IN THE EAT **Appeal No: UKEATPA/0533/12/SM**
& UKEATPA/0534/12/SM

BETWEEN

Ms AA Vaughan

Appellant

-and-

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

Respondent

1 February 2013

SKELETON ARGUMENTS FOR THE APPELLANT

References in the format - [C1x.x] is to [page. para] in the Core bundle of LBL, [C2x.x] is to [page. para] in the Core bundle of Paris Smith, [S1x.x] is to [page. para] in the Supplementary bundle of LBL, [S2x.x] is to [page. para] in the Supplementary bundle of Paris Smith. [AVS.x.x] is to [page.para] in the Appellants' supplementary bundle and [AVA. x.x] is to [page] in the Appellant's Authorities bundle.

Introduction

1. The Appellant was employed by the London Borough of Lewisham. This is a consolidated appeal on the judgments of the employment tribunal promulgated on 23 April 2012, the extreme cost order for £92,010. 37 **[C2. 1 – 6]** and 7 August 2012 **[C1. 1 – 6]** – the procedural applications, which included the Appellant's application to admit covert recordings into evidence. The Appellant has been limited by the EAT to submitting only a total of **12 pages** of skeleton arguments for both her appeals **[C1. 71 & C2. 62]**, it is therefore impossible for her to be able to refer individually to all the documents in her supplementary bundle and that which she had previously cited in her rule 3(10) hearing skeleton arguments dated 3 and 23 September 2012. The Appellant therefore refers instead to the rule 3(10) hearing skeleton arguments and indexes, (which have been included in her supplementary bundle for this full merits hearing) **[AVS. 586 -604]** and she respectfully requests leave from the EAT to refer to them, (in line with the registrar's decision dated 14 December 2012). The Appellant respectfully requests that the EAT cross reference these documents with her new supplementary bundle index, that has been submitted for the purpose of this full merits hearing. If leave to refer to the evidence is refused by the EAT, then, the Appellant submits that she should be permitted to read aloud (word for word), the relevant sections of her previous rule 3(10) arguments and she contends that this would constitute oral arguments for the purpose of the

full merits hearing. The Appellant made applications for the length of the hearing to be extended in order accommodate this and for permission to also be granted as a 'reasonable adjustment' **[AVS. 620]**.

2. The Appellant had previously submitted in excess 150 'double-spaced' pages of skeleton arguments for her 3(10) hearing in relation to these appeals. On 31 October 2012 the Appellant made an application to vary the Order **[AVS. 605]**, requesting that she be permitted to add her previous skeleton arguments for inclusion in a separate bundle and/or that the EAT allows the new skeleton arguments to exceed more than 12 pages, up to a number which would allow for relevant parts of her previous skeleton arguments to be copied and pasted into new skeleton arguments in relation to the matters to be addressed at the full merits hearing. In further support of her application, the Appellant also cited disability grounds. The Appellant informed the EAT that her memory and concentration and ability to learn and understand are impaired as a result of her mental health condition and that she also suffer from severe fatigue and is currently off sick with depression and receiving treatment for this. She highlighted the fact that unlike the represented Respondents', she will not be able to make full and effective oral arguments and as such, she will be relying on her written submissions. The Appellant advised the EAT that limiting her skeleton arguments would put her at a disadvantage as a disabled Claimant and exacerbate her medical condition, put undue pressure on her and confuse her, (making it difficult for her to understand the process and progress of her case) and she did not believe that it is just or equitable for the EAT to impose such strict limitations, as this would present an additional barrier. Despite this, the EAT refused the Appellant's application.

Submissions

3. The Appellants sent her chronology to the EAT and the Respondents' by recorded delivery on 16 February 2013. in this skeleton argument, due to the limitations placed on the Appellant by the EAT, it has been impossible for her to refer individually to all the events listed in her chronology, therefore the Appellant also refers to and relies upon her previous chronologies covering events related to the period of 19 April 2010 to 26 July 2012, at **[AVS. 436. 3a – 3bbb & AVS. 503. 4 - 4.67]** and respectfully requests that the EAT cross references these three chronologies. The grounds on which the Appellant relies on in this appeal are the grounds set out in her 'Notices of Appeal' dated 30 March **[C2. 7]** and 9 August 2012 **[C1. 7]**, her skeleton arguments dated 3 September **[AVS. 436]** and 23 September 2012 **[AVS. 503]** and Judge Clark's findings in relation to these matters, set out in the EAT transcript/judgment promulgated on 25 October 2012, together in particular with the matters set out below:

