IN THE LONDON SOUTH

EMPLOYMENT TRIBUNAL

CASE NUMBERS: 2375023/2011

& Others & 2357975/2012

BETWEEN:

Ms A A Vaughan

Claimant

-and-

London Borough of Lewisham and Others

Respondent

PRE-HEARING REVIEW

21 March 2013

Written Submissions for Ms AA Vaughan

PREAMBLE

References in these written submissions to the Claimant's Bundle are in the format [AV. xx . x] in these submissions are to [bundle. page. paragraph]. AVA.x.x] is to [page] in the Claimant's Authorities bundle:

INTRODUCTION

1. I was employed by the London Borough of Lewisham (LBL). I was TUPE'd in from Babcock on 1 April 2011. The above claims are lodged against Lewisham Council, its Chief Executive and other senior management, (including 7 individual Respondents') and Babcock. The claims relate to

unlawful disability discrimination, post-employment discrimination, PIDA detriment, unfair dismissal, breach of contract and human rights breaches.

2. This Pre-Hearing Review had previously been listed to take place in February 2013, however due to my illness (depression) and the fact that I underwent an operation on my lower back on 23 January 2013; I was not fit to attend and wrote to the Tribunal requesting that the hearing be postponed. I provided extensive medical evidence (GP fit notes for my psychiatric and physical conditions, a hospital letter and a letter from my GP). After some delay, the Tribunal wrote to parties advising that Judge Balogun was unavailable for the hearing listed to take place in February and that it would write to parties with a new date shortly. I have struggled to prepare for this hearing, but was lucky enough to have received help with the preparations.

3. In November 2012 the Respondents' (Babcock) made applications to consolidate claim number 2357975/2012 with the 2300254/2011B & 2375023/2011B and Others and to 'strike out' claim number 2357975/2012. Lewisham Council & the individual Respondents' are in support of Babcock's application to consolidate claim number 2357975/2012 with the other claims, but have not made any application to this effect or to 'strike out' the claim. I objected to the Respondents' applications.

4. On 20 November 2012 I made an application for a stay of proceedings in relation to claim number 2357975/2012 **[AV.134]**. On 12 February 2013 I made applications for the Tribunal to reconsider its decision on the admissibility of the covert recordings and transcripts and for it to strike out Lewisham Council's response to claim number 2375023/2011B and Others **[AV.222]**. On 23 February 2013 I made an application for a stay of proceedings in relation to claim numbers 2375023/2011 and others pending the outcome of my defamation hearing against the Respondents'

Lewisham Council and several of its senior managers **[AV.269]**. The Respondents' have objected to all my applications **[AV.137, 264, 280, 289]**.

5. The Tribunal wrote to parties on 12 February 2013, setting out the issues to be considered **[AV.220]**. The issues that it stated were to be considered are:
    a) Whether to grant my applications for a 'stay' of proceedings in relation to claim number 2357975/2012?
    b) Whether to grant the Respondents' (Babcock) application to 'strike out' claim number 2357975/2012?
    c) Whether to grant the Respondents' application (Babcock) to consolidate claim number 2357975/2012 with claim numbers 2300254/2011 and 2375023/2011 and others (*and which hearing this claim should be heard at*)?

6. The issues that it I also asked the Tribunal to consider during this hearing were:
    a) Whether to grant my applications for a 'strike out' of the Respondents' response in relation to claim number 2375023/2011 and others? **[AV.222]**
    b) Whether to grant my application dated 12 February 2013 for it to reconsider its decision dated 7 August 2012 regarding the admissibility of the covert recordings and transcripts? **[AV.222]**
    c) Whether to grant my application dated 23 February 2013 for it to 'stay' proceedings in relation to Claim Number 2375023/2011 and others pending the outcome of my defamation case against the Respondents' to these claims in the High Court?

7. The Tribunal has refused to consider my application dated 12 February 2013 for it to reconsider its decision dated 7 August 2012 regarding the admissibility of the covert recordings and transcripts until the covert recordings are professionally transcribed **[AV.285]**. I assume that this means that it

will also not consider my application of the same date to 'strike out' the Respondents' response in relation to Claim Number 2375023/2011 and others, as the application relies on the same excluded evidence.

8. I did not received any letter from the Tribunal, (giving me the required 14 days notice that these two applications were to be considered), therefore, particularly in light of the Tribunal's approach to the issue of the covert recordings and transcripts, it is clear that the Tribunal does not intend to consider my applications any further during the Pre-Hearing Review and/or case management discussion. I therefore respectfully request that the Tribunal states in its decision/Judgment on this Pre-Hearing Review /Case Management Discussion (and clearly, in a formal letter to me), that it has refused my application(s) dated 12 February 2013, and that it will not deal with the application(s) until the covert recordings are professionally transcribed.

9. I do believe that the issue of whether or not to grant my application dated 23 February 2013 for the Tribunal to 'stay' proceedings in relation to Claim Number 2375023/2011 and others pending the outcome of my defamation case against the Respondents' to these claims in the High Court should be considered today as the Tribunal has not indicated that there is anything to stop it from doing so. I therefore respectfully request that the Tribunal also deals with this application in its decision/Judgment on this hearing.

10. On 11 March 2013 the Respondents' (Babcock and LBL sent their agreed proposed CMD agenda to me **[AV.335 & 336]**. I sent my CMD agenda to them on the same day **[AV.328]**. I make reference to my previous CMD agenda **[AV.85 a-g]**, which is also relevant to the claims being dealt with in this PHR/CMD.

Issues

The tribunal will have to decide the following issues, (including clarifying its position on my applications dated 12 February 2013- as set out in paragraph 10 above):

My application for a 'stay' of proceedings

11. Should the Tribunal grant my applications dated 20 November 2012 and 23 February 2013 for a stay of proceedings in relation to claim numbers 2375023/2011 and others and 2357975/2012?

The Respondents' (Babcock's) 'strike out' application

12. Should the Tribunal grant the Respondents' strike out' application in relation to claim number 2357975/2012?

The Respondents' (Babcock's) consolidation application

13. Should the Tribunal grant the Respondents' application to consolidate claim number 2357975/2012 with claim numbers 2300254/2011 and 2375023/2011 and others?

Submissions

My application for a stay of proceedings

14. Should the Tribunal grant my applications dated 20 November 2012 and 23 February 2013 for a stay of proceedings in relation to claim numbers 2375023/2011 and others and 2357975/2012?

15. Firstly it is important to point out the fact that the Tribunal gave the case a claim number, but the Respondents' later wrote to the Tribunal, resubmitting their response and citing a different claim number in relation to this case. I then contacted the Tribunal by e-mail, requesting that it clarify the confusion regarding the correct case number for the claim.

16. On 20 November 2012 at 18.10 **[AV.134]** I sent the Tribunal an e-mail objecting to the Respondents' application on the basis that the proceedings should not be conducted concurrently with the other proceedings and requested a 'stay' in the proceedings for claim, pending the just disposal of claim numbers 2300254/2011B and 2375023/2011B and others.

17. I requested that the Tribunal deal with the respondents' request for a pre-hearing review and 'strike out' application following the just disposal of the forthcoming full hearings for claim numbers 2300254/2011B and 2375023/2011B and others. I also asked the Tribunal to treat my application for a 'stay' in these proceedings as a request for a 'reasonable adjustment'. The Tribunal is already aware that I am unrepresented and disabled and that I suffer from depression. I have been signed off by my GP with depression since April 2012 **[AV.24, 43 – 53, 92, 181 - 182]**. My current sick note runs out in April 2013 **[AV.180a]** and I am likely to continue to be signed off due to the constant deterioration of my health from the pressures of being expected to deal with further proceedings in the Tribunal and the Respondents' continuing discrimination, victimization and harassment of me in relation to this case. I am taking two sets of medication for my condition, including anti-depressants. My GP has also advised that I would not be able to cope with any further proceedings in the Tribunal at this time (this letter was sent to the Tribunal in January 2013), and that this would have a detrimental impact on my health and his concern is such that I have been referred back to Maudsley hospital for CBT **[AV.181]**.

18. I already have to cope with the extensive preparations for the forthcoming 2 Tribunal hearings in September and October this year- which will run for 28 days and involve a substantial amount of work because it will require me to deal with around 90 allegations, more than 14 witness statements and two sets of bundles etc. Even a well seasoned legal professional would find it impossible to deal with additional proceedings on top of all of this, much less an unrepresented, disabled Claimant with a mental health condition like myself.

19. It is clear that I am already at a considerable advantage and I will not be able to manage any preparations relating to claim number 2357975/2012 before the disposal of claim numbers 2300254/2011B and 2375023/2011B and others. I am extremely vulnerable and I simply cannot cope. I seriously fear for my health and I am on the verge of a complete and utter breakdown.

