the objective reasonable employer:

a) 'Findings of fact'- '*In our view*', **[C12. para 12]** of the judgment.
b) 'Findings of fact'- '*Our experience as a Tribunal panel…*', **[C29. para 83]** of the judgment.

c) ‘Conclusions’- ‘*We see nothing wrong in this approach*…*In our view*’, **[C33. para 96]** of the judgment.

d) ‘Conclusions’- ‘*In our view*’, *was not an extensive delay* **[C43. para 141]** of the judgment.

e) ‘Conclusions’- ‘*We feel that the Claimant has over -reacted*’, **[C44. para 146]** of the judgment.

f) ‘Conclusions’- ‘*…we see no problem with this*’, **[C45. para 149]** of the judgment.

g) ‘Conclusions’- ‘*7 weeks does not appear to us to be an unreasonable delay…*’, **[C50. para 163]** of the judgment.

h) ‘Conclusions’- ‘*In our view the delay was no unreasonably long*’, **[C51. para 167]** of the judgment.

i) ‘Conclusions’- ‘*In our view*’ it was entirely reasonable and consistent…, **[C52. para 173]** of the judgment.

j) ‘Conclusions’- ‘*…we take the view…*’, **[C54. para 177]** of the judgment.

k) ‘Conclusions’- ‘*…and we do not believe that…*’, **[C54. para 178]** of the judgment.

The language used by the Tribunal showed that its approach was that they were asking themselves the wrong questions, (even though the right ones were set out by the appellant in the form of ‘issues’ in her submissions) and in relation to some issues, not asking any questions at all, in line with **[C62. paras 11b –c, 14, 30 – 31, 35, 41, 66, 70 – 71, 77 – 78, 80- 81, 83, 88 – 89 & 100 - 103]** of the appellant’s Notice of Appeal. There was a tendency of the ET to follow a subjective approach to matters that required objective assessment. That

error was carried over into its findings of fact and conclusions and undermined its decision to dismiss all of the appellant's claims. It was not vitiated by subjectivity and substitution.

179. The Tribunal failed to ask itself the correct questions right from the outset. The tone is set by its opening to section dealing with determination of the issues, under 'Reasons', namely that- '*The witnesses also readily conceded, when put to them, that certain matters could have been dealt with better*', at **[C9. para 31]**. Whether or not the Respondents did so, was not a relevant matter and therefore this should not have been taken into account by the Tribunal, particularly as it did not alter the fact that the appellant was discriminated against and suffered numerous detriments. This paragraph is also perverse in relation to the assessment of the quality of the respondents' evidence. The Tribunal erred in law in criticising the appellant's evidence and commending the Respondents' evidence on false basis of facts.

180. The Tribunal persistently took into account and unreservedly accepted the Respondents' reasons, which were not justifiable or a means of achieving a legitimate aim. In the appellant's judgment 'justifiable' requires an objective balance between the discriminatory effect of the condition and the reasonable needs of the party who applies the condition. This test is an objective one and it is not sufficient for an employer to show that he considered his reasons adequate. Bilka-Kaufhaus was considered in detail by the Employment Appeal Tribunal in ***Cobb v Secretary of State for Employment*** [1989] IRLR 464 EAT where it was stated, per Wood J at p.468:-

"It was for the respondent to satisfy the Tribunal that the decisions which he took were objectively justified for economic, administrative, or other reasons. It was for the Tribunal to decide what facts it found proved, and to carry out the balancing exercise involved, taking into account all the surrounding circumstances and giving due emphasis to the degree of discrimination caused against the object or aim to be achieved – the principle of proportionality – we do not accept that the production of a mass of statistics, or if sociological or expert evidence is a necessity on these issues, nor do we accept that the absence of such evidence proves that the reasoning of the [respondent] is flawed … a respondent is entitled to take a broad and rational view provided that it is based on logic and is in the view of the Tribunal a tenable view. He is under no obligation to prove that there was no other way of achieving his object, however expensive and administratively complicated."

181. If an employer's aim is itself discriminatory, then the requirement cannot be justified. It is clear to the appellant that she received the treatment she did because of her disability and the fact that she brought legal proceedings and made protected disclosure, or at the very least, to the extent that the respondents' motives could be said to be mixed, her disability was an important factor in the respondents' decision-making process. The fact that the respondents acted with good intentions in the interests of the school does not provide them with a defence, (See : ***James v Eastleigh Borough Council*** [1990] IRLR 288.)

