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

Written Submissions for Ms AA Vaughan

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1. I was employed by Lewisham Council. I was TUPE'd in from Careers Enterprise Limited, (a subsidiary of Babcock) on 1 April 2011. In April 2012 I lodged an ET claim against Lewisham Council for unfair dismissal. This is one of several claims that I have lodged against Lewisham Council and Babcock, the other claims relate to unlawful discrimination and PIDA detriment.

2. On 20 and 23 April 2011 and 4 May 2011, I made applications to submit covert recordings in relation to **2375023/2011B** and others and supporting evidence post-February 2011 in relation to claim number **2300254/2011B**. Other applications included amendments to my pleadings for claim number 8, permission to rely on 'without prejudice' communication in relation to claim number

2375023/2011B and others and request for 'reasonable adjustments' in relation to the preparation for the hearings and the hearings themselves.

3. The Respondents have objected to the procedural applications. Paris Smith, acting for Careers Babcock objected to my applications to submit supporting evidence post February 2011 in relation to claim number **2300254/2011B** and LBL have objected to my application to submit supporting covert recordings and my request to rely on 'without prejudice' communication in relation to **2375023/2011B** and others. In its letter to the Tribunal dated 26 April 2012, LBL stated that submissions should be heard on this issue at a CMD.

4. On 26 April 2012 I e-mailed the Tribunal (copying in the respondents'), requesting that a PHR with a full panel be held to determine the above issues and setting out my reasons why, namely because the issues are substantive. This was reluctantly agreed to by the ET on 29 May 2012. The letter informed parties that the PHR would be conducted by Judge Balogun sitting alone.

5. The issues that I believe should be considered are, as set out in my e-mail to the ET dated 7 June and 20 June 2012, **[at page 38]**:

    a) Whether to grant my application to submit supporting evidence post-February 2011 in relation to claim number **2300254/2011B** and up until the full hearing and post-April 2012 and up until the full hearing, in relation to claim number **2375023/2011B** and others; and
    b) Whether to grant my application to submit covert recordings (and transcripts) in relation to **2375023/2011B** and others; and
    c) The merits of my claims (in relation to the respondents' assertion that it has no reasonable prospect of success); and

d) Whether to grant my application dated 28 May 2012 for leave to amend the claim, and make any consequent case management orders including granting leave to amend the responses;

e) Whether to allow me to rely on without prejudice communications;

f) To consider management of the claim generally including whether to hold a separate hearing for the balance of claim number **2300254/2011B** and number **2375023/2011B** and others considered together immediately afterwards.

g) Whether I was disabled at the relevant time, (as indicated by the Respondents' in its CMD agenda dated 12 April 2012)

Issues

The tribunal will have to decide the following issues:

Supporting evidence post-February 2011

6. Should the ET grant my application to submit supporting evidence post-February 2011 in relation to claim number **2300254/2011B** and up until the full hearing and post- April 2012 in relation to claim number **2375023/2011B** and others and up until the full hearing?

Covert Recordings

7. Should the ET grant my application to submit covert recordings (and transcripts)?

The merits of my claims

8. Whether the Tribunal believes that my claims have 'no reasonable prospect of success'?

Amendment applications

9. Whether to grant my application dated 28 May 2012 for leave to amend the claim, and make any consequent case management orders including granting leave to amend the responses?

Without prejudice communication

10. Whether to allow me to rely on without prejudice communications?

The management of the claims

11. Should the Tribunal hold a separate hearing for the balance of claim number **2300254/2011B** and consider claim number **2375023/2011B** and others together immediately afterwards?

Proving Disability

12. Whether I was disabled at the relevant time, (as indicated by the Respondents' in its CMD agenda dated 12 April 2012)

Submissions

Supporting Evidence

13. *Should the ET grant my application to submit supporting evidence post-February 2011 in relation to claim number **2300254/2011B** and up until the full hearing and post- April 2012 in relation to claim number **2375023/2011B** and others and up until the full hearing?*

14. A claimant must be entitled to produce the evidence which he/she feels supports his/her case, unless it is patently inappropriate or irrelevant. The evidence that I intend to submit is directly related to the grounds already pleaded and includes the detriments and discrimination that I have suffered to date, and which constitutes part of the continuing acts, course of conduct and an ongoing situation/continuing state of affairs by my former employers. The basic rule is that if

evidence is relevant it is admissible and if it is irrelevant it is inadmissible. As Lord Simon of Glaisdale observed in ***R v Kilbourne*** **[1973] AC 729, 756**:

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

15. Evidence is relevant if it makes a fact that a party is trying to prove a little more probable, or if it makes a fact that a party is trying to disprove a little less probable. I respectfully suggests that the ET should consider the following question: If I assert that my supporting evidence shows, a) the Respondents' propensity to behave in the manner alleged in my founding claims, b) the evidence does not consist of isolated examples, c) the evidence consists of similar facts that are highly/strongly probative of the issues in the substantive case, (it has enhanced relevance) and d) the evidence of similar facts, are proven facts/ reasonably conclusive, not unsubstantiated allegations, shouldn't I be permitted to submit such evidence?

16. It is submitted that my supporting evidence should be admitted because it is relevant to the claims (this case) and already in the public domain, particularly up to the full hearing for these claims including evidence which was adduced during the PHR's on 19 and 20 April 2012 and 2 and 3 August 2012 and:

    a) The evidence post-February 2011 sheds light on the respondents' motivation and proves that there was a culture of discrimination; and
    b) All the witness statements which are dated after November 2011 for the part of the claim which has already been heard are clearly highly material to this claim; and

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

d) The Respondents' unreasonable and vexatious conduct in relation to the proceedings, as evidenced by its disclosure dated 5 April 2012, which proves that both parties suppressed evidence in order to protect Lewisham Council; and

e) The evidence has been referred to in my PHR written representations on 19 and 20 April and 2 and 3 August 2012; and

f) It is important to note that I am claiming aggravated damage in relation to the conduct of proceedings- this should include all conduct engaged from February 2011 and up until the hearing.

17. I will need to rely on the supporting evidence to demonstrate/prove my claims. Permitting supporting evidence of continuing acts of discrimination occurring after the acts founding a claim, would not cause hardship to the Respondents' and will assist the tribunal in dealing with the case efficiently and fairly because (i) it clarifies the continuing victimization, harassment and detriments that the I have been subjected to as a result of my decision to bring proceedings against my former employers and (ii) it demonstrates my former employer's motivation.

18. The acts of discrimination occurring after the acts founding my claim have particular significance, as they give weight to my allegations of discrimination, victimization and harassment. Acts of discrimination occurring after the acts founding a claim are also admissible as supporting evidence of a tendency to discriminate, see ***Eke v Commissioners of Customs and Excise*** **[1981] IRLR 334, EAT and** ***Qureshi v (1) Victoria University of Manchester (2) Brazier*****, EAT/484/95**, approved and quoted at length in ***Anya v University of Oxford*** **[2001] IRLR 377, CA [A1]**, pages 6 – 9.

19. The supporting evidence is extremely crucial. It will therefore be required in order for me to advance my case and evidence the way in which the Respondents dealt with my disability and discriminated against me. The evidence is admissible because it is relevant to an issue between the parties and it is rationally relevant to issues in dispute.

20. The supporting evidence is relevant, recent and particularly of assistance to me in the case that I am putting, that the respondents have a tendency to discriminate. It also demonstrates motivation. All of my supporting evidence has a potential to shed some light upon the culture that I suggest, therefore the evidence should be admissible. Further to this, no additional witnesses shall be required in relation to the supporting evidence, as the evidence is self explanatory and undisputable, and as such, the Respondent will not be put to any considerable disadvantage or any considerable cost. The supporting evidence of similar facts, are proven facts/ reasonably conclusive and not unsubstantiated allegations.

21. The ET should be mindful that a dispute regarding supporting evidence has arisen before, in relation to the previous hearing which was heard in January 2012, whereby the respondents' removed the evidence from the trial bundle at the very last minute, without my consent. I relied on the same reasons to be allowed to submit the evidence, but the ET refused to allow it and in the end the matter had to be taken to the EAT and the EAT directed that the evidence be put back into the trial bundle.

22. Where evidence is relevant and admissible, the tribunal should not refuse to admit it: ***ALM Medical Services Ltd v Bladon*** **[2002] EWCA Civ 1085, [2002] IRLR 807**, **[A2]**, where the Court of Appeal decided that the tribunal had wrongly held that the evidence which the respondent wished to call (and

in respect of which witness statements had been submitted) was irrelevant. Mummery LJ said (at para 15):

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

23. The evidence that I am requesting to submit is clearly relevant and will have had an important influence on the hearing. Any refusal to permit the admission of the evidence will result in an unfair hearing. I refer the Tribunal to ***O'Brien v Chief Constable of South Wales Police*** [2005] UKHL 26 **[A3]**, paras 2 – 7. In addition, I also expect to be allowed to include correspondence (including e-mail attachments) between parties and the ET related to the proceedings from February 2012 until present, this includes any applications, from parties, ET orders, PHR evidence, written representations etc. **I would like confirmation from the ET that this will be permitted in line with normal procedure, as it clearly relates to the issue of the conduct of proceedings**. The cut off point should not be February 2011.

Should the ET grant my application to submit covert recordings (and transcripts)?

24. Firstly, it is important to note that although I have indicated that this issue should be determined at a PHR, I have only suggested this because the respondents' were seeking to deal with it at the CMD. I therefore submit that in accordance with **Phipson on Evidence** (17th edition) 2010 at paragraph 39-35:

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

25. However, if the Tribunal does decide that it is appropriate to deal with the issue in this forum, it is important to be mindful of the fact that this case raises important issues of principles as to the limits of qualified privilege in light of the Human Rights Act. LBL is a public authority and as such has a duty not to act contrary to the HRA. The publications were an interference with my Article 8 rights, which include a right to reputation, and therefore its actions have to be justified (as required by Article 8(2)).

26. Since making my application to submit covert recordings in April 2012, on two separate occasions the respondents' have written to the Tribunal asserting that I should reveal the dates of all my covert recordings and the names of who is featured in them. On both occasion I have responded by stating clearly that I am under no obligation to do so at this stage, (particularly as the respondents' are yet to even submit a full response to the ET claim that I lodged in November 2011, which outlines numerous allegations to which no defence has yet been offered) and the fact that the details of the recordings will emerge through normal disclosure. Clearly the respondents' are seeking to gain an unfair advantage over me, which they have more or less already secured by simply having been allowed by the Tribunal to delay lodging a full response, for what will be more than a period of 8 months, by the time that they do.

27. I have dozens of recordings estimated to last around 39 hours in total. They feature all of the individuals that I have named in my claim, including **Valerie Gonsalves, Elaine Smith, Christine Grice, Ralph Wilkinson, Elaine Hattam, Kate Parsley, Nicollete Lawrence, Nick French, Chris Threlfall, Rita Lee, Cynthia Maxwell**, (but excluding Barry Quirk and Frankie Sulke). The recordings date from **26 April 2011 to 6 March 2012**. The recordings are on an iPod and I am proposing to submit the iPod (and transcripts) as evidence. I will also provide the ET with quality speakers and a headset. The covert recordings do not include any private deliberations of the investigating officer/hearing officer or any events where I was not present. The covert recordings

conclusively prove my allegations against Lewisham Council and prove that I was discriminated against and unlawfully dismissed. The recordings disclose evidence that is critical to my claims/disclose important facts, such as discriminatory views that the respondents' deny expressing and acts that they deny engaging in.

