IN THE LONDON SOUTH

EMPLOYMENT TRIBUNAL

CASE NUMBERS: 2300254/2011B

2375023/2011B

& Others

BETWEEN:

Ms A A Vaughan

Claimant

-and-

London Borough of Lewisham and Others

Respondent

PRE-HEARING REVIEW

STATEMENT OF AYODELE ADELE VAUGHAN

(Please be advised that the Claimant has paginated the pages at the bottom, in the centre of documents)

I, Ayodele Adele Vaughan of, CENSORED, make this statement:

1. I was employed by Lewisham Council. I was TUPE'd in from Careers Enterprise Limited on 1 April 2011. Careers Enterprise Limited was responsible for delivering the Connexions contract in Lewisham. Lewisham Council decided not to re-new its contract with Careers Enterprise Limited and the Connexions

service closed on 18 March 2011. I began working for the Connexions service in March 2004, under London East Connexions Partnership. Prospects took over the contract for the Connexions service in 2006. VT Group PLC's subsidiary, Careers Enterprise Ltd (VT Enterprise) took over the Connexions contract in the first week of August 2008. Babcock International Group PLC took over the VT Group PLC on July 8th 2010 and their subsidiary, Careers Enterprise Limited (BabcockEnterprise) took over the Connexions contract on this date.

2. The Tribunal's Order dated 28 March 2012 stated that the Respondents' cost application will be dealt with as part of the PHR. I have therefore dealt with my response to the application for the cost order as part of my written statements and submissions for the PHR. The Respondents' (LBL) however are refusing to accept that the cost order is an issue that is being dealt with as part of the PHR and have refused to include crucial evidence that I wish to rely on in the joint bundle. I was advised by the respondents' to prepare a separate bundle to include those pieces of evidence. The Tribunal was copied into correspondence regarding this issue.

3. I believe that the Respondents' breached the Tribunal's order dated 28 March 2012. The respondents' failed to disclose all their evidence to me by 4pm on 5 April 2012, including several pieces of evidence in the bundle after this date, (without informing me that they had done this and without my consent). In addition they advised me that I would not receive a complete copy of the bundle until 16 March 2012. The Tribunal was copied into all correspondence regarding this issue, (including the Respondents' response to my allegation that it had breached the Tribunal's order).

4. I made an amendment application for claim number 2375023/2011B on 15 and 25 August 2011 **(page numbers 32 - 46 of the claimant's pack & 211 - 225 of the joint bundle)**. None of the Respondents' have objected to these applications, **(page numbers 47 & 50 – 53 of the claimant's pack & 230, 235 & 237 of the joint bundle)**.

5. On 30 September 2011 **(page numbers 52 - 54 of the claimant's pack & 237 of the joint bundle)**, the respondent (Marina Waters') made a strike out application and indicated that she intends to make a cost order if the case goes to a full hearing, alleging that I had made false allegations against her. On 1 October 2011 I wrote to the Tribunal (copying in the respondents'), objecting to respondents strike out application and set out my reasons why **(page numbers 55 – 56 of the claimant's pack & 239 of the joint bundle)**.

6. It is important to note that Marina Waters' ET3 and a statement she provided to LBL **(page numbers 26 - 29 of the claimant's pack)**, her own ET3, **(page number 116 of the joint bundle)** and LBL's equality form response, (which I will be submitting at the full hearing), are contradictory regarding the basis of my claim against her. This evidence alone supports my allegation that she lied to me during my OH consultation with her on 20 July 2011. An LBL employee and individual respondent has stated that Marina Waters' requested the meeting, (evidence will be provided at the full hearing), this is refuted by Marina Waters in her statement that she provided to LBL. Tanya Davis accompanied me to my consultation with Marina Waters' and has will be providing witness testimony

supporting my claims against Marina Waters. She has submitted a witness statement for the PHR confirming this.

7. Issues d) and e) are not claims that I have made. I made this clear in my letter to the Tribunal dated 26 September 2011, **(page numbers 49 of the claimant's pack & 232 of the joint bundle)**, which was acknowledged by LBL, who also highlighted this fact in its letter to the Tribunal dated 28 October 2011, **(page number 58 of the claimant's pack & 242 of the joint bundle)**. Theses matters have been included in my pleadings purely as background information.