182. At **[C8. para 28]** of the Tribunal's 'Reasons', it states that the 'appellant's allegations never developed beyond the bald assertions made' and that 'she never really explained why the respondents' explanations were not to be believed'. In contrast it states that the respondents' evidence was 'straight forward and factual', **[C9.para 31]**. It is clear that the appellant explained herself fully in her witness statements **[S324 – S582]**, her submissions **[S1250 – S1623]** and during the Respondents' cross-examination of her at **[S649 - s723]**. It is

submitted that there was no need for the Tribunal to express itself so strongly as to the quality of the Claimant's and Respondents' evidence. The comments appear without reasons and they were stated before any findings of fact are made. They are firm and prejudicial and unsupported by any evidence and therefore perverse. The ET failed to deal with a huge bulk of the evidence, (i.e. the oral testimonies and the Appellant's written submissions which set out the oral evidence, and the five questionnaires and responses). Its judgment is plainly inconsistent with its own findings which make no reference at all to the oral testimonies detailed in the appellant's written submissions and the five questionnaires and responses.

My application to disclose Chairman's Notes

183. This is clearly crucial to this case, as my appeal is based upon or includes an allegation that the ET's decision was perverse. 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. Para 22, page 313 Lord Donaldson stated 'in a word, it is impossible, or very nearly impossible ever to hold that an answer to a question concerning reasonableness is perverse unless the court has all the evidence upon which the answer was based- ***Hampson v Dept of Education & Science*** [1988] ICR, 278, EAT. As the appellant it is my duty to show the EAT the material upon which my appeal is based. If it is intended to appeal upon the ground that there is no evidence to support the Tribunal's findings the Appellant must take the necessary steps to obtain a Note of the Evidence.

An appearance of pre-judgment/closed mind

184. The appellant believes that the Tribunal had a closed mind and that it is clear that the Tribunal's sympathy for the Respondents' and distaste for the appellant had weighed with it, as demonstrated by:

a) the fact that it later went on to order cost against the appellant, (in excess of £10,000); and
b) Further, the position was further undermined by the Employment Judge's remarks during the PHR on 19 and 20 April 2012: In the course of giving her judgment the Employment Judge had not merely expressed an opinion but given a formal Judgment on the very points which the three members of the Tribunal would have to decide at the next hearing for the un-stayed part of claim 23000254/2011B, as set out in the cost order dated 23 April 2012 **[C553]**, the appellant's recusal application dated 27 April 2012 **[C562b].**

185. On 15 March 2012 **[C538]**, the ET refused the appellant's first recusal application. The appellant has no legal training and therefore she may not have been able to adequately express her grounds for the application. This was also confounded by her medical condition. The appellant's GP had increased the dosage of her medication **[S1658a]**. She had also been referred for counseling **[S1699f]**. 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, she had the opportunity to re-assess her situation and she

made another recusal application, this time making her grounds clearer, **[C562b]**. However, it is submitted that the ET should have been fully aware of these grounds when it made its previous decision to refuse the appellants' recusal application on 15 March 2012. The Tribunal delayed responding to the application (the second one) – as set out in her e-mail to the ET dated 23 May 2012 **[S1711]** and its response dated 28 May 2012 **[C574]**;

186. The grounds for the appellant's initial recusal application is set out in her e-mail to the ET dated 27 April **[C562b]**. In the appellant's view, it is 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 panel's decision to dismiss all of appellants' claims. The appellant believes that this state of affairs is evidence of pre-determination, that it vitiated the ET's decision and was integral to the Tribunal's reasoning and materially undermined what followed.

187. With regards to pint 145a, 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. It is important to note that on 19 and 20 April 2012, the Tribunal failed to make a deposit order in relation to the 'stayed' part of claim number 2300254/2011, even though the appellant raised the issue of a cost order with the judge on 20 April 2012 and the respondents' put forward written submissions asserting that the appellant's

claims have no reasonable prospect of success in light of the fact that the 'unstayed' part of the claim had been dismissed **[S199c-e]**. The appellant highlighted the Tribunal's failure to make a deposit order, in her e-mail to the ET dated 27 April 2012 **[S1703]**, setting out additional grounds for a review of the decision on the cost order. It is clear from the order on the PHR/CMD that the Tribunal did not see this as an issue, **[C553]** at page 6, paragraph 6.

188. **On 28 May 2012**, the ET again failed to list a PHR to determine the issue of a deposit order for her on-going claims **[C574]**, even though the appellant had requested this on 23 May 2012 **[S1711]** and the respondents had asserted in their ET3's **[S1706 & 1710]** 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.

189. 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.