28. To be relevant, evidence does not have to prove a certain point conclusively, (even though my covert recordings do). The fact that LBL is objecting to the covert recordings being allowed as evidence (even though it has asserted that my claims have 'no reasonable prospect of success' and I refer to the recordings in my pleadings for claim number 2313031/12), is clear proof that the respondents' have something to hide and that it is therefore crucial to the issues between parties. The respondents' have also threatened costs; therefore it is paramount that I am allowed to submit the recordings in order to be able prove my claims. I am alarmed by the threat of costs, particularly as an extreme cost order has already been made against me by the ET for **£92, 010. 37**, despite the ET having failed to make deposit orders during two separate PHR's in relation to those claims, which took place before the main hearing.

29. In addition, having regard to the nature of my overall case as pleaded, the covert recordings/transcripts will be such as to assist me in succeeding in a case of disability discrimination/PIDA detriment and unfair dismissal. The recordings document events which are in dispute, i.e. meetings and telephone calls. Each of the recordings proves that LBL lied about the way that events 'played out'. They support my version of events/my case and refute the respondents' case/defamatory allegations. The evidence is damning. It sheds light on the real motivations and the real principal reasons for my dismissal.

30. The recordings evidence the fact that at a fairly early stage LBL had formed the view that my employment was unsustainable (i.e. on the day that I was suspended). The recordings will also

show that there was a pre-formed view that what had been alleged by management (the defamatory allegations) was correct and exposed their true motivation, particularly when considered alongside the weak, fabricated and false evidence that was put together by LBL against me. The recordings will also show that there was strong predisposition on the respondents' part during my entire employment, (including the internal process which led to my dismissal) and it is clear that there was no attempt to support me or a genuine open mindedness on the respondents' part in relation to their conduct/actions and the decisions that were made during my employment.

31. One of my allegations is the Respondents' persistent failure to keep accurate notes and omit important facts- which they are refuting. It shows provocation, which I cited as an issue in my grounds of defence in relation to the SOSR process and which LBL failed to take into account. The recordings also evidence for example:

    a) Comments made by Union reps which I believe support my case and the general approach employed by management to deal with me; and
    b) Union reps stating that the allegations made against me were unsustainable and that they would '*need to come with something better than that*'; and
    c) Christine Grice shouting at me in a threatening way during meetings on two separate occasions; and
    d) The fact that I was treated by managers, HR officers and the hearing officer in a manner which was unpleasant, unfair and calculated to prejudice the investigation/hearings; and
    e) That LBL lied in their ET3s and equality form response and Managers, HR and the hearing officer openly lied during meetings, in their SOSR interview statements, SOSR presentation and in the SOSR findings/dismissal letter.

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

33. The respondents' deny all my allegations and they rely on the content of the dismissal letter to support their assertion that my dismissal was fair. The covert recordings are conclusive proof of my allegations and it will have to be adduced in order to prove my claims that I was publicly defamed and had my human rights breached. The decision to dismiss me was arguably tainted by the malicious, discriminatory and defamatory actions (which the covert recordings evidence) and that this was present in the hearing officer's mind.

34. The covert recordings also support my allegation that the procedure was unfair since there were inaccurate documents and falsified/fabricated evidence (which the recordings will prove) taken into account by LBL, which it failed to acknowledge. Thus, if an investigation was carried out by virtue of ***Burchell*** the recordings conclusively prove that LBL could not have held a genuine belief that I was guilty of the allegations/alleged conduct that I had been accused of. That belief could not have been reasonably held by reason of the content of the covert recordings. The recordings will support my contention that my dismissal lays outside the band of reasonable responses (and most importantly), that I did not contribute to my dismissal by any culpable conduct.

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

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

36. To admit recordings made secretly would not be a breach of the Local Authority's right to privacy under Article 8 of the European Convention on Human Rights — the right to respect for private and family life, as the Local Authority is engaged in public work, not work of a private nature, and that there was no evidence of any likely or potential interference with the private life of any public officer. The Local Authority can also not rely on judicial immunity, since the Local Authority was not acting in a judicial capacity, but in the capacity as senior managers (public officers) of a public body. This view is supported by ***Dogherty v Chairman and Governors of Amwell View School*** [2006] UKEAT/0243/06/DA **[A4]**.

37. The clandestine nature of the recordings also cannot by itself be a ground for excluding relevant evidence. As is demonstrated by the case of ***Brunel University and Another v Vaseghi and Webster*** [2006] **[A5]**, in which the EAT said that if covert recordings were the only means of demonstrating discrimination, then they may be allowed as evidence for that reason. The material I recorded is very much in the public interest and it should be disclosed. It is not in the public interest for the material to remain confidential and I believe that it is my right to be able to prove my claim of discrimination, (Article 6 – Right to fair trial- natural justice), confront the people who subjected me

to experiences (that I equate with inhumane and degrading treatment- Article 3), and who have also defamed and slandered me.

38. The recordings don't represent some insignificant sideshow; they represent the true version of the main events in this case, (which are in dispute and as set out in my pleadings. The Respondents' also deny that minutes to meetings are inaccurate, that any allegations were false or evidence falsified/fabricated, that the hearings were not conducted in a fair and impartial manner, that I was prevented from asking questions of witnesses; therefore the only way to establish if this is true or false is by listening to the covert recordings. Where facts are disputed the employment tribunal must resolve them by admitting and evaluating evidence about them.

39. The respondents publicly defamed me, slandering me and calling my good character into question. They labelled me as aggressive, rude and combative. Central to LBL's reasons for the SOSR dismissal are issues of personality and conduct. The Tribunal will not be able to properly decide on the issues relating to for example, whether the Respondent acted on the basis of stereotypical assumptions about my mental health condition, its subjective view of it or it acted on the basis of how I presented myself, unless it is provided with the actual evidence of how I presented myself (which is demonstrated by the covert recordings). The recordings are also essential in order to enable the Tribunal to make findings of fact about my alleged conduct for the purpose of deciding if my alleged conduct contributed to my dismissal and whether or not LBL knew this was the case.

40. It will not be sufficient to take LBL's word for it. LBL in fact relied on fabricated/falsified evidence as reasons for dismissing me from my employment- which is my pleaded case. The respondents should be held to full public account for these intentional allegations and perceptions which have been transmitted and /or published both verbally and in writing. The recordings are the only way

that I can conclusively prove my allegations regarding defamation (which I have pleaded) and successfully recover stigma damages, therefore the recordings should be admissible.

41. The Tribunal should not trivialise the issue of vindication. It is highly important that I be allowed to evidence the truth of my account. It is paramount that I am permitted to submit all the covert recordings, as my reputation and my career are on the line. LBL have ended my career (and all prospects of future employment in my chosen career, and even any other, earning the same level of income in my current field, because of the stigma) on findings of SOSR involving malicious defamatory allegations. My allegations include being publicly defamed suffering injury to my reputation and stigma. This requires, in my view, both clear and compelling evidence, which are the covert recordings. My dismissal under SOSR requires evidence that an offence had been committed that was so serious as to warrant the termination of my career. Since the evidence is in dispute and I have asserted that the covert recordings support my version of events it should be allowed.

42. To end my professional career for conduct that I have clearly not engaged in and other discriminatory actions/detriments that I was subjected to by LBL, short of dismissal involved breaches of Article 3, 8 and 10 of the European Convention on Human Rights (ECHR). The covert recordings will prove that LBL engaged in these actions and that the disciplinary proceedings and the disciplinary/SOSR procedures were not Article 6 compliant.

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

basis and as such there was no conceivable duty or interest on the part of LBL employees to voice publicly the defamatory allegations.

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

Whether the Tribunal believes that my claims have 'no reasonable prospect of success'?

45. First and foremost, I would like to make it clear that I am not making an application for a deposit order against myself. I clarified this in my e-mail to the ET dated 20 June 2012 at 9.29. Making an application against myself would be non-sensical, yet this is the assertion that was made by the respondents' in their letter to the Tribunal dated 19 June 2012. Clearly my position is that I shouldn't have to pay a deposit. It is clear that I had initially simply phrased the issue in the wrong way.

46. The Respondents (BED and the individual respondents for claim number 2300254/2011) have indicated in their letter dated 12 June 2012, sent at 15.20pm **[at page 33]** that the only issue they believe should be considered is the issue of supporting evidence. They have not made any application to strike out my claim. In the event that it does, it is submitted that it would be wholly wrong for the ET to consider merits of any ongoing claims connected to the claims that were

dismissed in January this year, as those claims are currently under appeal at the EAT and are set to be heard on 25 October 2012 **[at page26a]**. It would be wrong for ET to take make a decision on the merits of the 'stayed' part of the claim until my appeal has been determined and the evidence for the claim has been heard.

47. The respondents' to claim number 2375023/2011B and others have indicated in their letter dated 19 June 2012 **[at pages 35a]** that my claim in relation to LBL's indirect threat of an ISA referral, (which relates to settlement negotiations) should be struck out. It would not be just and equitable to strike out my legitimate claim which discloses a reasonable cause of action. I have pleaded in claim number **2302645\2012** that the correspondence is a blatant example of discrimination, harassment and victimisation. I have specifically pleaded that the settlement discussions was abused and used by LBL as a means to harass me and as a tool to intimidate and put pressure on me to leave my job, rather than about resolving a dispute **[paragraphs 10 – 12]**. I believe that the respondent party is trying to obstruct the just disposal of proceedings.

48. It is important to note that even though a cost order was made in relation to the 'un-stayed' part of claim number 2300254/2011, the Tribunal failed to make a deposit order in relation to the 'stayed' part of claim number 2300254/2011 at the PHR on 19 and 20 April 2012. It is clear from the order on the PHR dated 24 April 2012, that although the Tribunal had the opportunity to make a deposit order, (particularly given the fact that I raised the issue with the judge and the Respondents' put forward written submissions relating to this issue on 20 April 2012), it chose not to do so. Further to this, the Tribunal should also take into consideration my review application in relation to the cost order dated 25 April 2012, and the attached EAT Notice of Appeal which I submitted as supporting evidence for my application.

49. In relation to claims numbers 2302643/12, 2302645/12 and 2313031/12, the Respondents' contention that my claims have no reasonable prospect of success is baseless. LBL's main reason for dismissing me was an alleged 'breakdown of trust and confidence' and it refers extensively to my alleged 'conduct'. The reason for my dismissal does not satisfy the requirement of section 98(2) of the Employment Rights Act 1996 in that my conduct cannot have caused the alleged breakdown of trust and confidence because I must be culpable/blameworthy, and yet in LBL's view, I was not. The Respondent took the view that my conduct was not blameworthy, therefore the alleged conduct cannot be categorised as culpable and be held to have caused the breakdown of trust and confidence. The dismissal was for this reason and other reasons, not for a potentially fair reason and is, accordingly, unfair.

50. The issue of defamation and stigma is also related to my unfair dismissal. A statement should be taken as defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally, see ***Sim v Stretch*** [1936] 2 All ER 1237 at 1240 or it would be likely to affect a person adversely in the estimation of reasonable people generally (Duncan & Neil on Defamation, 2nd edition, paragraph 7.07 at p32). The words used by LBL, (even though there is not a jot of evidence supporting them), are plain. The defamatory meanings are clear. Even neutral third parties reading the dismissal letter asserted that it was dismissal for misconduct, (because of the catalogue of false allegations, the nature of them and the extreme language used by LBL) and as such refused to payout my insurance policy **[at pages 26]**. This was completely devastating for me and impacted on me both financially, (I am unable to now cover the costs of my loan re-payments due to the fact that I am now on benefits) and psychologically/physically- exacerbating my medical condition. I was completely humiliated. Even after having left LBL's employ I am still suffering the consequences of their deplorable actions.