4. The Appellant's ET PHR submissions related to the cost order are at **[C2. 15 – 35]**, pages 9 - 29 & **[AVS. 298 – 326]**, pages 1 -8. Also see the Appellant's skeleton argument at **[AVS. 436]** in relation to: **a)** the Tribunal's discretion and perversity- **[AVS. 436. 6 – 15, 35 – 37, 97 - 103]**, **b)** the unreasonable refusal of the appellant's initiatives to settle the case **[AVS. 436. 13, 66 & 110b&c]**, 'Meek' compliancy- **[AVS. 436. 34 & 105 - 108]**, **c)** the Respondents' unreasonable, oppressive and vexatious conduct in relation to their application, including the Respondents' perjured evidence- **[AVS. 436. 63 – 66 & 78 - 96]** and **d)** 'Relevant law'- **[AVS. 436. 34 -45]** and

[AVA], the appellants' authorities.

5. *The Merits of the Appellant's Case:* The ET should have taken into account the fact that the respondent took no steps during the proceedings to seek a PHR to canvass the point, apply for a strike out or a deposit order. There was nothing to suggest that the appellant proceeded with her claim in the "clear knowledge" that it allegedly had no merit, nor a prospect of financial reward. This fact is supported by the Tribunal's own judgment dismissing the appellant's claims, which did not contend that the Appellant did not have genuinely belief in her allegations **[C2. 68. 28]**:

   "***Whilst we are in no doubt that the Claimant genuinely believed in the truth of her allegations against the Respondents, that belief was borne out of an absolute refusal to countenance any other possible explanation of the events complained about***."

6. In its judgment the Tribunal made reference to the respondents' letter to the Appellant dated 8 November 2011 **[AVS. 150]**, and used this as a basis for making the award to award cost, as well as findings that it made during the course of the hearing, (which was clearly inappropriate and were both matters that the Tribunal should not have taken into account). The Respondents' alleged cost warning letter made no reference at all to the fact that it believed that her claims were weak or misconceived. On the contrary, the Respondents' made numerous settlement offers throughout the proceedings, for progressively increasing amounts **[AVS. 123 – 124, 144 – 155, 168 & 179]**. The Respondents' alleged cost warning letter merely stated the following:

   '***We believe that this offer is significantly in excess of any sum that you would be awarded by the Employment Tribunal, even if you were successful in your claims. This settlement offer shall remain open until 4pm on Friday 11 November 2011 and shall then be withdrawn. If you should fail to accept this settlement offer, then we are instructed that no further settlement offers will be made. The Respondents will continue to defend your claims and it would be their intention to apply for a costs order against you at the full hearing in January 2012***'.

7. The Appellant is unemployed and in has been in receipt of ESA due to her disability, since April 2012. She has been assessed by both the DWP and her GP as being unfit for work because of her disability. Her current GP sick note for depression and panic attacks expires in March 2013 and due to her current circumstances, the Appellant expects this to be renewed at that time. Other matters to be taken into account in support of the Appellant's appeal are: **a)** *The current climate of cost cutting in the Appellant's field of work in the public sector, (which was also referred to in the ET's cost order* ***b)*** *Inconsistency*: The ET's failure to deal consistently with Marina Waters' application for a cost order **[AVS. 346]**, and the Respondents' application for costs- also see the Appellant's EAT skeleton argument **[AVS. 436. 54 - 57]**, **c)** *An appearance of pre-judgment/closed mind and violations of the legal and European norms*- **[AVS. 436. 113. 126]** and **d)** *Punitive award and Public policy* **[AVS. 436. 58a-f & 73]***:* The Appellant's claims were fact sensitive and liability in this case depended solely upon what a Tribunal made of the evidence. It was therefore not unreasonable of her to pursue such a claim all the way to a full hearing. As a matter of public policy, discrimination cases should be heard. Discrimination cases are generally fact-sensitive and their proper determination is vital in a pluralistic society- see ***Anyanwu v South Bank Students' Union and South bank University*** [2001] IRLR 305, HL **[AVA.7] paragraph 24**. The ET specifically referred to and relied on matters that took place during the hearing, so this is self-evident that all the evidence needed to be heard/tested

at the full hearing. There was also a public interest in the case being aired. The ET failed to have due regard to this fact.