20. I am an unrepresented disabled Claimant and the Equality Act 2010 places a duty on service providers to take reasonable steps to change any practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which they provide to other members of the public. I would therefore request that the Tribunal make adjustments to the arrangements for dealing with these proceedings (in line with my applications), in order to accommodate my disability.

21. My memory and concentration and ability to learn and understand are impaired as a result of my mental health condition. I also have eating difficulties, insomnia and I suffer from severe fatigue. Requiring me to deal with additional proceedings in the Tribunal, when the Tribunal is aware that I am unrepresented, I am disabled and I am already dealing with proceedings three sets of proceedings in the High Court, (defamation case, the court of appeal case and the Senior Cost Court), will put me at a great disadvantage as a disabled Claimant and exacerbate my medical condition, put undue pressure on me and confuse me, (making it difficult for me to understand the process and progress of my case). I do not believe that it is just or equitable for the Tribunal to impose such a requirement. This will present an additional barrier.

22. I do not believe that such a requirement pursues a legitimate aim and there would be no reasonable relationship of proportionality between the means employed and the aim sought to be achieved. In my view, this would also constitute an interference with my Article 6 and 14 rights. It‘s clear that

natural justice does require that the European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 is adhered to and as such I respectfully requests that the Tribunal grants my application for a 'stay' in these proceedings. It is submitted that my application/approach is in line with the overriding objective, ensuring that the parties are on an equal footing and ensuring that it is dealt with fairly etc

23. The Respondents' objected to my application for a stay of proceedings on 22 November 2012 **[AV.137]**, citing reasons which contradicted the reasons they had previously stated, in which they sought and were granted a stay of proceedings in relation to the claims that are due to be heard in September 2013 **[AV. 16.4 & 16.38]**- *Tribunal judgment dated 25 July 2011*. This contradiction is also evidenced by their letter to the Tribunal on 26 September 2011 **[AV. 19]**, stating that I should not be permitted to keep adding claims until the date of the hearing because this will make the case unmanageable. If it would be unmanageable for a law firm, imagine what the effect will be on me. This letter was included in my Pre-hearing review bundle that was submitted to the Tribunal in April 2012- *see the paginated page number at the centre of the bottom of the page*.

24. I responded to the Respondents' letter of objection on 22 November 2012 at 11.59 **[AV.139]**, highlighting the Respondents' clear contumelious and reckless disregard for my medical condition/disability and my fragile mental state. No one should be expected to cope with a hearing which deals with around 100 allegations, let alone an extremely vulnerable, unrepresented and disabled Claimant. Any requirement for me to deal with two sets of proceedings concurrently is clearly not in line with the Equality Act 2010 and the duty it places a duty on service providers to take reasonable steps to change any practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which they provide to other members of the public.

25. Although the Respondents' seem quite happy to breach my article 6 and 14 rights and place my health in further grave danger, I have every confidence the Tribunal will ensure that this is not permitted. The application is simply outrageous and unfathomable. The Respondents are clearly seeking to abuse the process and find even more ways to put me at a disadvantage as an unrepresented disabled Claimant and place my health in further grave danger. I therefore strongly object to such an approach.

26. The Respondents suggests that costs will be incurred if my application for a stay is granted. I strongly refute this and indeed there is no evidence to suggest that this will be the case if my application is granted. A 'stay' of proceedings would not threaten the fairness of the trial, but a refusal to grant my 'stay' application definitely would. In my view, it would be improper for the Tribunal to take into account the matters which the Respondent has set out in its letter objecting to my 'stay' application. I do not agree to claim number 2357975/2012 going ahead in any shape or form.

27. It would be oppressive, stressful and a denial of justice to me if my applications for a 'stay' is refused. It is clear that a court/tribunal has power to intervene to prevent injustice where the continuation of one set of proceedings may prejudice the fairness of the trial of other proceedings and it should exercise that power where there is a real risk of serious prejudice which may lead to injustice. As I am being prevented from evidencing the fact that the Respondents' lacked a belief in their allegations against me and that they were reckless as to the truth/falsity of them, (with my covert recordings and transcripts), if the Tribunal case is allowed to proceed first, the Tribunal will make adverse findings against me in relation to this, which would then prejudice my defamation case, as the High Court would be bound by this and other related findings.

28. On 4 December 2012 at 15.08, I followed my previous correspondence up with an e-mail to the Tribunal, attaching a letter that the Respondents' had previously sent to the Tribunal regarding their arguments for a stay of proceedings in this case **[AV.141]**. I pointed out that in relation to the previous case involving three consolidated claims and just 40 odd allegations, the Respondents' had previously argued that some of those claims be 'stayed' to make the case easier to manage and the Tribunal granted that application, stating that it was the proportionate way of dealing with the case **[AV.16.38]** and the Tribunal had also previously expressed concern about the impact on me as an unrepresented disabled Claimant **[AV.14.2]-** .***'The Tribunal is also concerned that the Claimant is a disabled person and whether the length of hearing would put her at a disadvantage'.*** I stated that in the current case there are more than 5 Claims and some 90 allegations and the Respondents' are now arguing the opposite and seeking to consolidate further claims.

29. I submitted that it would clearly be an inconsistent approach if the Tribunal were to now take the decision to grant the Respondents' application for consolidation, particularly in light of the matters and the other arguments that I had advanced regarding this issue.

30. On 23 February 2013 I wrote to the Tribunal and made an application for a stay of proceedings- asking for additional proceedings/claims to be 'stayed', (including the PHR on 21 March 2013), in relation to claim numbers 2375023/2011 and others and cited additional reasons for claim number 2357975/2012 to be stayed, which included the following:

    a) In practice Employment Tribunal proceedings are stayed when there are common facts to be determined by superior courts;

b) The Respondents' will use the PHR and the full hearing in October 2013 as opportunities to further publicly defame me, paragraph 30 of my particulars of claim for my High Court defamation case **[AV.184]**) and the Tribunal should not sanction this;

c) In the Respondents' e-mail to the Tribunal dated 18 February 2013 **[AV.264]**, they indicated that they did not propose to listen to the recordings at this stage, (but surprisingly, having allegedly not listened to them, they were still able to refute my allegations);

31. There are common facts to be determined in my High Court defamation and Court of Appeal cases., therefore the Tribunal should 'stay' the full hearing due to take place in October 2013, due to the fact that High Court proceedings, arising from the same facts, are underway- see attached High Court Notice of Issue **[AV.2]**, my claim form **[AV.146]** and particulars of claim for my defamation case **[AV.184]** and the Court of Appeal claim form **[AV.148]** and skeleton argument for permission to appeal **[AV.156]**.

32. It is clear that my particulars of claim for the defamation case deals with all the issues in claim numbers 2375023/2011 and others and that it also covers claim number 2357975/2012, **[AV.184.50 & 184.60]**, where findings of fact will need to be made by the superior Court: see **[AV.184.11.1f & g]** of my pleadings for my defamation case.

33. With regards to my Court of Appeal case, it is clear that the Court will need to make findings of fact on the allegations raised in claim number 2357975/2012: see **[AV.156.11 – 11.5, 156.15, 156.16, 56.21.1, 156.26, 156.29 & 156.33]** of my Court of Appeal skeleton argument. The Tribunal intends to deal with the issues which would require it to make findings of fact and/or assess the merits of the claims, which the superior Courts will also need to do. It is submitted that in situations like this, Tribunal proceedings are stayed so that a superior court can make appropriate findings of fact first.

The relevant Law and General Principles

34. In the case of ***Mindimaxnox LLP v Gover*** [2010] EAT/0225 **[AVA.10. 24, 31 – 33, 37, 41 – 42, 44 – 45 – 47 & 51]**, the principles governing a stay of proceedings were laid down by the Employment Appeal Tribunal- that a stay of the tribunal proceedings should be applied:

a) where there is a very substantial factual dispute about complex matters;

b) where there is considerable overlap in relation to the facts of the dispute;

c) so as not to embarrass the High Court (***First Castle Electronics Limited v West*** [1989] ICR 72 **[AVA.7. 72 - 73]**) or to put it in a straightjacket by limiting it to considering findings of fact made by the tribunal (***Automatic Switching Limited v Brunet*** [1986] ICR 542) **[AVA.2. 545]**.