190. With regards to pint 145b, Judge Balogun had also expressed very clear views during the PHR on 20 April 2012 in relation to the appellant's allegations regarding the individual respondent 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 **[C553]**, '*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.

191. In addition one only has to look at the order on the PHR dated 24 April 2012 **[C553]**, (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. The panel clearly stated that the appellant had provided 'no evidence', (which obviously includes the evidence that the panel are seeking to look at in relation to the next full hearing for the stayed part of claim number 2300254/2011). It is important to note that the panel failed to make any findings of fact in relation to the evidence which emerged through the 25 hours of cross-examination or the appellant's questionnaires and responses **[C1]** and it also failed to take into account her written submissions, (which included an analysis of this). The appellant believes that there is a real possibility that consideration of the questionnaires and responses, oral evidence and submissions may have led to a different result and the failure to consider them had led to a breach of natural justice. The appellant is therefore of the view that she was not given a fair hearing.

192. The Tribunal made an extreme cost order against the appellant even though the appellant had set out compelling reasons as to why it should not, in

her written submissions **[S1674]** and witness statement **[S1659]**, (dated 16 April 2012) and her evidence setting out her inability to pay (dated 12 April 2012), which made it clear that she was unemployed, disabled and would be debarred from employment as a result of her unlawful dismissal by the respondents'. However, this was ignored and the appellant was severely criticized by the ET for bringing the claims against the respondents' **[C555. paras 9 - 14]**. It is difficult to imagine a more adverse series of findings of fact and conclusions by an Employment Tribunal against the appellant, particularly as the Employment Tribunal was not entitled to come to the vast majority of findings of fact and conclusions on the evidence it heard.

193. It is clear that the Tribunal's sympathy for the Respondents' and distaste for the appellant had weighed with it, as demonstrated by the language in its judgment **[C553]** and the fact that it made a cost order against the appellant, (in excess of £10,000), even though the appellant had set out compelling reasons as to why it should not, in her written submissions and witness statement dated 16 April 2012 and which made it clear that she was unemployed, disabled and would be debarred from employment as a result of her unlawful dismissal by the respondents'. However, this was ignored and the appellant was severely criticized by the ET for bringing the claims against the respondents'. It is difficult to imagine a more adverse series of conclusions by an Employment Tribunal against the appellant, particularly as the Employment Tribunal was not entitled to come to the vast majority of conclusions on the evidence it heard.

194. In addition, the Tribunal expressed itself incorrectly in holding, on page 4, paragraph 13 of its cost order **[C553]**, that: '*There is no reason to assume that*

she won't return to her chosen career at this level at some point in the future'. This finding was clearly perverse and it was not a conclusion that the Tribunal was entitled to arrive at, based upon the evidence. The Tribunal was presented with clear evidence that in fact the opposite was true and the claimant would be debarred from work in her chosen career at that level again.

195. On page 4, paragraph 14 of the Tribunal's cost order **[C553]**, the ET even makes a statement which supports the appellant's above assertion- '*Those costs have largely been borne by the first Respondent, a public body. These are costs that the local authority can no doubt ill afford in these times of cost cutting and austerity measures. In those circumstances, it cannot be just for the Claimant to walk away with no financial repercussion*' and that she should therefore pay a third of the respondents' costs. It is clear from this comment that the judge was unable to disabuse her mind of any irrelevant personal beliefs or predispositions.

196. Recusal applications should never be countenanced as a pretext for judge-shopping. It is clear that the judge in question had 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 judgment 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.

197. 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 EAT's work involves continuing defence of such a simple quality.

198. 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. It is said that having regard to its post-trial decision, the employment tribunal, on the face of it, were unable to bring to bear, on the determination of the appellant's case, an open mind and objectivity which is required in the discharge of judicial office.

Remission

199. The leading case on the issues to be borne in mind when the EAT decides whether to remit to the same or a different tribunal, is ***Sinclair Roche and Temperley v Heard*** [2004] IRLR 763, **[A20]**, ("Sinclair Roche No 1") at paragraph 46 of the judgment of the EAT (per Burton P). So far as relevant we set out the factors there referred to:

> ***"46.1 Proportionality must always be a relevant consideration …***
>
> ***46.2 Passage of time. The appellate tribunal must be careful not to send a matter back to the same tribunal if there is a real risk that it will have forgotten about the case …***
>
> ***46.3 Bias or partiality. It would not be appropriate to send the matter back to the same tribunal where there was a question of***

bias or the risk of pre-judgment or partiality …

46.4 Totally flawed decision. It would not ordinarily be appropriate to send the matter back to a tribunal where, in the conclusion of the appellate tribunal, the first hearing was wholly flawed or there has been a complete mishandling of it …The appellate tribunal must have confidence that, with guidance, the tribunal can get it right second time.