8. If the ET believed that the Appellant's claims were misconceived from the outset, why did Judge Balogun not advise the appellant of this during the CMD on 9 January 2012, or after having read all the documentary evidence during the Tribunal's reading time, which lasted a whole week, or at anytime during the hearing itself? Why did Judge Salter, Judge Baron and Judge McInnis' not advise the appellant of this during the many CMD's and PHR's? Why did the respondents' never set out this contention until after the hearing? If the Appellant's claims really were misconceived from the outset, the Respondents' would have stated this at the outset. When the Respondents' applied for a cost order in April 2011, which was heard in June 2011 it had the opportunity to rely on this ground but it did not **[C2. 665. 16]**. This evidence was presented to the ET by the Appellant **[AVS. 282. 10]**. This is clear evidence that the Respondents' did not believe that the Appellant's claims were misconceived from the outset. The Appellant could not have engaged with the Respondent's alleged costs warning letter, as it failed to set out the contention that her claims were misconceived and it would be applying for a cost order on that basis, and the respondents had failed to give earlier warnings and/or seek a deposit order and/or a strike out application and PHR on this basis. The ET should have therefore disregarded it, particularly as it even made reference to the possibility of the Appellant succeeding in her claims. This proposition is supported by ***AQ Ltd v Holden*** [2012] UKEAT 0021_12_1604 **[AVA.18]**, paragraph 37, in relation to the respondents cost warning the EAT held:

   'The second is what Ms Twine describes as a costs warning in April 2010. This was not a costs warning in the conventional sense – rather advice to Mr Holden to seek legal advice and to consider his position. The Tribunal was entitled to disregard it.'

9. If the Tribunal really believed that the Appellant's case had no reasonable prospect of success from the outset should have warned the Appellant. It had a duty, but failed to give a costs warning where it believed that there was a real risk that an Order for costs would be made against the unsuccessful Appellant at the end of the hearing. The Respondents' correspondence on 8 November 2011 represented a speculative costs threat, designed to do no more than frighten the Appellant, regardless of the actual merits of her case.

10. The Appellant's ET PHR submissions in relation to the admissibility of the covert recordings are at **[C1. 23 – 47]** and **[AVS. 385- 404**, pages 1, 22, 31, 45, 59, 62 & 65**]**. The Appellant's application to submit covert recordings is at **[C1. 1- 2]**.

The Tribunal's Discretion and the suggestion of 'tampering' by the Appellant

11. This had not been an argument advanced by the Respondents'. The Appellant was not selective in what she recorded; she simply recorded **all** of her contact with management. The Respondents' refer to the Appellant's decision to covertly record as seeking to gain an unfair advantage. How could a recording give her an 'unfair advantage', unless they had been and continue to be deceptive? On occasion during the recordings, the

Appellant even displays anger and frustration, which proves that the way in which she conducted herself was not staged. The recordings are original and were made on a Dictaphone. The Dictaphone did not belong to the Appellant and so before returning the Dictaphone to its owner, she transferred all of the recordings onto her computer and deleted the contents of the Dictaphone. The recordings are therefore authentic and the Respondents' cannot argue that there have been any additions to the recordings because the words in the recordings were clearly said by individuals (the Appellant cannot mimic people's voices).

12. The Appellant does not possess the skills or sophistication to tamper with the recordings. For a competent attempt at tampering, not only is knowledge of recording, editing and signal manipulation techniques a requirement, but also knowledge of general acoustics and forensic audio. In a natural conversation spoken words are not discrete; the last syllable of one word flows in a seamless fashion into the first syllable of the next word and so on. Gaps in time only appear at points of natural pauses in the speech flow. Taking a word from one point of a recording and placing it at another, would require skill and great expertise in overcoming the problem of the uninterrupted speech flow. Often, two people will talk at the same time (as is the case in all of the recordings), over these sections of recording editing is not possible. Speech consists of complex sets of interacting parameters and the place in the dialogue that an edited word would have to be inserted would have to match in terms of the intonation and inflection, if that word is to sound natural and in context with its neighbours.