35. In ***First Castle Electronics Ltd v West*** the Employment Appeal Tribunal identified a number of issues which ought to be considered by employment tribunals when exercising their discretion to stay proceedings pending determination of other proceedings. At first instance, the employment tribunal refused to order a stay of proceedings. An appeal was granted by the Employment Appeal Tribunal (Ward J presiding). The following factors were identified as being significant:

(a) the degree of overlap between the issues in the different jurisdictions;

(b) the complexity of the issues and the evidence;

c) the amounts at stake in the respective proceedings;

(d) the risk of there being findings of fact by an Employment Tribunal which could embarrass the High Court and on the contrary, the possibility of findings made by the High Court being helpful to an Employment Tribunal;

(e) the procedural complexity of the case;

(f) the rules of evidence (which may in the High Court be more suitable for the determination of particular issues);

(g) any prejudice which will be caused by the delay of a stay.

36. It is generally desirable to dispose of proceedings in the High Court first where the sets of proceedings are substantially similar, see ***GFI Holdings Limited v Camm UKEAT*** [2008] UKEAT/0470/11DM **[AVA.8. 16]**:

'It is generally desirable to dispose of High Court actions first where there are issues in both sets of proceedings which are substantially the same, see Automatic Switching Ltd v Brunet [1986] ICR 542. Cases such as Carter v Credit Change Limited [1979] IRLR 361, Bowater Plc v Charlwood [1991] ICR 798 and First Class Electronics Limited v West [1989] ICR 72 set out the factors to be taken into account when determining whether a stay is appropriate, including a similarity of issues between the two sets of proceedings, the complexity of those issues, the technicality of the evidence and the amount of damages claimed.'

37. Proceedings should not, generally, be permitted to continue concurrently. That is so, particularly where there are unfair dismissal proceedings in the employment tribunal and other causes of action relating to aspects of the dismissal in the High Court because the factual issues raised will be the same. It is not in accordance with the overriding objective to have concurrent proceedings dealing with the same factual issues, see **[AVA.8. 18, 22, 24 & 26]** of the same judgment.

38. More recently, in **Paymentshield Group Holdings Limited v Halstead** [2011] UKEAT/0470/11DM **[AVA.12]** the Employment Appeal Tribunal has granted a stay of Employment Tribunal proceedings even though no concurrent High Court proceedings had been issued by the employee. The position was that:

(a) the claimant had been dismissed and had issued a claim for unfair dismissal in the Employment Tribunal and (b) the claimant has also sent a letter before action in relation to a contract claim in the High Court in which wrongful dismissal was alleged as was breach of contract. There was, therefore an overlap of factual and legal issues as between the Employment Tribunal claim and the claim which had been intimated in the High Court.

39. I also refer the Tribunal to the Court of Appeal's decision in ***Noorani v Merseyside TEC*** [1999] IRLR 184 **[AVA.11]** in which ***Mindmaxnox*** was approved.

40. My defamation case is primarily about achieving vindication of reputation. The allegations contained in the Respondents' defence to claim number 2375023/2011 and others **[AV.27]-** *Lewisham Council's dismissal letter* go to undermine fundamentally my professional integrity and honesty in relation to the words complained of in the defamation action – matters which can be more appropriately be determined by the defamation proceedings. I have a right to speedy vindication in that case. This is important as I cannot recover from my illness or find employment until I have vindicated myself.

41. My reputation and fragile mental health are on the line here and as such it should be considered proportional that I be permitted to have the chance to bring any claims/issues in order to seek a declaration as to my rights as soon as possible, in order to protect and advance my case and protect my reputation and mental health. The Tribunal hearing is not due to take place until October 2013.

42. The Respondents' have made the wild allegation that my defamation claim is an attempt to have my claims heard by a different forum other than the Tribunal and that this therefore constitutes an abuse of process. Even though some of my Tribunal claims include allegations of defamation **[AV.93 - 99]** and encompass issues like qualified privilege **[AV.83.74]**, the Tribunal does not have any jurisdiction to hear claims for defamation. In their Tribunal response, the Respondents' have denied my allegations of defamation, yet asserted that I should be put to proof **[AV.90.35]**. It will be impossible for me to do this as the crucial covert recordings and transcripts have been excluded by the Tribunal, (even though it is clear that the recordings and transcripts are central to my case **[AV.72 - 84]** and only Defendants' 2, 3, 4 and 5 will be giving evidence at the Tribunal **[AV.64]**.

43. The Tribunal hearing will not be able to address in any comparable way, the important issues of justification, qualified privilege, honest comment and my allegations of dishonesty and malice on the part of the Respondents' because the covert recordings and transcripts have been excluded by the Tribunal, therefore only the High Court can adjudicate on the truth of disputed facts relating to these issues. The Tribunal will not be able to make findings of fact in relation to these issues, but other findings that it will make (which will be without the benefit of the covert recordings and transcripts), will clearly be prejudicial to my defamation action.

44. The Tribunal has already questioned my credibility, (as is reflected by the Employment Appeal Judgment). In her decision dated 7 August 2012 Judge Balogun referred to, the 'clandestine' nature of the recordings and the need to ensure that the material has not been tampered with. The Tribunal will obviously hear evidence from the Respondents' as to the circumstances in which I made the covert recordings and the evidence acquired and this will likely be central to their case, as is evidenced by the Respondents' pleadings **[A.55. 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….'

'In light of the Claimant's applications to the Tribunal and the reference to covert recordings in case number 2313031/2012A the Respondents submits that these suspicions were reasonable and well founded.'

45. I am at an unfair disadvantage as I have not permitted by the Tribunal to admit the covert recordings and transcripts into evidence, which shows that I was discriminated against and therefore that my precautionary measure (to covertly record) was justified. No fair and just findings can be properly made about the matter without admitting the covert recordings and transcripts into evidence. I should not be shut out from evidencing and justifying the truth of my claims.

46. The Tribunal has refused to allow my covert recordings and transcripts and even to allow me to submit the transcriptions I have prepared myself **[AV.285]**, even though the Employment Appeal Tribunal recommended that it reconsiders and permits me to admit my own transcriptions **[AV.183 a - p]**, and that this approach will be in the interest of justice.

47. The Tribunal's decision and approach has placed an unnecessary burden on me at the expense of preserving access to justice and maintaining an effective system for the enforcement of my rights, (which will clearly have a detrimental impact on the high court case if the Tribunal hearing is allowed to proceed first. It's clear that natural justice does require that the European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 is adhered to.

48. The Tribunal is taking a casual approach to the issue of vindication. The Tribunal will not be able to identify discrepancies, contradictions or inconsistencies with the witness statements, oral evidence and the documentary evidence, if it is unable to compare it to the covert recordings and transcripts. 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.

49. There is contradictory evidence, therefore the covert recordings and transcripts will be crucial in order to for proper findings of fact to be made, resolving issues of credibility, determining the real truth and disposing of the case fairly and justly. It is highly important that I be allowed to evidence the truth of my account, clearly this will only be possible now in the defamation proceedings. Further to this, in the Tribunal the burden of proof is on me, whereas in the High Court it is on the Respondents'. In light of all of this, it cannot seriously be suggested that priority should be given to Tribunal proceedings for the resolution of issues of this kind. The High Court will be the judicial body that will be determinative of the real issues between the parties in the defamation action.

50. The Respondents' in-house Solicitor Francis Millivojevic has lodged a witness statement in support of the Respondents' High Court application for a stay **[AV.310]**. At paragraph 13i of this witness statement it is argued it is argued that if I were successful at the Tribunal the damages would be a far greater amount than I could expect to receive at the High Court. My claim for defamation is first a foremost about vindicating my reputation, not money. I will clearly not be able to do this in the Tribunal without the aid of the covert recordings and transcripts (which the Tribunal has excluded). Therefore this basis of this argument should not be a relevant consideration for the Tribunal.

51. At paragraph 13m their above witness statement, it goes on to discuss what the effect of a delay would be on Tribunal proceedings, in the event that the High Court claim were to proceed first:

'The Employment Tribunal would therefore be required to consider historical allegations some years after the Claimant's dismissal.'

52. At the hearing in January 2012 the Tribunal dealt with historical allegations dating back to September 2009 **[AV.13]**. In October 2013 it intends to deal with issues dating as far back as 28 December 2010 **[AV.92b]**- the claims in this case have been stayed by it since July 2011. In its dealings with me since April 2010 it is clear that the Tribunal has been quite happy to deal with historical allegations and 'stay' them for prolonged periods of time.

53. At paragraph 13n of Francis their witness statement it states:

'The Claimant has made wide ranging and extremely serious allegations against a number of individuals, ranging from line managers, the officer presiding over the dismissal hearing, up to and including its Chief Executive. She has also made serious accusations of perjury and dishonesty in those proceedings. It would be invidious to those individuals named in the Employment Tribunal proceedings to yet suffer further delay, and prolong the stigma of being associated with allegations of discrimination.'