8. Careers Enterprise Ltd and Babcock Education and Skills Ltd also wish to be dismissed from proceedings. It is my understanding that the section 108 of the Equality Act specifically prohibits post-employment discrimination and harassment. CEL and BED engaged in 'continuing acts' up until 31 March 2011 and on and after my transfer to LBL on 1 April 2011, when the liability for my ET claim against them also transferred. With regards to my former employer's agent Babcock Education and Skills Limited (BED), it is also unlawful for a person to instruct, cause or induce a person to commit an act of discrimination or harassment in the context of relationships which have come to an end. At the time of lodging my claim, I believed that my former employer instructed, caused or induced BED to unlawfully discriminate against me and/or BED unlawfully aided my former employer to unlawfully discriminate against me. I believed this because LBL set out in its ET3 that it received no information from them regarding my disability. Therefore I believed that this was an act of discrimination and harassment, (as set out in my pleadings for this claim).

9. On 5 April 2011 I received evidence from CEL's and BED's representatives to the contrary, **(page numbers 196 - 210 of the joint bundle)**. I also asked the Respondents' to include Paris Smith's e-mail dated 5 April 2012, but it failed to do so. However, I have a copy of the e-mail which I can show to the Tribunal. The respondents' had previously failed to disclose this information. Now that I have been provided with this evidence, I will agree to dismissing CEL and BED from the proceedings for claim number 2375023/2011B.

10. The respondents' have made an application for a cost order in relation to claim number 2318353\2010 & others. This application is scandalous and vexatious. It is the Respondents' case that my claims have been misconceived from the outset, however, when it applied for a cost order in June 2011 it had the opportunity to rely on this ground but it did not, **(page numbers 16 - 23 of the claimant's pack)**. This is clear evidence that the respondents' did not believe that my claims were misconceived. In any event, that cost order application was not granted.

Matters or Events Leading to the Action

11. The matters or the events leading to the action can be traced back to 2010 when the proceedings of this employment case started. I have had to conduct my case all by myself, even though I am not legally trained and have no experience in how to conduct at a hearing, and it has been especially difficult for me as a litigant in person with a mental health condition (depression) that I have been battling throughout the course of these proceedings. There are events more critical than others in leading to the action.

Appeal at EAT

12. A notable action against my case was to remove my evidence post-December 2010 from trial bundle. I complained about the respondents' action to the ET but it refused to order the respondents' to put the evidence back in. I was also prevented from referring to any incidents' post-December 2010 in my witness statement. I appealed this decision at the EAT. I attended the EAT on 5 January 2012 for a Rule 3(10) hearing. Judge Serota warned Mr Dobbin, that he believed that I had an arguable point with regards to this issue and that he was inclined to order a full appeal hearing if Mr Dobbin did not agree to put the evidence back in the trial bundle. Mr Dobbin then stated that he was happy for the evidence to go back in. 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. On 5 April 2012 at 9.33 I asked the Respondents' to include the correspondence from the EAT in the bundle, but they failed to do so.

13. I had to fight for two months to get the removed evidence placed back into the trial bundle. This was an extremely traumatic experience for me and I also incurred enormous costs. Once again, I did not have experience in and knowledge of the appeal process and I represented myself. It is important to note that I never made any application for costs against the respondents' even though I could have made a cost application to the EAT.

14. It is important to note that the respondents' are continuing with this type of conduct, by stating in their CMD agenda that I should not be permitted to include

any evidence post-November 2011 in the trial bundle, even though it is clear that I will need to rely on this as background and supporting evidence:

a) All the witness statements etc related to the un-stayed part of claim number **2300254/2011B** are clearly highly material to the stayed element of the claim which will be heard. Some of this evidence is dated post-November 2011. Background evidence is permissible; and

Particularly in relation to my claims set out in my pleadings that the respondents':

b) Were trying to get rid of me, (paragraph 80) of claim number **2375023/2011B**, which they subsequently succeeded in doing on 13 April 2012, as a result of fabricating/falsifying evidence against me, (which my supporting evidence post-November 2011 proves); and

c) Unreasonably protracted my suspension, as set out in claim number 2390531/2011; and

d) Failed to make 'reasonable adjustments' (keeping in force a PCP/regime), as set out in both claims

15. The evidence post-November 2011 also sheds light on the respondents' motivation and proves that there was a culture of discrimination:

a) The respondents' (Deborah Francis, Bev Bannister & Ben Craig) perjured themselves on the witness stand in January 2012, this will go to the heart of the issue of credibility; and

b) The respondents' disclosed an e-mail to me on **5 April 2012** which reveals correspondence between CEL's representatives and LBL on 31 March & 1 April 2011, which evidence's the fact that LBL (HR) were aware of my disability, but have maintained all along- (even up until my dismissal this month), that they did not have sufficient information and as such LBL was still questioning my disability status at its SOSR hearing. It is important to note that in evidence dated post-November 2011 there is e-mail correspondence between myself and HR, which evidences the fact that HR were in possession of my full medical records well before that point; and

c) That LBL would have had access to my full medical records **since 1 April 2012**; and would have been particularly focused on it during **December 2011** and **January 2012**, when there was a dispute over its inclusion in the trial bundle for the hearing in January 2012.