13. If for example the Respondents' allege that there are portions of the recording that have been erased, those portions of the recording would need to be replaced with something else. The Respondents' will therefore have to specify what they are alleging these portions have been replaced with and they would also have to show these alleged missing portions in their own notes and explain why the recording of the conversation is still able to flow in a logical manner despite these alleged edits or deletions. In terms of taking 39 hours worth of recordings and editing lots of little sections to produce a false set of events and to do it in a way that is not detectable, would make this at best a highly unlikely event and at worst implausible and impossible, (particularly when the meetings were minuted/notes were taken **[C1. 194. 9m, C1. 230. 77V, C1. 295f &g, C1. 409. 94r, C1. 450. 106t & C1. 481. 61f&g]**, and given the fact that the Appellants' allegations against the Respondents', have not been the subject of defamation proceedings by the Respondents'). A recording/transcript, together with minutes, ensure an accurate contemporaneous account of what was said on both sides with absolute preservation of accuracy (which written notes will actually fall down on), including the tone with which the words were spoken.

14. Even if the Appellant was a secret sophisticated forger, the Appellant wouldn't have had the time to tamper with 39 hours of recordings, particularly when she suffers from depression, is on three sets of prescription medication, was receiving counseling, been ill throughout (which is backed up by medical evidence) and having had to deal with concurrent ET PHR's, a 20 day ET hearing, an EAT hearing and the Respondents' own internal SOSR investigations (x 3 totaling 8 hours) and SOSR hearings (totaling 15 hours), over the period of time that the recordings were made. The recordings were transferred from the Dictaphone to the Appellant's computer

between October and December 2011 (for the recordings made pre- 2012) and 10 March 2012 (for the recordings made during the Respondents' SOSR hearings), which were held on 27 & 28 February and 6 March 2012.

15. The Appellant also had her own witness who attended all the SOSR hearings, the OH consultation and her meeting with Chris Threlfall. Even if the Appellant did have the skills **and** the time to tamper with the recordings, what would be her motive for doing this when what she is alleging through the use of the recordings is consistent with the documentary evidence? This point also supports her contention that the recordings are original. The Respondents' will not be able to find any evidence of tampering, unauthorised editing, or any form of intentional deletions, material or otherwise, within the recorded content. It is worth noting that since the Respondents' are doing everything in their power to suppress the Appellant's damning evidence, they will most likely make allegations against the recordings with nothing to back up their claims. This should not be permitted and should have no impact on the path to justice. The fact that the Respondents' have refused to take receipt of the covert recordings on two separate occasions since October 2012, is in the Appellants' view, proof of the Respondents' malice and guilt.

16. In light of the fact that the ET is already questioning the credibility of the Appellant because of, (as the Employment Judge put it), the '*clandestine*' nature of the recordings **[C1. 4. 6]**, it is only right that the Appellant should be given the opportunity to admit the recordings to prove that she was justified in obtaining the recordings covertly. It is clear that the Appellant's credibility has already been tainted by the Tribunal's view of the Appellant's means of obtaining her crucial evidence. The issue of credibility will clearly be paramount in this case. The ET will obviously hear evidence from the Respondents' as to the circumstances in which the Appellant's covert recording evidence had been acquired and this will likely be central to their case, as is evidenced by their amended pleadings **[C1. 528. 21L]**. No fair and just findings can be properly made about the matter without admitting the covert recordings and transcripts into evidence- see the Appellants skeleton arguments at **[AVS. 503]**.

17. ***The suggestion that the services of a transcription company should be engaged***: see the Appellants skeleton arguments at **[AVS. 503. 29 - 35]**. For the reasons set out in the Appellant's rule 3 (10) skeleton, ET review application and correspondence to the ET, it is not appropriate for a transcription company to transcribe the recordings, namely because it is not the job of a transcription company to authenticate recordings and a transcription company would not be able to recognise the voices of any of the individuals featured in any of the recordings, (which can be anything up to 12 voices at a time speaking over one another). A transcription company would obviously not be able to identify which individuals are saying what. This is clearly a barrier. The Appellant had been informed when making enquiries to different transcription companies that several people would need to be engaged in the task of transcribing the numerous recordings- this will only serve to ensure that the defamatory statements contained in the recordings would be spread to an even wider audience, which is a breach of the Appellants' rights and not something that should be sanctioned by an EAT or EAT. Such a state of affairs is clearly unjust, inappropriate, oppressive, unnecessary and unreasonable and not in line with the overriding

objective. Further arguments in support of this proposition are set out in the Appellants skeleton arguments at **[AVS. 503. 120 - 130]**- ***Human Rights: The Discriminatory Impact of the ET's Decision/Approach- Equality Impacts on People with Protected Characteristics***.