54. This clearly didn't represent a problem to the Respondents' when in October 2012; the Tribunal listed the hearing to deal with these claims for October 2013, (a year later). No complaint was made

to the Tribunal by the Respondents' regarding the date or any request made to bring the date forward. I however, did contact the Tribunal to air my disapproval **[AV.132]**. The Tribunal received this e-mail and failed to comment **[AV.133]**. It is incredible that the Respondents' can even make such a statement, in light of the damning evidence against them, (the covert recordings and transcripts which prove my allegations of malice).

55. In addition to the above, following the hearing in the High Court, if I was successful, (which I believe I will be), it will be highly unlikely that the Respondents' would even proceed with the Tribunal case, (which is why I am not anxious about asking the Tribunal to stay the case. This rationale is in keeping with paragraph 13t of the Respondents' High Court witness statement, (to which the rationale can be reversed to suit a situation in which the High Court action proceeds first):

'…then following any decision of the Employment Tribunal it is likely that the parties will need to review what, if any, issues/claims remain to be determined before the High Court.'

The Respondents' (Babcock's) 'strike out' application

56. Should the Tribunal grant the Respondents' strike out' application in relation to claim number 2357975/2012?

Background

57. At the Tribunal in January this year, the Respondents' Counsel advised the Judge Balogun that the credit monitoring payment would be made to me. I was informed by the Respondents' Counsel that I needed to provide proof of payments for credit monitoring. I dispute the requirement to do so, as the payment promised by the Respondents' to me in 2010 was payments in advance **[AV.10]** –see Deborah Francis' appeal outcome dated 2 June 2010 at the top of the page, which states:

'I understand that the company has since agreed to pay the cost of your credit monitoring for 12 months. I believe that this could have been provided earlier and with less debate. If you would feel more comfortable having this monitoring extended for a further 12 months then please let me know and I will arrange this.'

58. This payment was meant to cover me for two years. It was never meant to be a reimbursement and as you can see from the letter I was not asked to provide any proof and she clearly recognised that it was unreasonably withheld by the company. In any event, in the spirit in cooperation, I did subsequently send proof to the Respondents' legal representatives Paris Smith.

59. On 15 August 2012 I contacted the Respondents' (Babcock) my former employer to request that it makes the credit monitoring payment that Counsel (Mr Palmer) advised the Tribunal that it would make. On 16 August 2012 this payment was refused by Paris Smith on behalf of the Respondent **[AV.65]**- *see letter from Clive Dobbin*, and he asserted that the payment owed to me should be deducted from the Respondents' cost award (that had yet to be enforced).

60. Unsurprisingly this incident dredged up all the emotions that I felt when my CRB went missing and the Respondents failed to support me and discriminated against me, as a result of raising the concern, (including the way that my initial request for credit monitoring was handled at the time and the failure to pay the credit monitoring for over two years). It also dredged up all the emotions relating to all the other incidents/treatment that I was subjected to for over two years whilst in the employ of the company- which had also been the subject of my Tribunal claims between 2010 and 2012. I was extremely distressed by this state of affairs and it impacted severely on my medical condition.

61. I felt humiliated, harassed and victimised. I have pleaded that this constituted post-employment discrimination. I was and remain extremely distressed by the treatment. On 16 August 2012 at

17.03 I e-mailed the Respondents' solicitor advising that I did not agree with the Respondents' approach and that I would take further legal action if the company did not pay **[AV.66]**.

62. On 17 August 2012 at 16.07 Paris Smith e-mailed me again advising that it would send me a cheque for the cost of the credit monitoring only if I confirmed that I would not bring legal proceedings in relation to the credit monitoring issue **[AV.67]**. I replied at 20.16, refusing to do so and reiterated my position **[AV.68]**.

63. This 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 me. I believe that this constitutes a continuing act, in line with ***BHS Ltd & Anor v Walker and Premier Model Management Ltd*** [2005] UKEAT 0001_05_1105 **[AVA.3]**.

64. Later that evening at 20:36, I received another e-mail from Clive Dobbin of Paris Smith's, which had been sent from his i-Phone. He asserted stated the following:

'We understand that it is subject to an EAT appeal and we are not trying to affect that
We were referring to a new claim as you had threatened new proceedings
We are authorised to send you a cheque once you have provided the requested confirmation' **[AV.68]**.

65. The requirement for me to confirm that I would not bring proceedings in relation to my credit monitoring claim would clearly would affect my on-going case in the Court of Appeal which deals with the claims that were dismissed in January 2012 by this Tribunal and which involve my allegations by perjury by the Respondents' witnesses during that hearing **[AV.156.11 – 11.5, 156.15, 156.16, 56.21.1, 156.26, 156.29 & 156.33]**.

66. Paris Smith advised the following in its letter to me dated 20 August 2012 **[AV.69]**:

'You have raised a number of other points in your e-mail, for example concerning the evidence given at the hearing in January/February 2012 and the provision of information to the London Borough of Lewisham at the time of your transfer to them. We do not intend to respond to these points in this letter, as these issues have either been the subject of Employment Tribunal proceedings or are currently subject to the appeal you have lodged to the Employment Appeal Tribunal.'

67. I believe that this supports my allegation of post-employment discrimination/PIDA detriment, as it indicates that the assertion that I should confirm that I would not bring any legal proceedings relating to the issue, was an attempt to jeopardize my on-going case.

68. My request that the Respondents (Babcock and LBL) to investigate the wrong-doing in relation to the way that my request on 16 August 2012 for the credit monitoring payment to be in accordance with Counsels declaration to the Tribunal in January 2012 and other related matters was not acted on, and Lewisham Council's email to me dated 23 August 2012 at 20.30 **[AV.85]** does not even give a specific reason for this in relation to the handling of the credit monitoring payment issue:

'I have been asked to respond to your email below as it relates to the conduct of litigation against the Council. The Council will not be responding to your complaints/allegations against CEL/Babcock…'

69. My request that the Respondents' investigate my complaints wouldn't have affected the ongoing cases at all, as neither parties internal processes would have regarded as judicial or 'quasi-judicial' in character, or constitute matters which have been expressly or implicitly put before the public for judgment, or a judicial determination/final judgment.

70. If one is to follow the Tribunal's logic, (with regards to my request for a 'stay' in relation to this case because there are issues which overlap with matters which are the subject of High Court proceedings), which stipulated in its letter to me dated 27 February 2013: '***The request for a stay of proceedings is refused. The High Court proceedings for defamation and the Court of***

Appeal proceedings have no bearing on the PHR issues to be considered at the hearing on 21 March' **[AV.285]**, presumably there was therefore absolutely nothing to stop the Respondents' from investigating my complaints, particularly as there processes would not be regarded as 'quasi-judicial' in character, or constitute matters which have been expressly or implicitly put before the public for judgment, or a judicial determination/final judgment.

71. It is also important to mention the fact that in April 2012 Lewisham Council also indicated that it intended to investigate issues under their internal appeals procedure, that were also the subject of my Tribunal claims, (**[AV.45]-** *top of the page*, and even after withdrew my appeal **[AV.42]**- *see my email to LBL dated 24 April 2012 at 17.10*. Also see Rita Lee (Lewisham Council's HR officer's) e-mail response to me dated 24 April 2012 at 17.03 **[AV.41]** where she indicates that LBL were proceeding with a hearing:

'I acknowledge receipt of your e-mail below confirming the withdrawal of your SOSR appeal. In your e-mail dated 19 April 2012 you had reiterated that you had logged an appeal in respect of the outcome of the SOSR and grievance hearings on 5 April 2012. Consequently I will be writing to you shortly to confirm the details of your grievance appeal which has now been scheduled for Monday 11 June 2012.'

<u>The relevant Law and General Principles</u>

72. As there is a material dispute as to the facts, on which findings have to be made before the Tribunal can decide the issues, and there are also findings to be made on my plea of malice/premeditation as to the Respondents' state of mind, then the Tribunal cannot pre-empt the matter at so early a stage as this. My procedural applications dated 12 February 2013, (which relate to my covert recordings and transcripts), should also be taken into account by the Tribunal when assessing/considering the merits of my claims.

73. The Employment Appeal Tribunal has said that a Tribunal should be careful not to overstep the line between legitimate case management and over-simplifying my case by striking out proper claims to save time. If the Tribunal does have a good reason to disallow some of the allegations, it must follow the correct procedure, ***Hambly v Rathbone Community Industry Ltd*** [1999] 617 IRLB 10, EAT **[AVA.9]**.

74. This is a complex case, which is in the public interest and raising new and/or controversial points of law and as a disabled and unrepresented claimant, I must have full and fair hearing and must be permitted to argue all of points raised their pleadings and submissions or relating to merits of actions with which they had been concerned with.