16. The respondents' legal representatives submissions dated **January and February 2012** also evidence the fact that the respondents' conceded that I am disabled.

The perjured evidence of the Respondents' during proceedings

17. The respondents' perjured themselves during the proceedings **(at pages 1- 2, 6- 10, 14 - 15 & 116 – 133 of the claimant's pack)**. I also wrote to the ET about this matter **(at pages 134 - 137 & 140 – 162 of the claimant's pack & 325 – 326, 328 - 331 & 334 – 337 of the joint bundle)**. I believe that the perjured evidence vitiated the Tribunal's general conclusions as well as the decision to dismiss all the appellant's claims. The respondents' Counsel also supported the respondents' perjured evidence and the Respondents' did not deny my allegation **(at page 132 & 138 – 139 of the claimant's pack & 332 of the joint bundle)**. I e-mailed the ET on 21 March 2012 objecting to the Respondents' application for a cost order **(at page 163 of the claimant's pack & 340 of the joint bundle)**.

The Respondents' approach to the settlement discussions was carried out in 'bad faith' and as a means to intimidate/threaten the Claimant

18. Mr Dobbin wrote to me on 22 November 2011, with a settlement offer, which I rejected because amongst other things, there was a clause in it regarding LBL wishing to reserve its right to make a safeguarding referral, '*(save for any claim relating to any breach of statutory duty and/or any claim relating to safeguarding)*' **(at pages 80 - 88 of the claimant's pack)**. It is important to note that the previously drafted contracts did not include this clause **(at pages 3- 4, 11- 13, 24 – 25, 30 – 31, 60 – 77, of the claimant's pack)**. When I challenged LBL's legal

representatives about this **at pages 89 – 90 of the claimant's pack)**, the response was as follows: '*I have removed the words "save for any claim relating to any breach of statutory duty and/or claim relating to safeguarding". However the London Borough of Lewisham cannot contract out of its obligation to make a safeguarding referral should it become aware of facts or circumstances which would require a referral. However I have included a new clause 11 which is confirmation that the London Borough of Lewisham isn't aware of any such facts or circumstances, which should hopefully give the claimant the comfort she requires in this regard. The wording of clause 11 is currently being checked by Lewisham, and is subject to their approval*' **(at page 92 of the claimant's pack)**.

19. I wrote to LBL to complain about the above on 13 December 2011 **(at pages 110 – 111 of the claimant's pack)**. The Respondents' approach to the settlement discussions were carried out in 'bad faith' and as a means to intimidate/threaten me.

20. On 16 November 2011 Mr. Dobbin also wrote to me again warning that the respondents' would apply for costs if she still refused to settle the case **(at page 68 of the claimant's pack)**. On 8 November 2011 I had already agreed to settle **(at page 69 of the claimant's pack)**, but the Respondents' still decided to progress to a full hearing and incur costs **(at page 100 - 108 of the claimant's pack)** which far exceeded the amount that she had agreed to settle for. I had stated in part of this correspondence that I did not have any holiday pay claims, this was obviously an innocent error and would have been rectified had settlement negotiations continued. The fact that the respondents' had attached a

figure of £3000 confused me, as my holiday pay claims would not be worth this much.

21. The respondents' have indicated that my claims were misconceived from the outset. But it is clear that my case was not. If they really believed this to be true the offers would not have increased so dramatically during the course of the proceedings, from £10,000, to £30,000, and then £40,000 **(at pages 3 – 4, 11 – 13, 24 – 25, 30 – 31, of the claimant's pack)**. There were also global settlement offers of £75,000 and £95,000 **(at pages 60 – 67, 80 – 88 & 91 – 99 of the claimant's pack)**. There were no deposit orders made. Instead, from the start the Respondents made settlement offers, which have progressively increased throughout the proceedings. The Respondents' application is therefore too much of a pendulum swing to be credible.The term 'misconceived' is defined as including 'having no reasonable prospect of success', although this definition is not exhaustive we can presume that 'misconceived' applies if the applicant cannot make their case out in law. I clearly did. There were two PHR's which took place prior to the full hearing and at no time at all did the respondents' make an application for my case to be struck out on the basis that it was misconceived/ it had no reasonable prospect of success. In any event, the Tribunal's judgment in that case in now the subject of an appeal at the EAT **(at page 164 of the claimant's pack)**.