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

18. The decision to exclude the evidence because they allegedly 'are not probative', was a perverse one, given the fact that the judge had not heard the recordings or read the transcripts and the recordings and transcripts go to the very heart of the dispute between the parties **[AVS. 503. 104]**. The exercise of the judge's discretion was vitiated by this factual error. In so far as the power to admit evidence is discretionary, then the Appellant contends that the Tribunal failed to exercise it discretion properly (or at all), and failed to apply the necessary considerations of fairness, equitableness, balance of convenience, and the overriding objective. The primary relevant facts are disputed/at issue' between the parties. The determination of the relevancy of a particular item of evidence rests on whether proof of that evidence would reasonably tend to help resolve the primary issue at trial. There is contradictory evidence, therefore the evidence that the Appellant is seeking to rely on will be crucial in order to enable the Tribunal to making findings of fact, resolving issues of credibility, determining the real truth and disposing of the case fairly and justly. The ET's order, in the Appellant's view, constitutes an interference with her Article 6 and 14 rights. Part of the Appellant pleaded case is that the respondents' have made false allegations against her and the ET therefore has a duty to give the Appellant the opportunity to clear her name and correct or controvert any relevant statement brought forward to her prejudice. The Appellant's career and reputation are at stake.

19. If the evidence is not admitted the ET will be free to add weight to the Respondents' fabricated and perjured evidence. The Appellant asserts that she is in possession of the true facts, spoken words and conduct of the Respondents', which is a very powerful piece of evidence that the ET was obliged by precedent to take into consideration in its determination of the case- see the Appellants skeleton arguments at **[AVS. 503. 47 - 73]**. ***The Public Interest Issue***: There is a clear and demonstrable point of significant wider public interest in the case. It is submitted that the ET failed to take a broad judgment taking account of the public interest involved- see the Appellants skeleton arguments at **[AVS. 503. 74 - 82]**. ***'Meek' compliancy***: The Tribunal erred in failing to give reasons for its general conclusion. The ET erred in law. The decision was based on a series of unreasonable demands and criticisms of the Appellant, all of which could not be said to be permissible and/or could not in any event legitimately lead to a decision being made against the Appellant- see the Appellants skeleton arguments dated 23 September 2012 **[AVS. 503. 100 – 109 & 114]**. Also se ***Relevant Law*** –see **[AVS. 503.100 - 119]** and **[AVA]**- the Appellant's authorities bundle. ***The Appellant's Application to Disclose Chairman's Notes***: see the Appellants skeleton arguments dated 23 September 2012 **[AVS. 503. 131 - 133]**. ***The Failure to Appoint a Full Panel***: It is submitted that the approach taken by the Judge during the PHR in relation to the covert recordings meant that the issue being determined by the ET became a question of fact and not just law. Fact-finding was then in play- see the Appellants skeleton arguments at **[AVS. 503. 134 - 137]**.

20. Both the ET and EAT have permitted the Respondents application, which was made in July 2012. The Respondents' are attempting to use their newly-gained knowledge, (that the Appellant made covert recordings), as a line of defence. However, it is clear that this is new evidence, which had been gained unfairly by the Respondents'. The Appellant will be at an unfair disadvantage if she is not permitted to adduce the excluded evidence, which shows that she was discriminated against and therefore that her precautionary measure (to covertly record) was justified. The Respondents' reference to the covert recordings in its pleadings is a perfect example of why the covert recordings/transcripts should be admitted into evidence, see **[C1. 528. 21L]** :

'The Respondents' admit that the Claimant's coat was removed from an investigation meeting due to the fact that they suspected that the Claimant was seeking to covertly record these meetings and other discussions in circumstances where the Claimant had denied that she was making recordings and had been unequivocally told that consent had not been given to record meetings. The interview room did not have coat stands in the room but had a wardrobe outside where coats were usually hung for meetings. The Claimant's coat was placed in this wardrobe. In light of the Claimant's applications to the Tribunal and the reference to covert recordings in case number 2313031/2012A the Respondents' submit that these suspicions were reasonable and well founded'