51. LBL unlawfully used the SOSR route. The correct categorisation of a dismissal for the reasons given by the respondent in its dismissal letter is misconduct, rather than 'some other substantial reason'- a difficult personality (which is what is required for a dismissal for SOSR). LBL stated that my alleged conduct was not blameworthy, (which is contradicted by their allegations off rudeness, aggressiveness and bullying) and which would clearly indicate more than just a ‘difficult personality’, if the allegations were true. Since the Respondent will therefore fail to establish the reason that it expressly relies upon in its own pleadings, my claim will succeed, particularly given the fact that I can prove that I in no way contributed to an alleged breakdown of trust and confidence, (which the respondents’ knew at the time of my dismissal) and that I was not guilty of the allegations made against me, (which the respondents’ also knew at the time of my dismissal), but which the respondent concluded had warranted my dismissal.

52. The assertion made by the respondent can be easily rebutted by me by way of substantially disputing the facts alleged by the respondent. This issue is inextricably linked to my application to submit covert recordings- which the Respondents' have objected to. If it is the Respondents' contention that my claims have no reasonable prospect of success, it is odd that they would object to me admitting recordings which are the only means of demonstrating what really took place/the issues that are in dispute. This suggests that they have something to hide and further supports my contention that the covert recordings are highly crucial and therefore admissible.

53. It is important to note that the Respondents' ET3's fails to engage with the substantive allegations, relying simply on 'rebuttal'. This raises the issue of the burden of proof. As a general proposition, the mere fact that someone has said that I was guilty of all the allegations that LBL relied on, or the fact that someone believed it to be so, cannot in itself constitute reasonable grounds to suspect. Something more is required, but LBL failed to provide this. The setting out of subjective views and judgments is irrelevant to the establishment of grounds to suspect, which are to be judged

objectively. The grounds relied upon in the dismissal letter, referred to in LBL's pleadings, must be treated as fact rather than comment. The remarks were public attacks made in pungent and unequivocal terms. It is clear that LBL employees went too far and that there was no occasion to endorse, in any degree at all, the allegations made against me, which LBL failed to verify. In light of this, any application for costs will be misconceived.

54. My case for defamation turns on the words published/said by LBL employees. At the heart of my complaints are clear alleged factual statements, which were made by LBL employees in unambiguous terms. Such statements required verification before publication and/or saying them publicly.

55. The Respondents may suggest that my claims have 'no reasonable prospect of success', by relying on a defence of 'justification/qualified privilege'. However, it is important to note that I contend otherwise in my pleadings, asserting that my Article 8 rights have been interfered with, and this was not 'in accordance with the law' - there was no clear legal basis for the interference; it was not in pursuit of a legitimate aim and the interference was not proportionate. The covert recordings are the only way of supporting my pleaded case on malice. Against that background it is necessary to consider how I put my case on defamation and malice. Central to it are allegations that the allegations made against me were untrue, that the individuals who had made those statements were aware that they were untrue and that LBL was recklessly indifferent to the truth (which is all evidenced by the covert recordings). It is clear from this that the covert recordings are crucial and probative.

56. 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 Employment Tribunal to draw inferences, including that of

discriminatory motive, from their replies. The covert recordings will go to the heart of the issue of credibility. I'm sure that the Respondents' will be well aware of the consequences of taking the stand and giving evidence in line with its pleadings (which is contrary to what the covert recordings will reveal).

57. In addition, the Respondents Barrister owes certain duties to the ET and is bound by certain standards of professional conduct in accordance with the code of conduct of his profession. He is prohibited from lying for the client or knowingly allowing his client to take the witness stand to lie. He has a primary duty to preserve the integrity of the adversarial system by presenting the ET from being misled by the presentation of false or perjured evidence. One might deceive or mislead the ET by, for example:(a) submitting inaccurate information or allowing another person to do so; (b) indicating agreement with information that another person puts forward which you know is false and (c) calling a witness whose evidence you know is untrue.

58. The Respondents' also suggest that I am inviting the Tribunal to substitute its decision for that of the employer. I am clearly not trying to do this. I understand that the tribunal is concerned with how a reasonable employer would have acted and is not concerned with what actually happened but with what the employer *believed* had happened. I am refuting what LBL claims it believed happened/what it believed the facts were and I intend to prove this, (with the assistance of my covert recordings), which it is attempting to exclude.

59. A clear indication from the Tribunal that the Respondent is mistaken in its belief that my claims have 'no reasonable prospect of success' may permit parties to focus on the real issues on which the case will be decided. In light of the above and the fact that the Respondent party deny that I have made protected disclosures, (this will widen the issues and increased costs), **I therefore consider it appropriate for the Tribunal to consider the following issues:** *Whether to direct the*

Respondents' to identify which protected disclosures they do not accept as being protected disclosures and which protected disclosures they believe are not protected and why not (please refer to the respondents' ET3's).

60. In relation to the issue of defamation, there is a matter concerning the question of whether the remarks/allegations made against me attracted privilege. As there is a material dispute as to the facts, on which findings have to be made before the Tribunal can decide whether the occasions were privileged at all, and there is also findings to be made on my plea of malice as to LBL' state of mind, then I the Tribunal cannot pre-empt the matter at so early a stage as this. My submissions relating to the question of my disability and my applications relating to without prejudice communication, covert recordings and supporting evidence should also be taken into account by the Tribunal when assessing/considering the merits of my claims.

Whether to grant my application dated 28 May 2012 for leave to amend the claim, and make any consequent case management orders including granting leave to amend the responses

61. The amendment sought is one of the minor matters, not a substantial alteration pleading a new cause of action. The amendment involves the additions of factual details to the existing allegations and/or the addition or substitution of other labels for facts already pleaded to. It does not constitute the making of entirely new factual allegations which change the basis of my existing claim. The tribunal has the power under rule 10 (q) of the procedure rules to permit amendment of a claim or response. I acknowledge that the closer we get to the hearing, the harder it will be to amend my claim, and therefore I made my applications the same month that I lodge my claim. A tribunal claim can be amended at any time; I just need the tribunal's permission. (ET Regs 2004 sch 1 rr10 (2) (q) 11 (1). The Respondents have not objected to my amendment applications. My applications are in line with the 'overriding objective' of the procedural rules to enable the tribunal to deal with cases

justly.

62. In deciding whether to allow an amendment, the ET must take account of all the circumstances and balance the hardship and injustice of refusing the amendment against that of allowing it, see ***Selkent Bus Co. Ltd v Moore*** [1996] IRLR 661, EAT. ***Transport and General Workers Union v Safeway Stores Ltd UK*** EAT/0092/07). 'Where the amendment is to add new facts and grounds, the ET must decide if the new claim is in time and, if not, whether the amendment should be allowed. If the claim arises out of the same facts as the original claim but simply adds factual details or attaches a new legal label, the ET should very readily allow the amendment even outside the time limit', ***See Selkent Bus Co. Ltd v Moore*** [1996] IRLR 661, EAT and **Transport and General Workers Union v Safeway Stores Ltd UK** EAT/0092/07). Other factors would be why the new claim was not originally included, how late in the day the amendment is now sought; whether the Respondent would be surprised by the new allegation or prejudiced by its late addition and, as already mentioned, the balance of hardship to each party.

Whether to allow me to rely on without prejudice communications?

63. The statements made in a without prejudice context are clearly connected with issues in a case and the Tribunal should not hesitate to lift the umbrella of 'without prejudice' because the case for doing so is absolutely plain. The evidence in question is already in the public domain- having been submitted as evidence at the PHR in April 2012 and made reference to in my PHR witness statement and submissions dated 16 April 2012, which relate to an allegation that I have pleaded in my ET1. I will clearly need to rely on the evidence that they are seeking to exclude, in order to prove my case.

64. The 'without prejudice' communication has also been referred to in open correspondence between myself and my former employer **[at pages 11 - 13]** and the respondents' included in the joint PHR bundle in April 2011 a document containing a reference to the settlement discussions, i.e. my appeal against my dismissal dated 5 April 2012, paragraph 21c:

'any conduct issues involving employees, (i.e. which I brought to her and LBL's attention (e.g. malicious actions, collusions or other misconduct)- there was no mention of this at all'.

LBL's legal representatives also referred to without prejudice discussions when making its oral and written submissions, stating that the offers were '*fairly and properly put to me*', paragraph 14 of the Respondents' cost submissions.

65. LBL did not seek to strike out references to without prejudice communication from the 7th claim during the PHR which took place on 19 and 20 April 2012, but sought only to consolidate claim 7 with the other claims. I will clearly need to refer to the 'without prejudice' discussions in order to prove my tribunal case. The Respondents' approach to the settlement discussions was carried out in 'bad faith' and as a means to intimidate/threaten me. It was also an indication, (a warning sign) of what was to come, because in the end the respondents' did manage to 'get rid' of me and destroy my career in the process. The 'without prejudice' correspondence was used by my employer as a tool to discriminate against me and the 'without prejudice' language was used to announce that course of action, which also involved publicly defaming me.

66. Mr Dobbin (Babcock and LBL's legal representative) 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)*'. It is important to note that the previously drafted agreements did not include this clause, (as was presented to the Tribunal in my PHR evidence pack in April 2011). This evidences the fact that the action was not genuinely aimed

at settlement. When I challenged LBL's legal representatives about this, 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*'.

67. LBL's legal department also e-mailed on 14 December 2011 at 14.41 regarding the issue on me and stating the following: '***I can however confirm that the Council does not intend to make a referral to the ISA and is unaware of any circumstances which would give rise to such a referral***', **[13d]**.

68. Even if the respondents' do have the right to reserve its position with regards to this, why did it feel the need to communicate this to me in a settlement agreement, when it didn't include this wording/clause in several previous drafts of settlement agreements? It was a statement which the respondent inserted for the clear purpose of causing distress, scaring and intimidating me into believing that my future career would be at stake. The respondents' actions therefore fall under the umbrella of 'unambiguous impropriety'. The Respondents clearly had reprisal in mind and it is submitted that the Tribunal to should view subsequent events through the lens of that conduct.

69. In ***BNP Paribas v Mezzotero*** [2004] UKEAT 0218_04_3003 **[A6]**, the EAT reached the conclusion that there *was* evidence of impropriety, because, although the Claimant's general claim in that litigation went wider, it *was* part of her case that the specific behaviour alleged on behalf of the Respondent, *in the without prejudice discussions* in that case, namely suggesting to her that her employment be terminated by mutual agreement after she had raised a grievance about her treatment on return from maternity leave, was *itself* improper conduct.

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

71. The Respondent has made a cost threat in relation to this issue. In their 4 page letter to the Tribunal dated 19 June 2012 it stated as follows **[at pages 35a]**:

'1. Strike Out (without prejudice reference): An application by the Respondents to strike out the references in the Claimant's claims to without prejudice correspondence and/or discussion, and to confirm that the Claimant will not be permitted to rely upon any without prejudice material as evidence in her ongoing claims. 2. Costs (without prejudice references): In the event that the Claimant does not accede to (1) above no later than 14 days before the PHR (and agree not to refer to or otherwise rely upon any without prejudice material), whether the Claimant should be ordered to pay the Respondent's costs incurred in connection with the same on the basis of unreasonable conduct and/or that her attempt to rely upon such matters is misconceived.'