46.5 Second bite. There must be a very careful consideration of what Lord Phillips in [English v Emery Reinbold v Strick Ltd [2003] IRLR 710 CA] at paragraph 24 called 'a second bite at the cherry'. If the tribunal has already made up its mind, on the face of it, in relation to all the matters before it, it may well be a difficult if not impossible task to change it: and in any event there must be the very real risk of an appearance of pre-judgment or bias if that is what a tribunal is asked to do. There must be a very real and very human desire to attempt to reach the same result, if only on the basis of the natural wish to say 'I told you so'. Once again the appellate tribunal would only send the matter back if it had confidence that, with guidance, the tribunal, because there were matters which it had not, or had not yet, considered at the time it apparently reached a conclusion, would be prepared to look fully at such further matters, and thus be willing or enabled to come to a different conclusion, if so advised.

46.6 Tribunal professionalism. In the balance with all the above factors, the appellate tribunal will, in our view, ordinarily consider that, in the absence of clear indications to the contrary, it should be assumed that the tribunal below is capable of a professional approach to dealing with the matter on remission … It follows that where a tribunal is corrected in an honest misunderstanding or misapplication of the legally required approach (not amounting to a 'totally flawed' decision described at 46.4), then, unless it appears that the tribunal has so thoroughly committed itself that a rethink appears impracticable, there can be the presumption that it will go about the tasks set upon remission in a professional way, paying careful attention to the guidance given to it by the appellate tribunal."

200. In light of the comments made by the ET at the PHR where the cost order was made **[C553]**- see 'the appellant's submissions in relation to '*An appearance of pre-judgment/closed mind*'. 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 and therefore submits that the case should be remitted to a fresh Tribunal for determination, including the full hearing for the 'stayed' element of claim number 2300245/2011. A referral back to the Tribunal at Southampton would be a denial of my Human Rights under Article 6 to a fair and unbiased hearing within a reasonable timescale. This case has already been a blatant abuse of my basic rights and has stretched over a period of two and a half four years, severely devastating my health in the process.

Conclusion

201. In the Appellant's view, there was evidence capable of supporting a finding of unlawful discrimination and PIDA detriment. It is submitted that the appellant made well-reasoned and responsible submissions, however, these submissions were ignored by the ET and as a result the ET's dismissed all of the appellant's claims.

202. It is submitted that the Respondents' have not only broken the law, but have abused the process and persistently engaged in vexatious, unreasonable and scandalous conduct. The Respondents' are is clearly trying to obstruct the just disposal of proceedings by committing perjuring, **[S202 – S205, 583 – 585, 732, 745, 1004, 1010, 1012, 1015, 1046, 1054, 1118, 1136, 1201, 1210 & 1624 – 1625, 1626 – 1630, 1636 - 1655]**, **[C330- C331.para8]**, **[C399.para20]**,

[C463.para 14 & 15], **[C519. para 8.1a & b]**, **[C71. paras 32 & 91 – 101]** & **[S1624]**.

203. The Tribunal persistently made it clear that they were assessing the case on how they would have reacted in a particular case rather than according to their assessment of what the objective reasonable employer would have done. It is clear to the appellant that the Tribunal failed to exercise the essence of objectivity that is required in order to consider the range of responses which can be seen as reasonable. On these points the Tribunal failed to make it plain in its judgment that it had that objectivity and that range in mind and that it had done more than pay lip service to it.

204. The appellant was treated less favourably and differently for a reason (present in the respondents' mind) which was related to the appellant's disability and/or race and because she made protected disclosures. What is important is that these reasons affected the respondents' minds, whether consciously or subconsciously. This was discrimination. The Tribunal failed to take into account ***Aylott v Stockton on Tees Borough Council*** **[2010] EWCA Civ 910**, as set out in **[S.1467 para 193 - 194]** and supported by examples of the stereotyping which occurred at **[S.1469 para 197 & S.1570. para 453 – 454, 482, 493, 519]**.

205. In the appellant's view, the Tribunal based their substantive conclusions in substantial part on a view of the facts which was simply not supported by the evidence. In so doing they were in error of law. The Tribunal failed to properly deal with the oral evidence and supporting evidence; it clearly did not make any

adverse findings against the respondents' based on it and failed to explain why it did not in reaching its conclusions. The Employment Tribunal therefore erred in law.