21. ***The Appellant's pleaded case***: see **[AVS. 503. 63 – 65, 76, & 138 – 138.31]** and **[AVS. 395 – 401]**. The Appellant has pleaded that the Respondents' actions/inaction, since April 2011, constitute discrimination, PIDA detriment and a breach of her human rights, including the allegations made by the Respondents' (directly and indirectly inferred against her), including the perceptions, were false; that the Respondents' failed to conduct a proper, fair and impartial interview investigation, including publishing statements that the Appellant has not made/were not made by others etc); publishing what they knew to be false/defamatory statements about the Appellant (inside and/or outside Lewisham); that individuals had fabricated/falsified evidence against the Appellant, but no attempt was made to question them about this during the SOSR hearing and she was prevented from asking questions about this; that the Respondents' wilfully gave false evidence during the SOSR process and that these actions constituted discrimination, PIDA detriment and a breach of her human rights. To exclude the evidence would prejudice her in the proper prosecution of her case- see the Appellants skeleton arguments at **[AVS. 503. 54 - 62]**. Some of the disputed facts/allegations include: **a)** the Respondents' subjected her to unnecessarily long investigation interviews and internal hearings **[AVS. 503. 64]**, which the Respondents' refute, **b)** The Respondents' deny that the Appellant was prevented from speaking during the investigation interview on 4 November 2011 **AVS. 503. 65]**, any allegations of false or evidence falsified/fabricated **AVS. 503. 65]**, **c)** that the hearings were not conducted in a fair and impartial manner **[AVS. 503. 65]**, **d)** and that the Appellant was prevented from asking questions of witnesses etc **[AVS. 503. 65]**. The Appellant made specific allegations in her pleadings (original and amended) relating to the covert recordings in claim number 2313031/12 **[AVS. 503. 138 – 138.31]**.

22. Where facts are disputed the employment tribunal must resolve them by admitting and evaluating evidence about them. The Respondents' also deny that they were required to produce an SOSR investigation report, (however the Appellants covert recording of her conversation with a Union rep before the SOSR hearings took place, disproves this). The Respondents have called the Appellants' general conduct throughout her employment and

her good character into question. They sated that her conduct throughout was unacceptable. The Respondents' should be held to full public account for these intentional false allegations and perceptions which have been transmitted and /or published both verbally and in writing and the Appellant will also be seeking stigma damages (a record of ill health and the fact that the Appellant had to take legal action against her employer- these facts will debar her from gaining further employment). The Respondents' have ended the Appellant's career (and all prospects of future employment in her chosen career, and even any other, earning the same level of income in her current field, because of the stigma), on findings involving false, discriminatory, malicious and defamatory allegations.

23. ***Recusal Application and Conduct of the Tribunal- Improper Conduct, Procedural Irregularity and an appearance of pre-judgement*:** see the Appellants skeleton arguments dated 23 September 2012 **[AVS. 503. 142 - 156]**. ***Perjured evidence of the Respondents' and making up evidence against the Appellant***: **[AVS. 503. 158- 167]**. The exclusion of the covert recordings and transcriptions would cloak acts of discrimination and perjury. It would also leave her at great risk of yet another extreme cost order, because she will be prevented from being able to prove her case. The Appellant believes that the Respondents' will knowingly give what they know to be false witness statements, and lie on the witness stand during the forthcoming hearing in October 2013. Some examples of the Respondents' lies/false allegations, which the Respondents relies on as part of their defence, (and which the covert recordings/transcripts disprove), is set out in LBL's dismissal letter, (which was also put before the ET), **[C1. 476. 45, 47 – 48, 63 & 497. 21c]** & **[AVS.266]**, and which for example conveys that the Appellant was allegedly obstructive, intimidating, dishonest with regard to the issues raised during the SOSR process, incompetent, lazy, unruly and unbalanced. The Respondents' deliberately ensured that their case was in opposition to what they knew to be true and to what the Appellant's case was, in order to deliberately represent the Appellant had manifested these particular deficiencies to them and was therefore not fit for her office/job/post/purpose, hence her subsequent dismissal. The Appellant's excluded evidence proves that the Respondents' made the statements, knowing them to be untrue and in order to 'get rid' of the Appellant. The excluded evidence disproves the Respondent's pleaded case/grounds of defence. It also shows that the she was singled out from her team and treated less favourably/differently. It proves that the Respondents' provided false equality form responses and submitted false evidence to the ET and that the Respondents' failed to follow a fair procedures in relation to her grievances, suspension and dismissal.