75. My claim is not suitable for striking out, see ***Anyanyu v South Bank Student Union*** HL [2001] 1 WLR 638 (in which the House of Lords emphasised the undesirability of striking out fact-sensitive cases (per Lord Steyn at page 647 B-C). In this case, there is a need for a full trial on liability involving oral evidence and the central facts are in dispute.

76. It is submitted that it follows that I need to explore this evidence by asking questions of the Respondents' in cross-examination to find out why they did and said such things and then lied about it, and if appropriate, to ask the Tribunal to draw inferences, including that of discriminatory motive, from their replies.

77. The Tribunal should not strike out a claim where the material before it suggests that the Claimant may be able to improve with the benefit of disclosure of documents or cross-examination of witnesses, (see ***Three Rivers*** at paragraphs 6, 97, 98, 105 & 145). Evidence adduced at trial, (including witness statements and oral evidence) will give context and colour to the facts pleaded

that would enable me to succeed- see ***Cornelius v Hackney London Borough Council*** [2002] EWCA Civ 1073 **[AVA.5]**.

78. The first limb of the test is whether a claim is 'fanciful', after taking into the evidence which may become available both before and at trial, (see ***Three Rivers*** at paragraphs 1, 90 – 93, 134 and 158). There are compelling reasons why the claims in question should be disposed at trial, (second limb of the test), see above paragraphs.

The Respondents' (Babcock's) consolidation application

79. Should the Tribunal grant the Respondents' application to consolidate claim number 2357975/2012 with claim numbers 2300254/2011 and 2375023/2011 and others?

80. On 4 December 2012 at 15.08 **[AV.141 - 144]**, I e-mailed the Tribunal attaching a letter that the Respondents' had previously sent to the Tribunal regarding their arguments for a stay of proceedings in this case. I pointed out that the first and third Respondents' had failed to state which case/hearing that it is suggesting that this claim should be consolidated with and that this was confusing, as there will be two hearings.

81. I referred the Tribunal to the timetable that it had sent parties, and that it was clear from this that there would be insufficient days available to 'tag it on' to the three day hearing, as the case involved a number of issues and many witnesses. On 9 December 2012 at 10.05 I notified the Tribunal and the Respondents' that I will be calling three additional witnesses in relation to claim number 2300254/2011B & 2375023/2011B **[AV.145]**. This will clearly not allow enough time for any other allegations to be considered at the hearing.

82. It is clear that it is not proportional or in line with the overriding objective to add further issues on to the consolidated cases, as there are already a vast number of issues being dealt with and evidence which will need to be adduced. This will lengthen the proceedings and put me at a further disadvantage as an unrepresented Claimant. The respondent has made no attempt to fairly propose any ways and means of reducing the areas of dispute. The respondent is denying all my allegations (making no admissions).

83. I would simply not be able to cope with and manage such a vast amount of issues as an unrepresented Claimant with a memory and concentration impairment and I therefore request that as a 'reasonable adjustment', the Tribunal rejects the Respondents' application. A Tribunal must give effect to the overriding objective when exercising its procedural powers. The Equality Act 2010 places a duty on service providers to take reasonable steps to change any practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which they provide to other members of the public. I respectfully request that the Tribunal denies the Respondents' application in order to accommodate my disability.

84. The granting of this request would reassure me that the Tribunal understands the vital role it plays in ensuring that that a disability does not amount to a handicap to the attainment of justice and would further the overriding objective in dealing with this matter in the most expeditious, efficient and fair way possible and in a way that enables me to fully participate in the tribunal process to the best of my ability and without being put at a disadvantage.

85. If the Tribunal is minded to grant the Respondents' application, it is clear that the Tribunal will also need to consider which hearing the claims should be heard at. It will not be appropriate to split the claims and hear them in two separate hearings, as the claims involve both Babcock and Lewisham Council employees, (where all witnesses will be required to give evidence in one hearing so as not

to prejudice my case and put me at an unfair advantage before all the evidence is heard), as the Tribunal will be making findings of fact after each hearing (in September and October 2013). This is also compelling reason why the Tribunal should not allow even part of case number 2357975/2012 to proceed against the Babcock Respondents' only, (as Babcock are likely to propose).

86. It will not be just and equitable, or economical for the tribunal and for the parties if the allegations are separated. I am also mindful of the fact that the Employment Appeal Tribunal has said that that a Tribunal should be careful not to overstep the line between legitimate case management and denying what expedition requires and what fairness requires. Article 6 (The right to a fair hearing) and article 14 (non-discrimination) of the European Convention on Human Rights should also be taken into account.

87. If the Respondents' request is granted this would be extremely prejudicial to me and I believe that I would be put at an enormous disadvantage. The Tribunal will need to weigh up all relevant factors. It must decide whether it is right, in the interests of justice and the overriding objective, to refuse my request for the claims to be heard together. That involves a broad assessment of what is in the interests of justice, and the factors which may be material to that assessment will vary considerably according to the circumstances of the case and cannot be neatly categorised.

<u>Other Matters/Ongoing Case Management</u>

89 Please refer to my CMD agenda **[AV.328]**. a) **Withdrawn Claims:** I have withdrawn claims set out in 44a - c of my pleadings in relation to claim my claim against CEL/BED in relation to claim number 2357975/2012; b)**Schedule of Claims:** This document is crucial and I have submitted one in relation to the other claims. I am requesting to be allowed **21 days** to produce a schedule of claims, if claim number 2357975/2012 is consolidated and not 'stayed'. If the claim is stayed, the date for the

production of this document should be decided at a subsequent CMD, after the disposal of claim numbers 2300254/2011 & 2375023\2011 and others; c) **Disclosure and Preparation of evidence:** It is submitted that the Respondents' should disclose their evidence after I have submitted my schedule of claims in this claim/after the disposal of these claims claim numbers 2300254/2011 & 2375023\2011 and others.

90 I object to the Respondents' assertion that it should be allowed to dictate what evidence I can adduce at the full hearing in relation to claim number 2357975/2012- please refer to their CMD agenda point 6.1. This approach should not be sanctioned by the Tribunal. A Claimant should be allowed to adduce all the evidence necessary to prove their case.

"Natural Justice" my right to a fair hearing

The making up evidence against me during proceedings

91 I believe that the Respondents' will knowingly give what they know to be false witness statements, and lie on the witness stand during the forthcoming hearing. I provided the Tribunal with conclusive evidence of this which I sent on 13 February 2013. The Respondents' were also sent copies. The previous day (12 February 2013), I made applications (via e-mail & letter) for the Tribunal to reconsider its decision on the admissibility of the covert recordings and transcripts and to 'strike out' Lewisham Council's and the individual Respondents' defence/response in relation to claim numbers 2375023/2011 and others **[AV.222]**.

92 In my application dated 12 February 2013, I stated that submissions should be heard on this issue at the Pre-hearing review and requested a full panel. I attached 30 PDF documents to the e-mails containing the (non- highlighted) transcripts of the covert recordings, which were sent the Tribunal and

Respondents regarding this issue.

93 I sent the Tribunal hard copies of the highlighted transcripts (x30) in relation to my applications and my supporting evidence. This was collated in two bound documents, (annex 1) **[AV.262]** and the supporting evidence, (annex 2 – 24) **[AV.1 & 263]** (*cover letter and list index of evidence*). This is the same order that they were collated in the bound documents. I also sent the Tribunal 2 copies of the 30 covert recordings on an mp3 player and a USB **[AV.261]**. I sent Lewisham Council hard copies of the highlighted transcripts (x30), in a bound document **[AV.257]** and 2 copies of the 30 covert recordings on an mp3 player **[AV.259]** and a USB **[AV.260]**.

94 On 18 February 2013, the Respondents' e-mailed the Tribunal, reinforcing their defence **[AV.264]** and they refused to listen to the recordings. Despite the material that the Respondents' were furnished with, they indicated that they intended to continue defending my claims, thereby using the Tribunal process as a forum and an opportunity to further publicly defame me and cause me humiliation, fear, anguish and injury to my already fragile mental health- see my medical evidence, **[AV.24, 43 – 53, 92, 96, 180a, 181 – 182 & 265]**.

95 On 23 February 2013 I made another application for a stay of proceedings in relation to claim numbers 2375023/2011 and others and requested that the Tribunal report the Respondents' because my covert recordings and transcripts, (which were sent to the Tribunal on 13 February 2013), proved that they were abusing public office and public facilities and it was clear from the material that I sent to the Tribunal that the Respondents' were concealing offences, (perverting the course of justice, interference with evidence and fabricating evidence and the publication of matters calculated to prejudice a fair trial).