72. This is an example of unreasonable and vexatious conduct and an abuse of process. I do not believe that the respondents' can prevent me from making an application to rely on 'without prejudice' communication, by using the threat of costs. It is my right make the application, seek review of the decision if necessary and appeal that decision at the EAT if necessary. I am therefore particularly confused by their 14 day deadline in relation to this. It is clear that the respondents' are seeking to deny me my right to receive the ET's decision on my application, which is incomprehensible.

73. It would not be just and equitable to exclude evidence of the 'without prejudice' correspondence from the proceedings because the correspondence is a blatant example of discrimination, harassment and victimisation. I have pleaded malice in relation to my defamation allegations and have also pleaded in claim number **2390531\2011, paragraph 80** that the respondents were trying to 'get rid' of me, (which they subsequently did). I have specifically pleaded in claim number **2302645\2012** that the settlement discussions was abused and used by LBL as a means to harass me and as a tool to intimidate and discriminate against me and put pressure on me to leave my job, rather than about resolving a dispute **(paragraphs 10 – 12)**. The 'without prejudice' communication is therefore crucial, as it supports my allegations and will help me prove my case. I believe that the respondent party is trying to obstruct the just disposal of proceedings. I therefore respectfully request that the tribunal use its discretion to permit me to rely on the 'without prejudice' correspondence and admit it as evidence, because it contains information which is clearly relevant and crucial to my case.

74. The use of the without prejudice communication formed part of the disclosure process in litigation, resulting in the submission of the material in the PHR in April 2012. I referred extensively to the material in my written representations. This amounts to putting the material in the public domain and so there has automatically been a loss of privilege, particularly as the respondents' had the opportunity, but did not seek to exclude its admissibility at the time. In ***Pizzey v Ford Motor Company Limited*** [1994] P.I.Q.R. P15, the Court of Appeal said:

> ***"Cases of discovery [disclosure] apart, an injunction will usually be granted to restrain the use of communications that are both confidential and privileged unless they have already been adduced in evidence or otherwise relied on at trial".***

75. The Respondent must have realised that what was said and relied upon at PHR and its own internal SOSR hearings was likely to be revealed in future Tribunal proceedings. Making and considering settlement offers are 'part and parcel' of any litigation proceedings and the PHR hearing in April

took investigated this in relation to the Respondents' cost application. The ET was asked to look into the improper conduct of the Respondents' during the course of negotiations.

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

77. In line with the rationale of ***Brunel University and Another v Vaseghi and Webster*** [2006] **[A5]**. The Council staff involved in the SOSR process/hearing were brought in by LBL because they were supposedly independent. The hearing officer and HR officer in particular was selected because they knew nothing about the dispute or the people involved in it. During the internal SOSR procedure, the hearing officer's function was to act as an independent adjudicator. The proceedings were formal and adversarial. Evidence was called, including the documents containing references to 'without prejudice' communication. Findings of fact were made; inferences were drawn and conclusions reached. The reality was that the SOSR hearing was a mini-trial, leading, in effect, to judgment.

78. Where documents containing references to 'without prejudice' communication was called, the ET is entitled to conclude that privilege had been bilaterally waived. The ET should also be mindful of the

fact that it was LBL that had made the public allegation that I had made vexatious grievances/unwarranted allegations relating to LBL's conduct regarding settlement negotiations. It had been content to rely on the documents containing references to 'without prejudice' communications when making its case against me during the SOSR process/hearing **[at pages 13 a -d]**, (which took place on during the months of February and March 2012). Waiver was then complete, as LBL staff (whose positions were not privileged and as a result of LBL's own actions), would have had access to the without 'prejudice communication' since this time.

79. Even if LBL had not waived privilege by its conduct of the SOSR hearing, it had done so when, in response to my allegations and its bid to 'get rid of me', it had relied on the SOSR proceedings and included documents containing references to 'without prejudice' communications in its SOSR bundle. Privilege had been waived by compiling the bundle of documents so as to include 'without prejudice' material and by disclosing the statements to staff, including the hearing officer, who relied on it in his SOSR outcome/dismissal letter- my alleged vexatious grievances/allegations, (the respondents' included this document in the joint PHR bundle in April 2011). It is unrealistic to think that a party can rely on this when setting out its case against me, (which led to my dismissal) and then seek to withdraw it at the hearing. By including the evidence in its SOSR bundle, LBL made it plain that it intended to waive privilege. In my view, bilateral waiver had taken place at the time the ET1 and ET3 regarding this matter was lodged with the Tribunal office and the evidence.

80. The respondents' SOSR bundle will obviously need to be adduced as evidence at the full hearing. In addition, I am also seeking to admit specific evidence in relation this (settlement negotiations illustrating my point), which was adduced during the PHR in April 2012 in my evidence pack, unless the Respondents' make admissions in relation to the fact that it did include the clause, but had not done so in previous drafts of settlement agreements. It would be an abuse of a privileged occasion

not to allow me to refer to the discussions to support my claims of discrimination, unfair dismissal, breach of contract/human rights and defamation.

81. The Respondents' are requesting that the Tribunal 'strike out' my claim which relies on without prejudice correspondence and which is crucial in enabling me to advance my case. Please refer to my submissions below regarding this issue- '*Whether to allow me to rely on without prejudice communications?*' It should be rare in whistleblowing cases or discrimination cases to strike out on the ground of 'no reasonable prospect of success, as these issues are particularly fact-sensitive and dependant on evidence being heard. I should be allowed to have all the circumstances considered at a full merits hearing. The Tribunal should not strike out this part of my claim, particularly as my claim is a serious one, involving defamation and injury to my reputation, to which I have pleaded malice and the respondents' have pleaded justification/qualified privilege, which I ought to have the chance to meet. The Tribunal should not be drawn into making a decision on a matter which ought properly to be left to the Tribunal of fact to decide.

*Should the Tribunal hold a separate hearing for the balance of claim number **2300254/2011B** and consider claim number **2375023/2011B** and others together immediately afterwards?*

82. I believe that claim number **2300254/2011B** and **2375023/2011B** should be heard together. The claims are continuing acts and I will predominately be relying on the same set of evidence for both hearings. In light of this I suggest that it will be just and equitable and more economical for the tribunal and for the parties if the hearings are not separated. I am also mindful of the fact that the EAT has said that that an ET 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.

83. 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.

84. In relation to the above issues, if the Tribunal decides to hold two separate hearings, it will also need to consider the issue of 'reasonable adjustments'. I am a disabled claimant suffering from a mental health condition. By taking a decision to hold two separate hearings will automatically double my workload, requiring me to have to deal with two sets of bundles, (which in the end may total over 14) and two sets of witness statements.

Human Rights and a Right to a Fair Trial

85. I have previously put it to the ET that the panel should have recused itself because there is an appearance of pre-judgment. I am concerned with questions of substantial and apparent unfairness. The issue of the constitution of the Tribunal had been put to me by the Judge at the end of the previous hearing in January 2012. However at that point I had no reason to object, but had indicated that I would reserve my right to object at a later stage. This point was acknowledged by the Tribunal.

86. On 15 March 2012, the ET refused my first recusal application. I am clearly unwell **[at pages 14, 25, 32 & 27 - 39]** and my GP has increased the dosage of my medication **[at pages 28 & 29]**. I have also been referred for counseling **[at pages 17 & 29]**. My concerns are real and pressing. I

informed the ET that I would therefore be disadvantaged at the hearing if the same panel sits, because of the strength of my feelings. The Respondents' recently made the following comments regarding my recusal applications- in its 4 page letter to the ET dated 19 June 2012 **[at pages 35c - d]**:

'*The Respondents are also aware that the Claimant has sought the recusal of the Tribunal and Employment Judge Balogun on a number of occasion, and that such applications have been refused. If the claimant has raised the issue of a deposit with the specific purpose of achieving the recusal, the respondents' submit that this would constitute unreasonable conduct (and which would cause the parties and the Tribunal to incur the costs and time of considering a deposit which is unlikely to be of any assistance to the parties). In the circumstances the Respondents respectfully submit that the consideration of a deposit order would not be proportionate or cost effective in this case*.'

87. It is important to note that on **15 May 2012** the Respondents' stated in their ET3's for my two ET claims that both claims had 'no reasonable prospect of success' and they threatened me with costs. It is also important to note that I have already been ordered to pay a third of the respondents' costs (which was estimated to be **£260,000**) in relation to my previous case against the respondents'. This cost order was made after the ET failed to make deposit orders at two PHR's and 4 CMD's prior to the full hearing and (in a 21 month period) and after not having advised me at any stage that it believed my claims were allegedly weak.

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

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

89. Judge Balogun had also expressed very clear views during the PHR on 20 April 2012 in relation to my allegations regarding Marina Waters' and her alleged inducement by LBL, stating on page 2 & 3, paragraph 8 of the order on the PHR/CMD dated 23 April 2012**, '*it is difficult to see how that gives rise to a disability discrimination complaint. On the conspiracy allegation, there are no primary facts pleaded that remotely establish a prima facie case of discrimination under the EQA*'**. This firm conclusion was made by the Judge without her having seen/heard all the evidence. The Tribunal did not state that the view was provisional only and it clearly was not. Against that background it is necessary to consider how I put my case on the issue of defamation and malice. Central to it are serious allegations of conspiracy and corruption. The problem in this case is rooted in the fact that the Judge has already committed herself on issues to which the other members of the Tribunal are, expected to consider afresh. I am therefore of the view that I can no longer have any confidence or will be given a fair hearing.

90. In its judgment on the PHR, (where it issued a cost order), the Tribunal stated that the respondents' costs were largely incurred by Lewisham Council and that they cannot afford this in times of cost cutting and austerity measures and in those circumstances **'*it cannot be right for the claimant to walk away with no financial repercussions*'** and that she should therefore pay a third of the respondents' costs. It is clear from this comment that the judge was unable to disabuse her mind of any irrelevant personal beliefs or predispositions. In any event, it is important to note that standard clauses for all public authority contracts require the contractor (Babcock- my former employer and co-respondent), to indemnify the public authority- LBL. I had submitted evidence to this effect to the Tribunal during the main hearing in January/February 2012 and referred to this in my witness statement for the full hearing.

91. Anti-discrimination criteria and clauses provide the local population with an assurance that their tax funds are not going to companies willing to discriminate against them. These clauses are in use in the United Kingdom, Austria and Sweden. They can be applied on all public contracts both above and below the European thresholds in goods, services and products. Such a clause would for example include the following wording:

'***The Contractor shall indemnify and keep indemnified the Authority against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:***

a) any loss or damage to property (whether real or personal); and

b) any injury to any person, including injury resulting in death

c) in any way arising out of the provision of the Services by the Contractor, its servants or agents except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Authority, its servants or agents (not being the Contractor or employed by the Contractor).

During and after this agreement, the Contractor agrees to protect, indemnify, defend and hold harmless the Authority, and to the extent required from time to time by the Authority, its officers, agents, and employees, from and against any and all expenses, damages, claims (whether valid or invalid), suits, losses, actions, judgments, liabilities, and costs whatsoever (including legal fees on a full indemnity basis) arising out of, connected with, or resulting from, the Contractor's negligence, misrepresentation or the breach of any obligation to be performed the Contractor under this agreement'.