24. **The relevant recordings/transcripts of the events that are in dispute and which the Appellant wishes to admit are as follows:**

a) **The Occupational health consultation with Dr Williams' x1:** a named person that the Appellant has alleged that the Respondents' unlawfully induced
b) **The workstation risk assessment with an independent assessor**
c) **Telephone calls with Unison rep x4 :** which support the Appellant's case/version of events
d) **Telephone call with Christine Grice:** (*an individual respondent*) **x1**

e) **Telephone calls with Elaine Smith:** (*an individual respondent*) **x5**

f) **Meeting with Chris Threlfall and HR x1**:

g) **Meeting with Christine Grice and HR x1**:

h) **1-2-1 Meetings with Elaine Smith x3**:

i) **Meeting with Christine Grice and Elaine Smith:** (individual Respondents') **x1**

j) **A 1-2-1 meeting with Valerie Gonsalves:** (*an individual respondent*) **x1**

k) **Team meetings** (which feature all the individual Respondents')**x4:**

l) **The meeting where the Appellant was suspended** (with Christine Grice and which depict her predetermining the outcome of the investigation) **x1:**

m) **Investigation interviews with Christine Grice, HR and Unison reps** (The Unison reps make numerous comments which the appellant believes support her allegations)**: x3**:

n) **3 SOSR hearings** (which feature all the individual Respondents') **x7**

25. The Appellant had previously brought employment tribunal proceedings involving the first and second Respondents', in relation to claims of discrimination and bullying in the workplace. The claims have been on-going since April 2010 and relate to incidents from September 2009 to 2011. The Appellant did make covert recordings in relation to these proceedings at all, so it is clear that she felt that there was no other way to protect herself but to resort to such a measure in relation to this case. It was not a decision she took lightly. The Employment Appeals Tribunal have regularly exercised their Part 32 powers to admit covert recordings/transcripts when a fair trial was at stake (as is the case here), so even though the Respondents' are seeking to prevent the admission off the evidence, for issues such as discrimination, (as in the present case), it should be permitted. The Appellants' covert recordings and transcripts prove that the Respondents' engaged in discrimination and that their actions (which resulted in her dismissal), were actuated by malice, spite, ill-will and vindictiveness against her. They evidence the fact that managers, (who are also individual respondents') knowingly/willfully providing false information and making false statements and prove that the senior managers behaved improperly and unlawfully, had untoward motives/agendas as such, they lied to protect themselves. The recordings and transcripts support the Appellants' allegations that the Respondents' consistently produced inaccurate/fabricated minutes of meetings and hearings and omitted crucial statements made by the Appellant and by others who attended- which demonstrated discrimination, bias/conflict of interest, in terms of absent content, misinterpretations, false accounts and publishing statements the Appellant did not make. The excluded evidence, (covert recordings/transcripts) was clearly available to the individual Respondents', by virtue of the fact that it showcases them. However, the fact that the Respondent's employees were unaware that the recordings existed was not the basis upon which the ET excluded the evidence- see paragraph 18 above.

EAT Procedural Applications

26. ***The Appellant's Application to admit 'fresh evidence':*** On 28 October 2012 at 10.11 the Appellant e-mailed the EAT to make an application to admit fresh evidence. The Respondents' objected to this. In her application, the Appellant advised the EAT that she had sent the Respondents' e-mails which set out excerpts of the covert

recordings, (which included the meeting where she was suspended by Christine Grice). The recording depicts Christine Grice, (the individual Respondent that investigated the Appellant); clearly making statements which showed that she had predetermined the outcome of her investigation of the Appellant. Following this meeting Christine Grice sent the Appellant a letter categorically denying that she had made the statements. This recording specifically relates directly to one of the Appellant's allegations/claims. In her application to the EAT the Appellant also set out other excerpts of the transcripts which she had sent to Lewisham Council. On 19 November 2012 the EAT refused the Appellants' application to adduce fresh evidence.

Application to submit documentation exceeding 50 pages

27. The Appellant applied to submit documentation exceeding 50 pages on 15 November 2012 **[AVS.609]**. The documentation had previously been presented to the EAT at the rule 3(10) hearing, which resulted in her appeal being set down for a full merits hearing. The Respondents' objected to this, even though the Appellant had previously presented the EAT with more than 50 pages of supplementary documentation, (which included in excess of 100 pages of skeleton arguments) at the rule 3(10) hearing, which were relevant and crucial to her case. The Appellant followed this up with further supporting arguments and evidence between November 2012 and 12 December 2012 **[AVS. 611 -613 & 615]**, indicating that she had significantly reduced her bundle. On 24 November 2012 the Appellant requested a 'reasonable adjustment'- that the EAT extend the length of the hearing from 3 hours to a day, **[AVS. 620]**. The Respondents' sent the Appellant and the EAT their final bundle indexes on 13 December 2012.