96 The Respondents' did not respond to my application right away, but instead informed me of their intention to make an application in the High Court to 'stay' my defamation proceedings against them **[AV.281]**. They advised the Tribunal of this the following day when they lodged it, **[AV.289]**. The Respondents' application for a stay of the defamation proceedings is clearly designed to circumvent my Tribunal application for a 'stay' of proceedings. Their High Court application is completely without merit (as demonstrated by arguments in relation to my application for a 'stay' of proceedings and it does not disclose any valid reasons for the High Court to grant such an application.

97 It is submitted that the Respondents' course of conduct amounts to harassment, I therefore lodged an application at the High Court for an interim injunction in libel and slander to restrain the publication and utterances of defamatory allegations under the Protection from Harassment Act 1997 to prevent harassment by defamatory publications and utterances **[AV.291]**.

98 I forwarded the Tribunal a copy of my application **[AV.283]**, my letter to the High Court regarding this **[AV.291]** and my bundle index for my application on the same day that it was lodged **[AV.303]** and the Tribunal confirmed receipt of this **[AV.290]**. If my High Court application is granted, this should effectively prevent the Tribunal full hearing from proceeding before the High Court defamation hearing.

99 Arguably, the conduct of the Respondents' is of a gravity which could be characterised as criminal, (misconduct in public office). A professional woman's integrity is the lifeblood of her vocation. If it is deliberately and wrongly attacked, whether out of personal self-interest or malice, a potential claim lies under the Act. The courses of conduct which amount to harassment are:

a) Engaging in the deliberate and dishonest abuse of power' which has resulted in me suffering loss and damage because of that action carried out with reckless disregard or indifference to the consequences;

b) The misuse and abuse of power, which is intended to be used for the public good but which the Respondents' used for their own benefit and/or selfish purposes, which include spite, malice and revenge;

c) Intentionally exceeding authority for improper reasons, i.e. to obtain an improper private advantage for themselves and over me;

d) wilful excesses of official authority, malicious exercises of official authority, intentional infliction of injury upon a person, frauds and deceits and wilful neglect without reasonable excuse or justification. The misfeasance, breach of duty and neglect being calculated to injure me, including the Respondents' neglect and the denial of knowledge of the my mental health condition;

e) the targeting of me, (vulnerable disabled employee and member of the public) in order to subject me to degrading treatment which aroused feelings of fear, anguish and inferiority and it humiliated and debased me;

f) suspending me for reasons based on a body of lies, deception, concealment, exaggeration and manipulation;

g) publishing the statements and allegations, without making any prior check with me as to their veracity or offering me any opportunity to respond to them prior to publishing/uttering them and suspending me;

h) tampering with notes/minutes in order to support their false case against me;

i) The abuse of the internal process for the purpose of making/relaying untrue defamatory statements/allegations relating to me and which were motivated by malice;

j) unlawfully dismissing me for reasons based on a body of lies, deception, concealment, exaggeration and manipulation;

k) The Respondents' did not properly act on the information given to them by me but instead suspended and dismissed me on false and fabricated charges. The wording in the dismissal letter in their natural and ordinary meaning meant and were understood to mean that I was: i) unfit for public office; ii) incompetent; iii) responsible for my own dismissal; iv) lacking professional integrity;

v) dishonest in relation to the charges brought against me; vi) there was no evidence of my disability/I had failed to adequately disclose information about this;

l) ignoring and disregarding evidence which showed there was simply no evidence to support the false allegations made against me;

m) wilfully and maliciously fabricating/falsifying evidence against me and publicly defaming me;

n) justifying and reinforcing the false allegations against me and failing to retract them, despite knowing that what they wrote and or said were false;

o) failing to take disciplinary action against those guilty of misconduct in public office, upon receipt of proof of that misconduct;

p) the substantial interference with my Article 8 rights;

q) knowingly instructing legal representatives to submit false evidence to the Employment Tribunal, (in the form of pleadings/Employment tribunal response and the Respondents' dismissal letter, which was submitted to the Tribunal for the hearing on 19 and 20 April 2012 **[AV.23 - 40]** and which the Respondents' rely on as part of their defence in that case. Reliance on this evidence by the Respondents' in order to deny access to untainted justice;

r) unreasonably defend legal proceedings relating to these matters, (their continued defence of my claims can be viewed as part of a course of conduct amounting to harassment- see ***Iqbal v Dean Manson Solicitors*** [2011] EWCA Civ 123 at paragraph 54.

100 The Respondents' have done and continue to abuse their office, either by acts of omission or commission, and the consequences of that, is has been and continues to be injury to me (a Claimant and member of the public). By the Respondents' acts or omissions they individually and/or collectively are responsible for conspiring, assisting and encouraging one another, in relation to concealing offences; interference with evidence and fabricating evidence and the publication of matters calculated to prejudice a fair trial.

101 The Respondents' crossed the boundary from the regrettable to the unacceptable by virtue of the gravity of the misconduct which is in an order which the I believe could sustain criminal liability under section 2 of the Protect from Harassment Act 1997. Together, the multitude of incidents in such a prolonged period, (from April 2011 and continuing) by the same Respondents', consisting of targeted malice, discrimination, PIDA detriment, human rights breaches and/or negligence, and/or other acts, and/or omissions, under a 'duty of care', indicate harassment and misfeasance in public office.

102 The conduct was and continues to be oppressive. There has been and continues to be the very worst kind of abuse of executive power by the servants of government. The actions have been orchestrated at the very highest level. It extends to the maintenance by the Respondents' of false allegations against me. The Respondents' have acted and continue to act in a contumelious way and in a way in which there was and is active and knowing concealment of what had taken place.

103 The very nature of the harassment which I believe constitutes misfeasance in public office, the Respondents' objectionable behaviour and the disrespect shown for my Human Rights is behaviour that I trust that the Tribunal will disapprove. The Respondents' actions constitute a deliberate attack on my professional and personal integrity and arguably evidence a campaign of harassment against me. Their actions are arguably capable of causing me alarm and distress. They are arguably unreasonable, oppressive and unreasonable, oppressive and unacceptable and genuinely offensive and unacceptable.

104 I believe that the Respondents' are clearly are attempting to deny access to untainted justice and this remains unacceptable and leads to conscious participation in activities used as obstructions to justice, which I believe in themselves constitute criminal offences. I have previously advised the Tribunal this continuing course of conduct by the Respondents' constitutes perverting the course of justice, abuse of

court facilities, defeating the ends of justice and obstructing the administration of justice **[AV.269]**.

105 The material which I sent to the Tribunal in support of my procedural applications shows that the Respondents' have knowingly submitted false evidence to the Tribunal, (see the Respondents' Tribunal pleadings, and their Pre-Hearing Review evidence – Lewisham Council's PHR bundle index and dismissal letter, which it and the individual respondents' state in their pleadings that they rely on as part of their defence).

106 I believe that the above indicates that the Respondents' intend to lie under oath- as they will be giving oral evidence in order to support of the dismissal letter, which the covert recordings prove is based on a body of lies and the Respondents' fabricated/falsified documentary evidence, which includes oral and documentary evidence given by the Respondents during their internal dismissal procedure. All this documentation was sent to the Tribunal on 13 February 2013 **[AV.1]**.

107 Lewisham Council's dismissal letter is based on Ralph Wilkinson's (individual Respondent) findings and his wholesale acceptance of managements' unsubstantiated allegations against me. The Respondents called my general conduct throughout my employment and my good character into question. They sated that my conduct throughout was unacceptable, to the effect, (either implied/inferred or otherwise), that I was obstructive, intimidating, dishonest in relation to the allegations made against me, incompetent', unruly, insane, lazy and unbalanced. The Respondents' deliberately intended to represent this, in the clear knowledge that the allegations were false and of the severe consequences for me of their actions.

108 The allegations meant and were intended to convey that I had manifested particular deficiencies and were also not fit for my office/job/post/purpose, hence my subsequent dismissal. The material shows that this was unwarranted and the Respondents' should be held to full public account for these

intentional false allegations.

109 My evidence plainly goes to the issue of the credibility of the Respondents'. Therefore the evidence will have an important influence on the hearing. Credibility must inevitably spill over into findings on other issues. The Respondents' defence is tainted by dishonesty and amount to an abuse of process, which would make the trial unfair. A person will be in contempt of court if he presents a deliberately false statement of case, witness statement (under CPR part 31). The Respondents' intend to, (as they have done before), mislead the Tribunal, by using evidence unlawfully obtained against the European Convention to unlawfully make an application for a cost order against me.

110 There is real problem with the Respondents' as witnesses and based on the damning material that I have submitted to the Tribunal, (which it is unjustly refusing to admit into evidence), it is clear that there evidence should not be accepted- their case should be struck out, this approach is entirely in keeping with ***Rodrigues v Co-operative Group Ltd*** [2012] UKEATS/0022/12, para 55 **[AVA.13]**, however, the Tribunal refused to deal with my strike out application, by virtue of the fact that it has refused to deal with my covert recordings and transcripts.