206. These failures in evidence analysis 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 Tribunal appears not to have taken proper advantage of having seen and heard the witnesses. There was a failure by the Tribunal to adopt an analytical approach to the evidence and to explain where they were finding that a prima facie case had not been made out and on what basis. Their findings simply represented a series of criticisms of the Appellant, some of which could not be said to be permissible criticisms to make and/or could not in any event legitimately lead to a finding that a prima facie case had not been established.

207. The ET's conclusions were not based on a proper assessment of the reliability of witnesses or the substance of their oral evidence. It is therefore submitted that the EAT is entitled to interfere with the decision of the ET and that should be done particularly in the light of the oral evidence. The EAT is in as good a position as the ET to evaluate the primary facts in order to see what inferences may properly be drawn from them.

208. The Tribunal failed to adequately consider the inadequacy of the respondents' internal investigations, which included the fact that the appellant's employer could not apply their own policies to the respondents'- non-CEL employees, (who they were allegedly investigating), and breaches of their own

equal opportunities policy, were in the appellant's view material legitimately to be taken into account in deciding whether the Appellant had established a prima facie case of discrimination on racial grounds. *Anya v. University of Oxford and another* [2001] EWCA Civ 405, at (para 378) **it was held that, 'when equal opportunities procedures are not followed when they should have been it may point to the possibility of conscious or unconscious racial bias having entered the process**.

209. The Employment Tribunal erred in dismissing the appellant's claims. It is in the appellant's view an error of law for an Employment Tribunal to fail to take into account matters which should have been taken into account and to take into account matters which should have been left out. The Tribunal's findings were wholly inconsistent with its acceptance of the appellant's findings of fact, particularly in relation to evidence obtained during cross-examination. In any event, disparity between the Tribunal's conclusions and the evidence presented to it was so serious as to amount to perversity.

210. The appellant has found the irregularities and the unjust process described in this appeal to be most troubling and distressing, thus undermining the trust of the public. It would reassure her that the EAT is committed to equal treatment and ensuring just outcomes. 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.

211. It is submitted that appellant should not be denied her request for a postponement of the hearing in where claim number 2300254/2011 and others will be heard. Proceedings should not, generally, be permitted to continue concurrently. There is a risk of having two judicial parallel processes running along side each other, as the EAT appeal is likely to significantly affect the outcome of the ET case. It is submitted that the hearing should be postponed pending the outcome of this appeal.

212. In the Appellant's view the judgment cannot stand on the evidence and should be set aside for the reasons set out in the appellant's skeleton arguments and remitted to a different tribunal for consideration afresh. The appellant believes that she has been let down by the ET and as a result of this she believes that this has given power to the perpetrators and deterred future whistleblowers from coming forward.

213. The appellant turned to the ET for redress and justice, but she did not find this. Instead she experienced further injustice rather than help to resolve it. It could have changed her whole view point about justice, but it didn't and she still has faith that the EAT will be able to provide her with some measure of justice.

214. The Tribunal's assessments of the appellant's allegations were vitiated by underlying findings and conclusions which were unjustified. The Employment Tribunal reached a decision that had not been open to it on the facts. In the appellant's view, it has demonstrated perversity and an error of law. The reasoning of the ET did not adequately comply with the duty to give reasons. In all these circumstances, it is submitted that the judgment was perverse and that there should be a remit to a freshly constituted Tribunal for determination. The appellant also believes that notes of evidence will be needed.

53. 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) To 'stay' direct the ET case to 'stay' the 'stayed' part of claim number 2300245/2011, pending the outcome of this appeal. The outcome of that ET case will depend heavily on justice in this case; and/or
b) To consolidate this case with case number UKEATPA/0861/12/SM, (the appellant's appeal of the ET's decision dated 23 April 2012- the ET's cost order), which has been consolidated with that case, in order for these two cases to be heard together in a PH and/or FH, should they be ordered and if they should be ordered, for the hearings to be expedited as the High Court hearing for the cost assessment has been set to be heard in the week commencing 18 March 2013. The outcome of case number UKEATPA/0861/12/SM and the high Court cost assessment hearing will depend heavily on justice in this case; and
c) To allow the appeal and set aside the judgment of the ET; and

d) The case to be remitted to a fresh Tribunal for determination, including the full hearing for the 'stayed' element of claim number 2300245/2011 and to enable the ET to hear arguments to redress the prejudice caused by the respondents' perjured evidence; and

e) Directions as to notes of evidence; and

f) To allow the appellant's application for 'fresh evidence' and to issue directions in relation to this

Ms AA Vaughan

3 September 2012