28. On 14 December, the EAT registrar sent the Appellant the decision on her application to submit documentation exceeding 50 pages and her request for a reasonable adjustment **[AVS. 624]**. It incorrectly stated that her bundle carried 151 separate items; it carried far less than this. The Appellant was informed that the decision regarding her request for 'reasonable adjustments' would be given on the day of the hearing. Much to the Appellant's astonishment, the registrar described the documentation that she had previously relied on and was seeking to rely on again, as '*unnecessary*'. The Appellant was informed that the Registrar had taken '***the unusual step of directing that the respondents' two separate bundles and its two supplementary bundles shall be paginated and shall be adopted as the core bundles for the appeal'*** and the Appellant may lodge a supplementary bundle of her own but would require leave of the court to refer to it.

CONCLUSION

29. The full details of the Appellant's concluding arguments are set out in the Appellants skeleton arguments dated 3 September **[AVS. 436. 128 - 134]** and 23 September 2012 **[AVS. 503. 182 - 189]**. ***General principles:*** In these two consolidated cases the Tribunal exercised its discretion contrary to principle, in disregard of relevant factors and the decisions are just plain wrong, as set out in the case of ***McPherson v BNP Paribas*** [2004] IRLR 558, paragraph 26 **[AVA. 12]**. In that case it was held that the appeal court should read the reasoning of the tribunal as a whole, see paragraph 36. As to the correction of an error of law committed by a judge who is exercising a

judicial discretion, the law is equally clear. The leading case is ***G v G*** [1985] 1 WLR 647, which contains references to the well known judgment of Asquith LJ in Bellenden (formerly Satterthwaite) v Satterthwaite [1948] 1 All ER 343 at 345 **[AVA.1.para 9]**. For an appeal to succeed, the exercise of discretion which is challenged must, in Asquith LJ's words: *'Exceed the generous ambit within which reasonable disagreement is possible*'.

30. The Employment Tribunal misapplied the law and/or misdirected itself in deciding these two consolidated cases. The Appellant believes that the decisions of the Tribunal are legally flawed. The Tribunal exercised its discretionary powers of case management under rule 10 of the Employment Tribunal (Constitution and Procedure) Regulations 2004, which the Appellant believes are challengeable, on what may loosely be called "Wednesbury" grounds. The Appellant believes that the tribunal has exercised the discretion under a mistake of law or disregard of principle, under a misapprehension as to the facts, where it took into account irrelevant matters and failed to take into account relevant matters. The Tribunal's discretion was not properly exercised.

31. There is ground for upholding the Appellant's appeal on the cost order and her application to admit covert recordings and transcripts into evidence. The covert recordings will demonstrate the fact that the Appellant was unrelentingly punished and vilified and had numerous malicious false allegations made against her by the Respondents'. Just because the Appellant blew the whistle and she was unwilling to permit the undoing of her legislative, human rights and dignity, they concocted despicable untruths and savaged her reputation. Everything the Appellant worked for, for so many years has been taken away by Lewisham Council. There has been serious and widespread misconduct by these servants of the government. Trying to discredit those that are prepared to expose the abuse of employment rights and the system will never lead to the provision of a fair and just legal system. The transcripts have already been prepared by the Appellant and all that remains is for them to be agreed between the parties for the purposes of the full hearing. The Respondent will be given the full opportunity to authenticate them. This approach is entirely in keeping with ***Dogherty v Chairman and Governors of Amwell View School*** [2006] UKEAT/0243/06/DA **[AVA. 15]**, paragraphs 18 and 75. The Appellant sent the EAT a copy of the ET's notice of hearing with her application to vary the EAT's order dated 31 October 2012. The full ET hearing will take place in **October 2013**.

ORDERS SOUGHT

32. 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 allow the Appellant's appeal on the cost order and set aside the judgment of the ET (having regard to the fact that the detailed cost assessment hearing is due to take place on 18 and 19 March 2013 **[AVS.435]**; and
    b) Permission to admit the covert recordings and transcripts as evidence (allowing the Appellants' already transcribed material), as no other approach is reasonable, just, appropriate or time permitting.

Ms AA Vaughan

16 January 2013