111 The Tribunal can dismiss a claim or defence if there has been a deliberate destruction or falsification of evidence. The failure by the Tribunal to act upon the material that I provided it with has inhibited the ability of the Tribunal to dispose fairly of my procedural applications. It is with deep regret that I have to say that the Tribunal's approach and dealings with me does not demonstrate that this judicial body hearing this case is creating the impression of impartiality. Having regard to its decisions on the run up to this hearing, it appears that the Tribunal has failed to demonstrate on the determination of the matters in dispute in this case, fairness, an open mind and objectivity which is required in the discharge of judicial office.

PRACTICE AND PROCEDURE

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

a) The failure/refusal by the Tribunal to permit the preliminary issues identified by me to be added to the list of issues to be determined at this hearing. It is part of the duty of employment tribunals to ensure, so far as practicable, that a case is dealt with expeditiously and fairly and deal with cases justly (including ensuring that the parties are on an equal footing): reg 3(2). The Respondents' strike out application is being considered as part of the Pre-hearing review, but my strike out application is not;

b) The failure to add my applications dated 12 February 2013 to the list of issues to be determined at the Pre-hearing review;

c) The persistent failure to provide me with a formal letter which I requested **[AV.267, 278, 287, 320, 324 & 325]**, and which would set out the Tribunal's refusal of my application for it to reconsider it's decision regarding the admissibility of the covert recordings, rather than simply issuing an informal '*acknowledgement of correspondence*' letter regarding this, which cannot be used at the Employment Appeal Tribunal as the basis for an appeal on an interlocutory decision;

d) Points a – c is evidenced by the failure by the Tribunal to send parties a letter 14 days in advance of the Pre-Hearing review listing the additional issues identified by me,(despite my requests over a two week period for it to do so and the Respondents' (Babcock's) letter to the Tribunal dated 26 February 2013 objecting to my issues/applications being addressed at the Pre-hearing review, which stated:

'***The Claimant has submitted a request to submit covert recordings, and has asked that this application be considered at the hearing on 21 March 2013. The PHR listed for 21 March 2013 has currently been listed in respect of case number 2357975/2012 only. The hearing on 21 March 2013 has currently been listed in case number 2357975/2012, and does not relate to the Remaining Claims. On behalf of the Second and Third Respondents in case number 2357975/2012 we would object to the application to admit covert recordings in the Remaining***

Claims being considered at the forthcoming PHR if this means that the hearing listed on 21 March 2013 is postponed' **[AV.280]**.

The Tribunal did not write to parties to disagree with the Respondents' assertion/approach.

e) The European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 clearly states that the Claimant has a right to a fair trial. This embraces the principles of equality of arms and the right to adversarial proceedings and required that the Tribunal to properly address the issues indented by me at the Pre-hearing review and in its written correspondence to me.

113 All these factors are in direct contradiction with The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004. This must be an administrative error. In relation to the last ground, the tribunal should act in the way they consider is best in the interests of justice in each individual case. I consider that I will suffer a great injustice as a result of the Tribunal's decision. I do not believe that the decision taken by this Tribunal was within the range of responses that a reasonable Tribunal might make, in the exercise of its powers to control its own proceedings, to my applications dated 12 and 23 February 2013.

114 In the exercise of its Case Management powers, the Tribunal should have allowed me to transcribe the evidence myself. This is in line with what Judge Underhill stated at my appeal hearing for my appeal against the Tribunal's decision to refuse to permit me to admit covert recordings and transcripts into evidence **[AV.183a - p]**. I advised the Tribunal of this in my forward e-mail to it dated 28 February 2013 **[AV.320]**. My approach is also in keeping with ***Dogherty v Chairman and Governors of Amwell View School*** [2006] UKEAT/0243/06/DA **[AVA.6]**.

115 In relation to the issue of the transcripts and my application to admit them and the covert recordings the Tribunal stated the following **[AV.285]**:

'Turning to the application to admit covert recordings, you have sent to the Tribunal a transcript (which presumably has not been independently and professional done) along with, what we understand to be, 32 hours of actual audio recordings. Please note that the Tribunal will not be reading the transcript or listening to the audio recordings as this is an unreasonable and wholly disproportionate use of the Tribunal's time. You are referred to the PHR Order of Judge Balogun dated 2 August 2012, in particular, paragraphs 6 and 7 of the Reasons. They make clear that before an application for admission of covert recordings can be considered, the recording must be independently transcribed.'

116 The Tribunal's approach is clearly unfair and onerous. I should not have to comply with this requirement just for the Tribunal to determine whether or not the material is probative. At the Pre-hearing review in August 2012 when this issue was originally considered all the Tribunal required me to do at the time was state what the material contained in order to answer the question of whether or not the material was probative:

> '***When asked by me to be more specific about the content of the recordings, the Claimant was not prepared to elaborate but simply referred me back to her written submissions***'. ***I was therefore not satisfied that the recordings were of probative value.'*** **[AV.62.7]**.

117 Even though I provided the Tribunal with over 700 pages and over 30 hours worth of the precise details of what the recordings contained, (in the form of the transcripts and recordings), all of a sudden the previous approach adopted was discarded and a new and inconsistent approach and requirement was adopted and imposed upon me. The Tribunal's decision dated 7 August 2012 refusing to allow me to admit the covert recordings and transcripts into evidence did not base its decision on the fact that I had failed to produce professional transcripts, indeed this was not even a requirement imposed on me by the Tribunal prior to the Pre-Hearing Review in August 2012.

118 It is important to note that the Respondents' and the Tribunal have not disputed the content of the recordings, nor contended that the recordings have poorly transcribed or tampered with and yet the Tribunal failed to properly consider my application. The Employment Appeal Tribunal's rationale for dismissing my appeal was because the covert recordings and transcripts were not placed before the

Tribunal at the time of my application and therefore Judge Balogun had not alternative but to refuse my application.

119 The Tribunal should act in the way they consider is best in the interests of justice in each individual case. When I made my initial application I now realize that I made it too early, (before I had completed transcribing all the covert recordings), therefore the material that I wished to rely on was not available at the time that the Tribunal was asked to consider my application.

120 At paragraph 7 of the Tribunal's reasons for its decision dated 7 August 2012 it states:

> '***When asked by me to be more specific about the content of the recordings, the Claimant was not prepared to elaborate but simply referred me back to her written submissions***' **[AV.58.7]**.

121 The Tribunal based its decision on my inability (as a disabled Claimant with a memory and concentration impairment), to provide specifics (on the spot), in relation to the 39 hours of material, which go as far back as April 2011. This was an extremely onerous approach for the Tribunal to take and it failed to take my disability into account. The issue being determined by the Tribunal was clearly a question of fact and not just law. The substantive merits of my claims were obviously being considered in this respect. Fact-finding was then in play and the Tribunal reached conclusions on the issues of fact. Judge Balogun was essentially attempting to clarify issues and review/decide certain/actual aspects of the case, (which was in dispute). It is therefore just and equitable for the Tribunal to carry out this fact-finding again, only this time with all the relevant material to hand to enable it to properly do so.

122 It was not the case that I choose to hold back my evidence or some of my arguments; it was simply a case of the material not being available to me at the time, (the completed transcripts). I was therefore unable to bring my whole case to the Tribunal at the relevant hearing, as fuller arguments relied on the

complete transcripts. Due to my disability it was unreasonable and unfair to expect me to remember the content of 39 hours of recordings and state specifically why it was relevant.

123 Since April 2012, (when I began to transcribe), the recordings have taken me the best part of a year to fully transcribe, and this task was made even more difficult by the fact that I am unrepresented, dealing with concurrent proceedings in the Tribunal and Employment Appeal Tribunal and disabled with a condition which hinders my concentration and memory. I had also been signed off with depression throughout this period and I have continued to be signed off with Depression continuously since April 2012, until April 2013, which the Tribunal is aware of.

124 It is important to add that I had also been under the impression that I would not have to disclose the material until the deadline for normal disclosure of all evidence and the Tribunal failed to advise me to the contrary. At no stage after making my application to the Tribunal in April 2012 did the Tribunal specifically inform me that I would need to produce the covert recordings and/or the fully transcribed material, on or before the hearing in August 2012.

125 I made my original application at a very early stage in order to give the Respondents' and the Tribunal enough notice and to ensure that the issue was raised long before the main hearing. I was trying to be helpful, but subsequently this did not work in my favour and I was not given any guidance by the Tribunal in relation to making the material available to the judge for her consideration. At the hearing in August I was simply asked by the judge to provide details off the top of my head regarding 39 hours worth of recording, which was of course impossible for me to do, given my disability and the fact that many of the recordings dated back up to over a year before.