22. Further to this, under Rule 7, a party whose case has been deemed to have no 'reasonable prospect of success', can be ordered to pay a deposit as a condition of being permitted to continue to participate in proceedings. The Tribunal should

not make a cost order because I was not required to pay a deposit, therefore the following does not apply:

'*A costs order can be made pursuant to Rule 47 of the Employment Tribunal Rules 2004 where a litigant has pursued a claim in the face of a deposit order and where that claim has failed on grounds that "were substantially the same as the grounds recorded in that document for considering that the contentions of the party had little reasonable prospect of success'.*

23. In the light of this, I would have to be guilty of some improper or unreasonable behavior/conduct of the proceedings during the hearing itself for there to be a sufficient ground for awarding costs. It is still weak to use this alternative ground. My actions made during the hearing were not unreasonable and/or unlawful in nature. However, I submit that the respondents' actions have been throughout.

24. The nature of the unreasonable conduct of the proceedings made by those other parties may include the following:

    a) Wasting valuable tribunal time on a matter which could have been dealt with easily: I requested a PHR in August 2010, to establish the correct respondent. I did not know that it was just a simple matter of 'relabeling the facts'. I only realized this for the first time on at the PHR, because Judge MacInnes asked my employer's solicitor if they had not considered that this was what I was trying to do. The solicitor's simple reply to that question was 'yes' **(at page 5 of the claimant's pack)**; and
    b) The Respondents' unreasonable refusal of my initiatives to settle the case; and

c) The Respondents' approach to the settlement discussions (carried out in 'bad faith' and as a means to intimidate/threaten me).The Respondents and their legal counsel, have consistently acted in a threatening and abusive manner, introducing scandal at every opportunity in order to frighten me from making just and rightful claims against them; and

d) The Respondents' perjured evidence: The Respondents repeatedly provided the Employment Courts with false testimony all of which has previously been exposed and has been again in this hearing. This is a vexatious and disruptive act designed to further pervert the course of justice. Not only have the actions of the Respondents been blatantly illegal but are also an abuse of process; and

Severe consequences of unreasonable conduct by those other parties

25. It is known that, as the results of the unreasonable conduct by those other parties, the ET made decisions to dismiss all my claims, (and with obvious errors of law) and the long and drawn out proceedings have had a devastating impact on my health.

26. All these events plus the unreasonable refusal of my initiatives to settle the case, (I made reasonable counter offers), resulted in unreasonable protraction of the proceedings and costs incurred by me. This has also caused no proper resolution of the 'stayed' part of the employment case so far.

27. If the Respondents' really believed that my case had no reasonable prospect of success they would not have made numerous offers to settle and engaged in

unreasonable, vexatious and scandalous conduct, (including removing my supporting evidence from the bundle). This was a desperate attempt by the respondents' to try to suppress it and ensure that it never came to light. This is not the actions of a confident party.

28. It is submitted that the respondents' defence during the proceedings has been wholly false, the true state of affairs being within that party's own knowledge, as is indicated by the nature of its language during settlement negotiations in relation to that case, resulting in significantly prolonged proceedings and commensurately increased costs for me.

29. I do not have the means to pay costs. A record of my monthly income and expenditure and supporting evidence was provided to the respondents' on 12 April 2012. I am able to provide the Tribunal with copies of those documents. I am now also unemployed, having been dismissed by my employer on 13 April 2012 **(at page 404 of the joint bundle)**.

30. The Respondents' question whether or not I own any property. It is obviously clear that I do not. If I had this type of assets I would not be living in social housing, (please refer to the evidence sent to the Paris Smith on 12 April 2012), have submitted a claim for benefits, (as I would be submitting a fraudulent application) and been unrepresented since April 2010. I can show the Tribunal and the Respondent's correspondence from the Jobcentre regarding my claim for benefits, which I received on 13 April 2012. The Respondents' are 'clutching at straws' and being vexatious, extremely unreasonable and illogical. In addition, I

am under oath and unlike the Respondents' I am not happy or willing to perjure myself.

31. In support of this witness statement and my evidence, I have also provided written submissions.

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

Ayodele Adele Vaughan

Date: 16 April 2012