92. The ET persistently failed to make deposit orders in relation to my claims and this is a familiar patter. It is important to note that on 19 and 20 April 2012, the Tribunal failed to make a deposit order in relation to the 'stayed' part of claim number 2300254/2011, even though I raised the issue of a cost order with the judge on 20 April 2012 and the respondents' put forward written submissions asserting that my claims should be struck out in light of the fact that the 'un-stayed' part of the claim had been dismissed **[at pages 20 - 21]**. I highlighted the Tribunal's failure to make a deposit order, in my e-mail to the ET dated 27 April 2012, setting out additional grounds for a review of the decision on the cost order. It is clear from the order on the PHR/CMD that the Tribunal

did not see this as an issue, **(see page 6, paragraph 6 of the order on the PHR/CMD dated 23 April 2012)**.

93. **On 28 May 2012**, the ET again failed to list a PHR to determine the issue of a deposit order for my on-going claims, even though I had requested this on 23 May 2012 and the respondents had asserted in their ET3's dated 15 May and 19 June 2012 that my claims (**2302643/12, 2302645/12 & 2313031/12**) have' no reasonable prospect of success' and threatened costs. The ET is entitled to have regard to this fact, as it is clear evidence that I have been prejudiced by the ET's persistent failure to assist me as an unrepresented disabled claimant and aid me in assessing how serious I should take the respondents' numerous costs threats.

94. The ET failed to exercise of discretion in accordance with the authorities that the I cited in my e-mails to the Tribunal regarding my recusal application and in particular with the guidance laid down in ***Dorbcrest Homes Ltd v Fishwick*** **[2010] UKEAT/0507/09/JOJ** and and ***Amjad v Steadman-Byrne*** [2007] EWCA Civ 625, [2007] All ER (D) 348. It is submitted that the ET should have treated the case as one of doubt, in accordance with the tenth principle in ***Ansar v Lloyds TSB Bank*** [2006] ICR 1565 (EAT), [2007] IRLR 211 (CA):

> ***'10. In any case where there is real ground for doubt, that doubt should be resolved in favour of recusal: <u>Locabail</u> at para 25.'***

95. The fact that Judge Balogun referred both my recusal applications to the regional Judge leads me to believe that there was doubt in her mind, particularly as Judges have jurisdiction to determine applications for their own recusal.

96. The ET is entitled to treat the case in accordance with the above with ***Drury v BBC*** [2007] All ER (D) 205:

"The mere fact that the judge had made a finding against a party on a previous occasion even if he had been critical to that did not found a later objection to the judge sitting in another matter. It was however also plain that where there was any room for doubt as to which course to adopt that doubt should be resolved in favour of recusal."

97. In my view, the ET should have directed a new panel in the exercise of its discretion and case management powers, having regard to the exceptional circumstances of the case. The ET should have directed a new panel (in advance of the PHR on 19 and 20 April 2012). There was no disadvantage to the Respondent in a fresh panel being put in place and the respondents' did not object to my applications. The ET failed to take into account the matters set out in my recusal application and it has failed to adhere to the legal and European norms and adhere to the European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6, which clearly states that I have a right to a fair trial.

98. The received the ET's refusal on my recusal application on 20 June 2012, which was not sufficiently clear to me straight away and I made an application for a review of it decision on the same day, clarifying my concerns and highlighting the impact of the decision on my health. I pointed out that the case which is due to be heard involves the same issues and witnesses in the previous case, definitive opinions on the issues to be heard have been expressed by the judge, whose recusal was sought, and the judge in question has expressed strong views (which I have previously set out), destructive of my credibility (a witness who is crucial to both hearings). I went on to state that if a judge sits to hear a case at first instance after he/she has, in a previous case and/or situation, expressed clear views either about a question of fact which constitutes a live and significant issue in the subsequent case or about the credit of a witness whose evidence is of significance on such a question of fact, it could not constitute a fair trial/process.

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

100. Recusal applications should never be countenanced as a pretext for judge-shopping. It is clear that the judge in question has already pronounced on an actual, live, concrete and highly relevant issue in question. In this case part of that pronouncement relates to the credibility of a key witness, (myself) concerning the very issues in dispute and has expressed a judgement on a significant feature of the new matter, not by way of articulating a general philosophical position, but by way of making a finding on the very matter in issue.

101. I believe that a reasonable person would say that a judge should not sit in a matter where she or he has already pronounced on the live and central facts in issue. The saying that not only must justice be done, it must be seen to be done, is a well worn one, and for good reason. An ET's work involves continuing defence of such a simple quality. I have been informed by this Tribunal that there is no basis in law to grant my recusal application and that I cannot request a review of the decision to refuse my recusal application.

102. It is my view that this process does not exist in a vacuum. It exists to dispense justice according to law and ensure that public confidence is maintained by the openness and transparency of the process. My recusal application was primarily about maintaining the public's

confidence and trust in the justice system by verifying the judge's impartiality and thereby his/her independence.

Practice and Procedure

103. There have been violations of the Legal and European Norms in this case. An example of this took place on 20 April 2012. The Respondents' made an oral application for all of my claims to be consolidated, (4 and half claims at the time). The additional two claims had only been served to the Respondents the previous week and the Tribunal had not even accepted responses for them as yet. I expressed concern about this at the PHR. Judge Balogun informed me that she had already spoken to the Regional Judge about it and that he had advised her that she could consolidate the claims and that this was the best approach etc. Judge Balogun informed me of all this within just minutes of Lewisham Council's legal representative making the oral application to consolidate those claims. I had not been aware that any application would be made by the respondents' before the PHR on 20 April 2012.

104. I advised the Tribunal and the respondents' that I felt that such a move may prejudice my case. I was immediately asked by Judge Balogun how this was so. I responded by stating that I wasn't sure, as it was just a feeling I had, and as I was unrepresented and had no legal training, I should be permitted enough time to go away and think about it. During the PHR/CMD and in a follow up e-mail to the ET, I highlighted the fact that the application had not been made in line with Tribunal rules **[at page 23]**. I was then informed by Judge Balogun that this didn't matter and that I should make any objections orally, right there and then. I had to insist that I be allowed to respond in writing if I wanted to object. Judge Balogun then agreed to this **[see the order on the PHR dated 23 April 2012]**.

105. 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 judge Balogun and the panel members' recusal. I was denied this.

Requests for 'Reasonable Adjustments'

106. The last hearing which dealt with only three consolidated claims (including the un-stayed part of claim number 2300254/2011B) consisted of around 45 allegations, of which the last two were 'stayed' by the Tribunal in order to make the hearing more manageable. The Tribunal has made the surprising decision to consolidate a large number of claims, stating that both Judge Balogun and the Regional Judge had discussed it and decided that his was the best approach. It is important to note that my disability was not taken into account when this decision was made and as a disabled and unrepresented claimant I am being expected to deal with a large number of claims consisting of the following complex and detailed matters:

Table 1

No.	Claims in relation to Babcock
1.	The handling of the referral to PHC occupational Health company: Paris Smith's involvement, the disclosure of my ET1's to **Beverly Bannister**, the inclusion of my ET1's and confidential e-mail correspondence in the OH referral pack, my employer's failure to observe my rights under the Access to Medical Records Act/Data Protection Act etc and the threat of disciplinary action again; and
2.	My employer's handling of the return to work process**- a)** Not in accordance with the normal procedures; the continued failure to make reasonable adjustments, (offer me an alternative role/job & the continued failure to pay me at full rate) & **b)** The handling of the risk assessment & return to work meetings; and

Table 2

No.	Claims in relation to Lewisham Council
1.	Issuing a letter (after I had been at work at LBL for the whole week) advising me that I was not employed by LBL.

2.	The handling of my protected disclosures: I.e. The line management change/the refusal to make a 'reasonable adjustment'/advise me as to whether Nick French would be working part-time or full-time and the failure to deal with my protected disclosures in an appropriate and effective manner; the failure to adopt procedures which are open and demonstrate accountability; the failure to enable me to feel confident about raising my concerns, without any risk to myself, the persistent delays to address the matter, the letter from Alan Docksey putting pressure on me to send further info and meet with him, (after I had already advised LBL of my position with regards to the matter) and the outcome of his subsequent investigation.
3.	The delay in referring me to OH and the failure / delay in conducting / implementing a DSE, stress risk assessment, H&S induction, and an adequate personal risk assessment and the associated 'reasonable adjustments'
4.	The lack of line management / support and the handling of my requests for reasonable adjustments
5.	The failure and the delay in providing me with the tools / resources / information and guidance to enable me to do my job
6.	The way my first salary payment was dealt with: cash/security issues, tone of correspondence from HR, (unsympathetic, sharp, disproportionate, impersonal/no phone call and I was not advised in advance that I would not be paid in full) and the delay in providing me with appropriate and accurate information regarding my April / May salary.
7.	The persistent failure to respond to my e-mails and/or address the concerns raised / queries made / provide information requested 'in good time'
8.	Management copying in the legal team into e-mail responses to me, LBL's lawyers impersonating staff via e-mail and an LBL lawyer contacting me via my work e-mail regarding the tribunal case; this was a form of intimidation and harassment
9.	The breach of information relating to sensitive, personal and confidential information (OH referral process) and the subsequent handling of the 'investigations' into this- the findings were inaccurate / false, it was not in line with normal policy and procedure, there were unreasonable delays, I was treated less favorably than Cathy Robinson and there was a failure to reach a reasonable conclusion
10.	Elaine Smith's behaviour / harassment of me regarding my psychotherapy appointments
11.	Valerie Gonsalve's and Elaine Smith's actions (requiring me to still accept being line managed by Valerie Gonsalves), after the data protection breach
12.	Management's failure to advise me/explain in advance, the decision not to invite me to the induction to Lewisham session
13.	Valerie Gonsalves conduct towards me during the team meeting on 21 June 2011 The handling of the meeting on 28 June 2011: no apology given, denying knowledge of the data protection breach/my complaint, the failure to provide an adequate explanation for the delay in implementing a personal risk assessment and 'reasonable adjustments', the failure and/or delay in changing my line management and requiring me to attend another meeting
14.	Elaine Smith's and Christine Grice's harassment of me on 29 June 2011 and copying in Valerie Gonsalves to information regarding my health without my consent (after the data protection breach)
15.	The handling of the meeting on 30 June 2011: It was not a genuine attempt to support me- i.e. no apology given the false allegations made against me, the unacceptable explanation provided by Elaine Smith for not getting back to me between 26 May and 29 June 2011 following the data protection breach, Christine Grice's, statement- 'I am not here to answer your questions', (the failure to answer direct questions), the attempt to deter me from sending any more e-mails about my concerns and making any further contact with Frankie Sulke and Barry Quirk, the appointment of Elaine Smith as my line manager and the inaccurate/false notes provided by Christine Grice.