126 The Tribunal should have properly reconsidered the matter, (taking into account my disability) and as my circumstances have since materially changed, (I have now completed the transcribing) and the

transcripts are now available for the Tribunal and the Respondents' to consider. The material puts my claim beyond any doubt. It is therefore justified to properly consider my application based on my own transcripts because the overriding objective to deal with cases fairly merits it and the Employment Appeal Tribunal sanctioned this approach, (which the Tribunal is aware of).

127 It is clearly 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.

128 I 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 my rights and not something that should be sanctioned by a Tribunal. Such a state of affairs is clearly unjust, inappropriate, oppressive, unnecessary and unreasonable and not in line with the overriding objective. The Tribunal's approach is also discriminatory.

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

the cash to pay for it.

130 It is essential that Claimants can access employment tribunals and cost/fees should not be a barrier to access. The Tribunal's decision represents a further bar to my ability to enforce my employment rights, which have already been severely eroded. My treatment by the Tribunal as some kind of 'consumer', there by choice, is extremely unfair and dangerous. I and other Claimant's are not "shopping" for our employment rights, we are merely trying to enforce what is legitimately ours and by doing so encouraging good standards of behaviour by employers.

131 During the Pre-Hearing Review in August 2012, when I repeatedly explained to the Judge Balogun that I am not in a position to pay £10,000 for the services of a transcription company, Judge Balogun responding by saying that I was '*not even prepared to do the basics*'. The Judge Balogun then asked me, '*Who do you think is going to pay for it?*' I believe that this and the Tribunal's letter dated 27 February 2013 shows a discriminatory attitude and approach. The Tribunal's decision and approach has placed an unnecessary burden on me as an employment tribunal user at the expense of preserving access to justice and maintaining an effective system for the enforcement of employment rights. It's clear that natural justice does require that the European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 is adhered to.

132 The Tribunal's approach in relation to the issue of the covert recordings has limited access to justice for me and adversely affected me as an unrepresented, unemployed, and disabled Claimant. It has effectively 'priced me out' of access to justice. The Tribunal is well aware of my precarious financial situation (which is evidenced by its cost order dated 23 April 2012), and which is also evidence by the fact that I am still unemployed and deemed unfit for work both by my GP and the DWP **[AV.266]**. This has been the case since last April 2012.

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

134 The Tribunal's approach amounts to a handicap to the attainment of justice and as a result, many unscrupulous employers will be emboldened to treat employees in a worse manner because they will be able to ensure that damning evidence never comes to light by making applications to the Tribunal for the Claimant to pay upfront costs that they know the Claimant's can't afford. This will allow those unscrupulous employers to 'rest easy', knowing that they will not be then held to account by the damming evidence in public and for evading legal duties. It provides a powerful incentive for employers to demand that Claimants' pay upfront costs/fees that they cannot possibly afford. By making such an order the Tribunal is undermining the effective enforcement of employment law and sending an entirely wrong message to rogue and discriminatory employers.

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

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

of discrimination and so I am particularly disadvantaged.

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

138 The Tribunal has failed to apply the proper rules regarding my procedural application. It is clear that the Tribunal has adopted an unfair, procedural approach against me, operating in favour of the Respondents'. The European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 clearly states that I have a right to a fair trial. This embraces the principles of equality of arms and the right to adversarial proceedings and requires the Tribunal to have acted upon the extensive damning evidence that I sent to it on 13 February 2013.

139 My case for the Respondents' response to be 'struck out' is also supported by documentary evidence. Where a party's conduct (such as perjury or presenting fraudulent evidence) so damages the integrity of the case being presented that its continuation would be an affront to justice, it may be struck out as an abuse of process, see ***Masood v Zahoor*** [2009] EWCA Civ 650, [2010] 1 WLR 746.

140 In ***Shetland Sea Farms Ltd v Assuranceforeningen Skuld*** [2004] SLT 30, Lord Gill found that the case was based on false averments of fact supported by fabricated documents and he said that the court possessed an inherent power to strike out an action which amounted to an abuse of process. In doing so it protected the integrity of its procedures by preventing one party from putting the other at an unfair disadvantage and compromising the just and proper conduct of the proceedings. There were many ways, he said, in which a litigant could abuse the process of the court: for example, by pursuing

a claim or presenting a defence in bad faith and with no genuine belief in its merits, or by fraudulent means, or for an improper ulterior motive.

141 In the case of ***Clarke v Fennoscandia Ltd (No 3)*** [2005] SLT 511 and 2008 SC (HL) 122, **[AVA.4- 16 - 17]** on appeal, the Lord Justice Clerk observed that the concept of an abuse of process need not be confined to fraud. The essential question, he said, was whether the action compromised the integrity of the court's procedures. It might do so if it wastefully occupied the time and resources of the court in a claim that was obviously without merit.

142 The Court of Appeal decision in ***Arrow Nominees v Blackledge*** [2000] 2 BCLC 167 **[AVA.1. 54]** is the first to consider in any detail the proper response to the dishonest conduct of litigation. The Court of Appeal stated:

"Where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice the court is entitled—indeed, I would hold bound—to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him."

Conclusion

143 It is clear that as a disabled and unrepresented claimant I should be given a full opportunity to make all my points. In all cases a Tribunal must afford Claimant's the full opportunity to make submissions and adduce all evidence necessary in order to prove their case, in accordance with principles of "Natural Justice". Well established principle of "Natural Justice" that Tribunal's must give litigants adequate opportunity of dealing with all aspects of their pleaded case. Any restriction would be a very draconian measure.

144 The limitations that the Respondents' applications will place on me and the Tribunal approach thus far, is restricting and reducing the access left to me in such a way and an extent that the very essence of this right will be impaired. The restrictions that the Respondents' applications represent do not pursue legitimate aims and there is no reasonable relationship of proportionality between the means employed by the Respondents and the aim sought to be achieved. It is also clear that my article 10 rights would be breached, as the Respondents' request interferes with the freedom of expression. It should be refused on this basis, as I am clearly entitled to be heard and it is 'necessary in a democratic society' for any of the purposes specified in para (2) of art 10." It is submitted that the respondents' request is disproportionate and oppressive and a serious infringement of a citizen's right of access to the courts.

145 It is submitted that my approach is in line with the overriding objective. It should be considered proportional that I be permitted to have the chance to bring any claims/issues in order to seek a declaration as to my rights and make any applications and refer to all the necessary legal arguments in order to protect and advance my case and protect my reputation and mental health.

146 The Tribunal will need to place in the balance my right as an unrepresented disabled claimant and the rights of the Respondents'. Weighing the balance of prejudice as between the parties it is my view that a decision by the Tribunal to refuse my application would have a greater prejudicial impact on my case as an unrepresented disabled claimant than it would have upon the Respondents' case. This balancing exercise is one which the tribunal has to perform in compliance with its own obligations as a statutory body under the **Human Rights Act 1998**. The very basics of a fair trial will not have been met if the Tribunal fails in the fulfilling of the overriding objectives.

147 To my mind this interpretation of rule 13(2) accords with its natural meaning and furthers the overriding objective set out in reg 3 of the 2004 Regulations. It is part of the duty of employment tribunals to ensure, so far as practicable, that a case is dealt with expeditiously and fairly: reg 3(2). This duty

cannot be performed without allowing my application.

148 The Tribunal's failure to deal with my applications dated 12 February 2013 is extremely prejudicial to me and I have now been put at an enormous disadvantage. The Tribunal failed to carry out the proper balancing exercise, taking into account all the surrounding circumstances and giving due emphasis to the degree of prejudice caused to me and the Respondents unreasonable, vexatious, scandalous and criminal behaviour in relation to the way in which it had been conducting proceedings.

149 The Tribunal's failure to adequately deal with my applications and act upon the damning material which I sent to it (the covert recordings and transcriptions) will cloak acts of discrimination and perjury. It will also leave me at great risk of yet another extreme cost order, and I say this not because I believe my claims to be misconceived, but simply because the Tribunal previously made one against me despite me having presented the Tribunal with over 2500 pages of documentary evidence. This indicates that the audio evidence and transcripts will be of particular assistance to me in proving my case.

150 The Respondents' conduct and the Tribunal's approach to this hearing and the general proceedings in the run up to the full hearings for these claims and has led to an unacceptable risk that there will be an unsafe judgment in relation to these claims. I therefore respectfully request that the Tribunal does grant all my applications, (including allowing me to admit my own transcriptions) and that it conducts another Case Management Discussion/Pre-Hearing Review to consider my applications dated 12 February 2013, (where I can adduce the covert recordings and transcripts), as soon as possible.

Ms Ayodele Adele Vaughan

12 March 2013