16.	The handling of my second referral to OH: The failure of LBL and OHWorks to adhere to normal procedure, including the meeting which took place between Marina Waters and Elaine Smith prior to my OH appointment, the failure to provide me with a copy of the referral form in advance of my appointment and set out clearly to me the reason for the referral, the false and / or conflicting accounts given by Elaine Smith and Marina Waters about their meeting, the failure by Marina Waters to adequately review my individual risk assessment with me (including the content of her outcome letter dated 27 July 2011) and the failure by Marina Waters to comply with the ethics and code of conduct for her profession
17.	The handling of my complaint relating to my second referral to OH
18.	The failure of Frankie Sulke and Barry Quirk to intervene and take all steps as were reasonably practicable to prevent their employees from unlawfully discriminating against me
19.	The delay and/or failure in sending me the notes to the meetings which took place on 28 and 30 June 2011
20.	The delay and/or failure by Andreas Ghosh to respond to my complaint regarding the conduct of management and Marina Waters and LBL's failure to reach a reasonable conclusion regarding my complaint'
21.	Elaine Smith conduct towards me on 9 and 10 August 2011: Including the delay in responding to my request for a 'reasonable adjustment'; the refusal to make a 'reasonable adjustment', the delay in contacting me regarding the riots following receipt of my e-mail sent on 10 August 2011 at 2.33am, the harassment and victimisation of me via e-mail, telephone and in person, i.e. displaying aggressive and intimidating behaviour towards me and trying to provoke me, expecting me to wait at my office for instruction from her when I was in imminent danger and had been directed to go home by an LBL senior manager, expecting me to have been working from home when she had refused my request to work from home, the direction for me to be at work at 9am for no valid specific reason and the false allegation(s) made against me etc
22.	The handling of my suspension from duty: Imposing a disciplinary penalty when unwarranted and where the disciplinary procedure had not been followed; Christine Grice's bias statement- '*it is felt that your employment with LBL is unsustainable*'; the failure to inform me of the complaints against me and supporting evidence, before the meeting on 10 August 2011; the failure to provide me with an adequate explanation for the sanction of suspension; the failure to put the decision in writing before asking me to leave work and the delay in putting the decision in writing after asking me to leave work; the failure to inform me how long the investigation will take; the threat of dismissal and the letter dated 11 August 2011 that was sent to me confirming the 'alleged' reasons for my suspension (which contradicted the verbal reasons given to me on 10 August 2011)
23.	Blocking my e-mail access, restricting access to my workplace and instructing me to return my office keys and mobile phone
24.	Isolating me from colleagues and defamation to my character, detriment to my reputation/future employability, preventing me from being able to maintain and develop my skills / erosion of my knowledge, skills and experience and denying me equal right and access to training, development, and career opportunities.
25.	LBL's persistent failure since July 2011 to keep/provide accurate notes/minutes for the meetings/interviews that I attended (in terms of absent content, misinterpretations, false accounts and publishing statements I have not made/were not made by others etc); and
26.	The failure to provide a full/adequate response to the Equality form questionnaire in the allocated time; and
27.	LBL's failure to bring my suspension/the investigation to a timely and fair close (which resulted in the unnecessary detrimentally impact to my health, wellbeing and reputation). Christine Grice's investigation, took too long; and
28.	LBL's failure to investigate my grievance against Elaine Smith following receipt of this on 10 August 2011, in line with policy and procedure (within 10 days) and its failure to acknowledge this and making the assumption that I would want to attend a grievance hearing, (discuss this in person), when this was not the case; and

29.	LBL's failure to invoke/implement the correct policies and procedures (sickness absence, grievance and disciplinary) efficiently and effectively; and
30.	Christine Grice's denial that she had stated that my employment was 'unsustainable'; and
31.	The threat of disciplinary action
32.	The allegations made by Elaine Smith, Valerie Gonslaves, and other staff, (directly and indirectly inferred against me both during this whole process), including the perceptions: these were very serious, and constitute both libelous and slanderous defamation of character, especially as no other staff/employees have been accused of the same. The allegations are very serious. They also constitute both libelous and slanderous defamation of character;
33.	LBL's failure to provide a written apology detailing specific failures, errors and mistreatment that has affected me; and
34.	During my suspension interview on 1 November 2011 I was accused on more than one occasion of being 'rude and aggressive' and not calm
35.	The abuse of the 2nd OH process; LBL's and Marina Waters' decision to hold two meetings about me, without my knowledge or consent and without me being present, LBL's decision to re-refer me OH, via OH Works following me bringing legal proceeding against OHWorks, LBL's failure to provide me with a copy of the referral form and any information relating to my second referral to OH and the decision to make a third OH referral because LBL 'allegedly' did not have any information about my health, apart from the fact that I have a mental impairment; and
36.	The removal of my valuable belongings (without my consent) during the investigation interview and management taking issue with me asking for my belongings to be kept with me; and
37.	The investigation interview on 1 November 2011 lasted two and a half hours and management took several lengthy breaks, one of which lasted around 20 minutes. Management even took a break to specifically 'drink tea'.
38.	The requirement for me to attend three interviews regarding my suspension; and
39.	The unreasonable delay in responding to my request for a 'reasonable adjustment' in relation to the interview method on 4 November 2011 and the insensitivity shown in dealing with this; and
40.	Stereotypical assumptions about the implications of my disability were made during the interview process (even though no concerns have ever been raised about my work and I was one of only 4 out of 30 staff who had been transferred to LBL on the basis of my work record): My ability to perform my job was called into question; and
41.	The failure/delay of LBL to follow it policy and procedure in relation to my suspension review once it lasted more than two months; and The decision to continue interviewing staff and advising me that I may also need to be re-interviewed; and
42.	The attempt by Christine Grice and Cynthia Maxwell to prevent me from speaking on 4 November 2011 and Christine Grice's offensive comment about my capability in relation to my communication skills; and
43.	The unreasonable construction of the interview questions, (the length and the fact that there were many questions contained within just one question); and
44.	The failure to conduct a proper, fair and impartial interview investigation; and
45.	The failure/delay to provide me with the notes and the questions to the investigation interviews; and

46.	The 3rd OH referral: The failure to action the two previous OH reports, the unreasonable delay in responding to my e-mail to Christine Grice dated 10 November 2011, the failure to deal with my medical condition in a sensitive and inclusive manner, the failure to make the 3rd referral 'in good time', the failure to provide me with a copy of the OH referral with a date on it, the decision to delegate Marina Waters'/OHWorks the task of making my OH referral and the subsequent instruction for me to attend an OH appointment in Kent; and
47.	LBL's failure to comply with several stages of the Statutory Disciplinary Procedure and poor procedures were followed and the failure to make 'reasonable adjustments' in relation to the investigation process to eliminate my disadvantage on 25 October and 1 November 2011; and
48.	Undue weight was applied to the subjective verbal word of my line manager, who I had previously made serious allegations about, including in the hours leading up to my suspension and in the absence of any initial objective evidence to support the allegation it failed to provide corroboratory documentary evidence: Who, What, Where, When, How, Why? ; and
49.	LBL's failure to consider whether standards of other employees were acceptable, and that I was not being unfairly singled out/ its failure to bring others to account – colleagues/managers, organisation and complainant; Parity of disciplinary treatment- not applying the proper suspension framework and treating me different to my line manager(s) and other individuals is breaching this, which is unlawful under the Employment Act. The law requires LBL to do equally to others for their culpability and/or equal conduct; and
50.	LBL failure to use any official verbal/written warnings, there is no evidence of this or details of any improvement notice including how any "conduct" will be objectively measured and recorded; and
51.	LBL's failure to give consideration to systemic/organisational issues and the fact that it had failed to do anything to address/rectify/resolve/remedy the situation, informally and formally prior to suspending me. There were systemic/underlying/real factors-(team, organisational, actions, inactions, environment, equipment, resources etc). LBL failed to attempt to successfully resolve long-standing issues and stop further deterioration/escalation of the situation;
52.	LBL's failure to give consideration to the fact that there is evidence of less favourable treatment, maltreatment, bullying, abuse, victimisation, harassment, discrimination; and
53.	The conduct of LBL and its representatives with regards to the removal of my medical evidence from the trial bundle, thus putting me at a disadvantage as a disable employee; and
54.	LBL's persistent conduct with regards to copying Christine Grice into the correspondence regarding my complaints about her and the failure to remove her as the investigating officer: and
55.	The failure to re-instated an annual leave that was owed to me: and
56.	Christine Grice's failure to set out the 'charges' against me in LBL's notification letter regarding the SOSR hearing and the delay/failure to do so following my request for this information on 13 December 2011;and
57.	Frankie Sulke and Barry Quirk's failure to respond to direct correspondence from me and take all reasonable steps to protect me from bullying, harassment and victimisation and investigate my allegations of alleged 'misconduct/corruption in public office'; and LBL's persistent failure since July 2011 to keep/provide accurate notes/minutes for the meetings/interviews that I attended (in terms of absent content, misinterpretations, false accounts and publishing statements I have not made/were not made by others etc); and
58.	LBL's failure to provide me with the minutes to the SOSR hearing and grievances 'in good time' and/or at all; and

59.	LBL's failure to bring my suspension/the investigation to a timely and fair close after my request in November 2011 that this be done (which resulted in the unnecessary detrimentally impact to my health, wellbeing and reputation). Christine Grice's investigation, took too long; and The failure to provide a full/adequate response to the Equality form questionnaire in the allocated time; and
60.	LBL's failure to investigate my grievance against Christine Grice and Dr William's following receipt of this on 29 December 2011, in line with policy and procedure (within 10 days) and its failure to acknowledge this and making the assumption that I would want to attend a grievance hearing, (discuss this in person), when this was not the case and the continue harassment in relation to this; and
61.	The persistent failure to acknowledge and satisfactorily address/deal with the bullying, harassment, victimization, discrimination (rather than persistently fail to uphold my allegations, conduct the investigation within the grievance time limits, and provide the grievances outcome 'in good time'; and
62.	LBL's failure to provide the paperwork/evidence that LBL would be relying on at the hearing by mid January 2012 as promised; and
63.	LBL's failure to invoke/implement/follow the correct policies and procedures (sickness absence, grievance, capability and disciplinary) efficiently and effectively: LBL's failure to comply with several stages of the Statutory Disciplinary and Capability Procedure and poor procedures were followed; LBL failure to use any official verbal/written warnings, there is no evidence of this or details of any improvement notice including how any "conduct" and/or "capability" will be objectively measured and recorded; and
64.	The decision to arrange a SOSR hearing instead of stopping proceedings as soon as Ralph Wilkinson, Barry Quirk and Frankie Sulke had in their possession the evidence which supported the fact the allegations against me were false and the evidence was fabricated/falsified; and
65.	The allegations made by Elaine Smith, Valerie Gonslaves, and other staff, (directly and indirectly inferred against me both during this whole process), including the perceptions: these were very serious, and constitute both libellous and slanderous defamation of character, especially as no other staff/employees have been accused of the same. The allegations are very serious. They also constitute both libelous and slanderous defamation of character. LBL also fabricated/falsified evidence; and
66.	The abuse OH process and using it as a tool for intimidation; Particularly the third referral and Christine Grice's and Dr William's role in this, the persistent questioning of me in relation to my request to be seen by an OH consultant in London, the nature of the referral (inaccurate information and personal comments made etc), LBL's failure to provide Dr William's with sufficient information/documentation and the suppression of my medical records/evidence, LBL's and Dr William's failure to make every effort to gather information about my medical condition through various channels, i.e legal representatives etc, the unreasonable length of the OH consultation and the manner in which it was conducted (i.e. the nature of the questioning and Dr William's breach of confidentiality- discussing my condition with Tanya Davis when I left the room), LBL's failure to investigate my complaint against Dr Williams; and
67.	The refusal to allow my friend who accompanied me to the hearing to advocate on my behalf and the decision to employ the services of a note taker from an outside agency; and
68.	The failure to provide me with the full bundle of evidence by the agreed date and 'in good time' before the SOSR hearing: and
69.	The failure to conduct a proper, fair and impartial hearing and reach a 'reasonable' conclusion, (including fully exploring and understanding the issues, making impartial decisions, appropriately hold systems and people to account for issues and failures and reasonably addressing issues satisfactorily);The unreasonable construction of the SOSR hearing (conducted like a disciplinary hearing) and the questions posed; I was treated less favourably, intimidated and harassed; I was kept waiting for an unreasonable amount of time during breaks; Undue weight was applied to the subjective verbal word of Elaine Smith, Valerie Gonsalves and Christine Grice, who I had previously made serious allegations about and in the absence of any initial objective evidence to support the allegation it failed to provide corroboratory documentary evidence: Who, What, Where, When, How, Why? There was also proof that these individuals had fabricated/falsified evidence

	against me but no attempt was made to question them about this and I was prevented from asking questions about this; and
70.	The failure to hold the grievances 'in good time' after the SOSR hearing; the decision to allow Ralph Wilkinson to hear the grievances alone, (rather than appoint a panel) and LBL's previous failures to do this, when the grievance policy states that a panel should be appointed; the failure to investigate all my grievances properly and reach a reasonable conclusion; and
71.	The decision to provide the outcome of the SOSR and the grievances at the same time; and
72.	The conduct of LBL in relation to suppressing the evidence which was disclosed to me on 5 April 2012 and the impact that this had on me; (putting me at a disadvantage as a disabled employee and aiding LBL to discriminate against me)
73.	The conduct of LBL and its representatives with regards to the removal of my medical evidence from the trial bundle and the reference made to reserving its right to make a 'safeguarding referral' and the breach of duty- this was carried out in 'bad faith' and as a means to intimidate/threaten me; and
74.	The decision to dismiss me
75.	Ralph Wilkinson (Head of Public Services) subjected me to unlawful disability discrimination and PIDA detriment in relation to his handling of the SOSR process/hearing and his decision to dismiss me during February – April 2012. I have covert recordings, which prove that he failed to conduct a fair, objective and reasonable hearing/process and that witnesses wilfully gave false evidence during the process. He failed to properly fulfil his obligation (on behalf of LBL), to me by making sure that Christine Grice formulated genuine and coherent charges based upon substantiated/corroborated evidence.
76.	Ralph Wilkinson (Head of Public Services) subjected me to unlawful disability discrimination and PIDA detriment in relation to his decision to allow Christine Grice to publicise what he knew to be defamatory statements about me and slander me and his subsequent decision to publicise (inside and/or outside Lewisham) what he knew to be defamatory statements about me.
77.	Ralph Wilkinson and Elaine Hattam behaved unfairly and discriminatory in failing to take into account the fact that I provided them with conclusive proof that false defamatory allegations had been made against me and that the managers who had falsely accused me were guilty of gross misconduct. LBL/Barry Quirk and Frankie Sulke were also guilty of this.
78.	Frankie Sulke and Barry Quirk subjected me to unlawful disability discrimination and PIDA detriment in relation to their handling of the complaints that they were aware that I had made since being transferred on 1 April 20122 (and dismissed on 13 April 2012) and my allegations regarding the gross misconduct of Valerie Gonsalves, Elaine Smith and Christine Grice, particularly in light of the numerous e-mails that they were copied into and my SOSR bundle which they were provided with- the conclusive proof supporting my allegations. No LBL manager was ever brought to account for their discriminatory conduct, gross misconduct and malicious falsehood.
79.	Elaine Hattam subjected me to unlawful disability discrimination and PIDA detriment in relation to her handling of my employee information when I transferred from CEL in April 2011 and the SOSR process/hearing during February – April 2012 and her failure to disclose to me the fact that she had received information regarding my disability by CEL's/Babcock's representative at the relevant time (March/April 2011) and her failure to do so again for over a year and during the SOSR hearings in February/March 2012, when the matter was raised in her presence. She wilfully suppressed this evidence, as did LBL.
80.	The decision to instruct it representatives to demand that I should be put to proof of my disability and its effects, when it has had access to this information since September 2011; and
81.	The delay in providing me with a 'statement of earnings'; and
82.	Informing DWP that there was no record of my sickness absence, after it had received information that I had been signed off sick from me; and
83.	The delay and/or failure in paying my final salary correctly (including notice pay and holiday pay); and the way

	in which it handled my concerns regarding the failure and/or delay in paying my final salary correctly- see above; and
84.	The decision to publicise (inside and outside Lewisham) what it knew to be defamatory statements about me

107. **Withdrawn Claims:** I have withdrawn my claim against CEL/BED in relation to claim number 2375023/2011B and I am withdrawing my claims against LBL in relation to **a)** payment of arrears and **b)** the failure to provide me with my P45 'in good time'.

108. **Schedule of Claims:** This document is crucial, which I am assuming is why the Respondents' have not yet been required to provide a full response to my 5th claim, which has been outstanding since last year. I am requesting to be allowed **49 days** to produce a schedule of claims due to number of claims involved. I have previously been given 28 days to produce one in relation to the last hearing- which involved 3 claims. It is likely that I will be expected to deal with 5 and a half claims, including the 'stayed' claim. **Disclosure and Preparation of evidence:** It is submitted that the Respondents' should disclose their evidence after I have submitted my schedule of claims and they have submitted their full response to my 5th claim. I would like to be permitted to disclose my evidence **2 months** after the Respondents' disclose theirs because I am being expected to deal with two separate hearings and two sets of evidence. I also have to transcribe numerous recordings.

109. **Preparation of witness statements:** I would like to be permitted to submit my witness statements **112 days after** the Hearing bundles have been completed, due to amount of evidence involved (documentary and audio). **Length of hearing:** In estimating the length of a hearing, sufficient time must be allowed for pre-reading any documents required to be read, the length of the speeches, the time required to examine witnesses etc. I estimate **40 days** being, **34 days** for the

evidence to be heard, **3 days** for the Tribunal to consider its decision and **3 days** for the decision to be given and remedy dealt with (if appropriate) including additional time that I require due to my medical condition. The Tribunal will also require a substantial amount of 'reading time'. It is important to note that 20 days was allocated for the last hearing which involved only half the number of claims being dealt with in this case and a full week of reading time was set aside.

110. The cases are very complex and this will no doubt be extremely confusing for me as an unrepresented disabled claimant. I believe that it is just and equitable for me to be allowed double the normal time to prepare my evidence, (including transcribing the extensive covert recordings) and my witness statements. It will further the overriding objective. The respondents' have legal teams at their disposal and huge resources; I am just one person having to cope with the preparation for two complex hearings all by myself.

111. My memory and concentration and ability to learn and understand are impaired as a result of my mental health condition. The nature of my disability is such that I will be at a substantial disadvantage if the above 'reasonable adjustment' is not made and it will present an additional barrier. For these reasons I suggest that it is in the interests of the efficient and fair disposal of the case if the tribunal makes the 'reasonable adjustment' that I have requested.

112. An ET must give effect to the overriding objective when exercising its procedural powers. I hope that these factors will be taken into account when making decisions regarding my request for 'reasonable adjustments'. 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 make adjustments to accommodate my disability.

113. The granting of this request would reassure me that the ET 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.

Whether I was disabled at the relevant time, (as indicated by the Respondents' in its CMD agenda dated 12 April 2012)?

114. The Respondents' have stated in their previous CMD agenda's and their ET3s that I should be put to proof of my disability and its effects. In their later dated 19 June 2012 (at pages) they subsequently stated that this issue should not be considered during this PHR. It is my view that the PHR is the appropriate forum in which to address this issue. This is in accordance with the overriding objective. This approach is in line with the ET's duty to manage cases. The ET must further the overriding objective by actively managing cases and should not refused to hear argument on any matter that is raised by a party as a preliminary issues. Active case management includes, identifying the issues at an early stage. If it is not addressed before the main hearing it will result in issues being protracted and it will also put me at an unfair advantage and at risk of costs if the Tribunal finds that I was not disabled at the relevant time. I will need to ensure that I am able to deal with any potential disputes over this issue (reviews and/or appeals), before the main hearing. I believe that the Respondents' are trying to prevent me from dealing with this issue in advance of the hearing in order to put me at a disadvantage. It is clear from **London Borough of Southwark v Woodrup** [2002] EAT/702/00 **[A8]**, that the ET is expected to deal with an issue such as this before a full hearing.

The law

115. For the purposes of the DDA, ' disability ' is defined in s.1 DDA, subject to the provisions of Schedule 1. I refer the Tribunal to the 4-fold requirements of s.1, identified by Morison P in ***Goodwin v Patent Office*** [1999] ICR 302 (see para. 35).

> ***'(1) Does the Claimant have a (here) mental impairment? (the impairment)***
> ***(2) Does that impairment affect the Claimant's ability to carry out normal day-to-day activities in respect of one of the 8 capacities listed at Schedule 1, para. 4(1)? (the adverse effect)***
> ***(3) Is the adverse effect substantial, that is, more than minor or trivial? (substantiality)***
> ***(4) Is the adverse effect long term (see Schedule 1, para. 2; in particular para. 2(2), where the impairment ceases to have a substantial adverse effect but is to be treated as having that effect if the effect is likely to recur).'***

116. The Judgment of Underhill P in ***J v DLA Piper*** [2010] ICR 1052, 1082 D **[A7]**, states that the construction of 'likely' adopted by the House of Lords in Boyle v SCA Packaging Ltd [2009] ICR 1056 in relation to Schedule 1 para. 6(1) – that is, 'could well happen' – would apply equally to para. 2(2) (the long term condition).

117. The definition of "disability" for the purpose of the 1995 Act is at section 1 (1), which reads:

> ***"Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-time adverse effect on his ability to carry out normal day-to-day activities."***

Schedule 1 contains a number of glosses or qualifications affecting particular elements in that definition. Those which are relevant for present purposes are paragraphs 2, 4 and 6. Paragraph 2 reads:

> ***"(1) The effect of an impairment is a long-term effect if –***
>
> ***(a) it has lasted at least 12 months;***

(b) the period for which it lasts is likely to be at least 12 months; or

(c) it is likely to last for the rest of the life of the person affected.

(2) Where an impairment ceases to have an substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if the effect is likely to recur."

Paragraph 4 reads:

"An impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following … ."

118. There follows a list of "capacities". The capacity generally relied on in cases where the alleged disability takes the form of depression is for example, (g) – "memory or ability to concentrate, learn or understand". An adverse effect found on the basis of paragraph 6 has come to be referred to in the jurisprudence - rather inaptly - as a "deduced effect". Paragraph 6(1) of Schedule 1 states:

> ***"An impairment which would be likely to have a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities, but for the fact that measures are being taken to treat or correct it, is to be treated as having that effect."***

119. In ***Woodrup v London Borough of Southwark*** [2003] IRLR 111 **[A8]**, CA, Brown LJ said:

> ***"The question to be asked is whether, if treatment were stopped at the relevant date, would the person then, notwithstanding such benefit as he had obtained from prior treatment, have an impairment which would have the relevant adverse effect? In any deduced effects case of the present sort, the claimant should be required to prove his or her alleged disability with some particularity. Ordinarily one would expect clear medical evidence to be necessary."***

The ET will need to bare in mind the above authority and the fact that sufficient medical evidence will need to be adduced if it concludes that the issue of whether I was disabled at the relevant time should be an issue for the main hearing.

120. The medical evidence does not demonstrate that the effect of continuing treatment is a permanent improvement in my condition- hence why the respondents' accepted that I was covered by the act in its pleadings for my 4th claim. If the condition is a recurring one, its effects are counted long-term in relation to a past disability if the condition did in fact recur or continue until more than 12 months after the first occurrence, which in my case was November 2009.

121. The Respondents' assert that I should prove my disability and its effects, (as indicated by the Respondents' in its CMD agenda dated 12 April 2012), given the content of Dr Williams OH report. This application is clearly vexatious. Firstly, Dr William's is not qualified to diagnose mental health conditions and offer an informed and accurate prognosis. He also did not have an awareness of the requirements of LBL's workplace and my job functions (as LBL had not provided this information and he had not made any enquiries himself).

122. Secondly, in all their ET3's the respondents' have denied that they failed to make reasonable adjustments', stating specifically that they made them during the SOSR process/hearing and thirdly, it is important to note that I allege that Dr Williams from the managing director of the OH company 'Working Fit Ltd', unlawfully aided LBL in discriminating against me. I was accompanied to the consultation with him and the person who accompanied me to that consultation wrote to the Chief Executive (Barry Quirk), of LBL to complain about Dr William's conduct during that consultation. I also contacted the Barry Quirk to complain and took out a grievance. Myself and the person who accompanied me, (Tanya Davis), who is also here today to support me, alleged the following regarding Dr William's conduct:

a) He was extremely insensitive, unprofessional and 'economical' with the truth.
b) He made several false allegations/comments about my alleged conduct during the consultation- allegations/comments that had never been made before by any medical professional that has assessed me, (and I have been assessed by many); and

c) He insisted that he did not have enough medical information, (even though I provided him with **19** separate pieces of medical documentation, (which included previous OH reports, fit notes and assessments). It is important to note that LBL had failed to provide him with any of this information; and

d) He wrote a report containing false information and omitted important information, despite the fact that I informed him that LBL representatives were in possession of my 'full medical records', which consisted of; several GP sick notes indicating 'depression'; assessments from 3 different psychologists- two diagnosing severe depression in 2010 and one diagnosing symptoms of mild depression relating to work related stress, in August 2011- (and that I received 9 sessions of CBT in July/August 2011); and

e) Dr Williams proceeded to imply that I was not covered by disability legislation. He informed me that he was diagnosing 'adjustment disorder' (which by the way is a condition that is also covered by the relevant legislation). He wrote came to an unreasonable conclusion, despite the fact that I also informed him that my previous employer had conceded that I have been covered by disability legislation since November 2009; and

f) During the course of the consultation, Dr Williams attempted to get me to provide details about specific incidents of bullying, victimisation and harassment that I had been subjected to by my previous employer. I advised him that I did not want to do this because I found it extremely upsetting and it was like re-living the ordeal. He concluded that I was being difficult and that I was refusing to provide information. Contrary to this, I provided him with information on my current stressors and suggested reasonable adjustments that could be made. I also advised him on my current state of health; and

g) Dr Williams persistently insisted on making reference to the tribunal hearing that is due to take place in the New Year, stating on more than one occasion that he was *'here to help the tribunal*'. Shocked by this comment, I informed him that thought that he was here to help me.

I noted that he seemed particularly keen on discussing legal proceedings with me, (even though I made it clear to him that I was uncomfortable with this); and

h) Dr Williams implied that the tribunal would not be convinced that I was covered by disability legislation. He also felt it necessary to inform me that he has masters in Law; and

i) After the consultation, Tanya Davis advised me that when I left the room to get make a photocopy of something; Dr William's proceeded to discuss details of my case with her, which was clearly inappropriate.

123. The other OH consultants that I have been assessed by never once asked me to go into any specific details about the previous incidents of bullying, victimisation and harassment that I have suffered during my previous employment. Even the OH consultants that had assessed me during my previous employment did not require me to do this. They merely focused on my current situation/state of health and concentrated their efforts on what could be done in the here and now, to try to support me at work.

124. I have been assessed by many OH Consultants, so I am aware of the standard that OH consultants work to. I believe that Dr William's conduct was unacceptable, falling far short of the behaviour expected from someone in the medical profession. I was very offended by his line of questioning and his overall behaviour. The OH consultation lasted over three hours. In light of the numerous comments that were made by Dr Williams during the consultation, about the imminent tribunal case in January 2012, it was clear to me that Dr Williams was not objective or impartial. I believe that this is clear evidence of impropriety /inducement, which also constitutes harassment, victimisation and discrimination and a breach of my human rights. His behaviour caused me deep distress, anxiety and worry.

125. Dr William's, the respondents', (LBL, CEL and BED) and their legal representatives are fully aware that I am covered by disability legislation. From September 2011, the respondents', (LBL, CEL and BED- have been in possession of my full medical records dated up until the end of August 2011, which includes evidence from the psychologist who treated me during July and August 2011- who diagnosed depression, (this evidence was presented to the Tribunal during the hearing in January 2012). It also evidences the fact that I had been seen by two Psychologists the previous year- in 2010, who both also diagnosed depression (this evidence was also presented to the Tribunal during the hearing in January 2012). My medical records also indicate that I saw two OH consultants in 2010 and 2011 and they both stated in their OH reports I am covered by disability legislation (this evidence was also presented to the Tribunal during the hearing in January 2012).

126. In May 2011, LBL's own OH consultant sent LBL an OH report, recommending 'reasonable adjustments' and warning LBL that I was in danger of a relapse of my condition **[at pages 4 - 5]**. In July 2011 I was seen by Marina Waters'- she too recommended 'reasonable adjustments' and she reviewed the individual risk assessment, (which had been undertaken for 'my depression'), by my previous employer CEL. In February and March 2012 the Respondent (LBL) has also asserted made 'reasonable adjustments in relation to the arrangements for my SOSR hearing in February and March of this year, **[please refer to the respondents' ET3s]**.

127. I was recently signed off sick with depression by my GP **[at pages 14, 25 & 32]**. LBL were advised of this on 11 April 2012, (a day before the respondents' sent their CMD agenda to me alleging that I should be put to proof of my disability)- **[at page 15**. I advised the Respondent of this on the same day and sent the sick note to LBL on 13 April 2012 **[at page 16]**. My full medical records indicate that I have been on medication for depression since 2010, without a break in treatment, this was presented to the Tribunal at the hearing in January this year and my most recent records support this **[at pages 27 - 31]**. I am therefore able to rely on the 'deduced effect'-

my impairment affects the 8 capacities. In light of the above, it is incomprehensible why LBL would make such an application. This is a perfect example of the type of discrimination that I have had to endure at the hands of the respondents', particularly whilst in the employ of LBL and even after my unfair dismissal, (which I lodged an ET claim about on 13 April 2012).

128. It is important to note that in LBL's pleadings for claim number **2375023/2011**, which was submitted in early September 2011, LBL accepts that I am disabled **[paragraph 103]**. Claim number **2390531/2011** covers events up to November 2011; are the respondents' suggesting that between that date and March 2012, I would suddenly not be covered by disability legislation anymore? If so, what is its rationale? LBL's response to claim number **2375023/2011** states that it proposed and/or made 'reasonable adjustments' **[paragraphs 51, 60, 64, 76, 106c, 106d, 106j, 106n, 106p, 107 & 109]**. It makes reference to 'addressing a disability situation'.

129. It is clear from the above, (including what is demonstrated by the medical evidence, which the Respondents' are in possession of), that I am a disabled person under the Equality Act 2010, which is material to the question of whether I had an impairment during the material time. I have had an on-going mental health condition that has been medically diagnosed, since November 2009. My condition is long-term and, if left uncontrolled through treatment, has a substantial effect on my ability to carry out day to day activities. Even with treatment, has a substantial effect on my ability to carry out day to day activities. An impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse long-term effect on how they carry out those activities. For example, where an impairment causes pain or fatigue in performing normal day-today activities, the person may have the capacity to do something but suffer pain in doing so; or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time.

130. The symptoms are severe and I have been prescribed numerous medications for this, which I have taken together: Temazepan - (sleeping pills) propanolol - (for anxiety and panic attacks) and anti-depressants. The symptoms I experience are headaches, dizziness, fainting, vomiting, panic attacks, difficulty sleeping and eating, difficulty in concentrating, always tearful and extreme fatigue. Therefore it can potentially affect many activities because of the overriding effect of extreme tiredness. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.

131. The respondents' would have been aware that Dr Williams had recommended that I stay on my medication **[at pages 10b]** for the foreseeable future and that the *likelihood* of my impairment continuing or recurring, was extremely high, considering this fact and the overwhelming medical evidence pointing to this from its own OH consultant in May 2011 and my GP in **[at pages 1 – 5]** and the fact that the respondents' had cited their concerns for my health as part of it's reason for suspending me **[at pages 6 - 7]**.

132. It is important to note that Dr William's OH report even contradicts the findings of the evidence that the respondents' had in its possession **[at page 10b-** 1st paragraph**]**, i.e. stating that I have no previous history of mental health problems. This was wholly false and contrary to the documentary and oral evidence that I presented to him. From this it is clear that his judgment cannot be relied on because his findings were obviously perverse.

133. It should be clear to any reasonable person that I am disabled person by reason of a mental impairment and that the Respondents' ought to have from the evidence available to it that I was disabled at the relevant time. That evidence shows I have suffered serious depressive episodes in the context of workplace stress, and that for the long term future I need to stay on antidepressants

and other medication, and that even though I had gone back to work, my condition continued, which is evidenced by the medical evidence, thus amounting to a disability within the meaning of the Equality Act 2010.

"Natural Justice" and my Right to be Heard

134. I was very disturbed by the respondents' letter dated 19 June 2012 **[at pages 35a - d]**. I view it as a form of bullying and intimidation. It was also unreasonable and vexatious, for the reasons set out in my e-mail to the ET of the same date at 11.17am **[at pages 36 - 37]** and my follow up e-mail dated 20 June 2012 at 9.29am **[at page 38]**. I believe that the letter is an attempt by a public body is try to bully me into silence and breach my legislative rights.

135. In particular Lewisham Council stated the following:

> '***5. Individual named Respondents: Given that the London Borough of Lewisham is not raising the statutory defence (and will in any event satisfy any judgment liability in respect of any individual named Respondent), the Respondents invite the Claimant to clarify whether she is content to discontinue the proceedings against individual named Respondents. In the alternative, the Claimant is to justify the basis upon which she wishes to remain as named Respondents, and how this accords with the overriding objective as enshrined in the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2004***'.

136. It is important to note that I named 8 individual respondents' in my previous case against the respondent, yet such an issue was not raised by it. In the current case, there have been three individual respondents named since August last year (Christine Grice, Valerie Gonsalves and Elaine Smith), and again no issue was raised in relation to this. The only reason that Lewisham Council is raising it as an issue now, (a year on), is because I recently added Barry Quirk (the Chief Executive of Lewisham Council), and two other senior people- Frankie Sulke and Ralph Wilkinson.

137. I have heard from a reliable source that one that LBL has recently 'parted ways' with one of the individual Respondents'- Christine Grice, (the individual responsible for suspending me, investigating me and recommending my dismissal). This will no doubt be due to her role in this whole state of affairs. This highlights the importance of keeping those I have name as individual respondents', particularly to ensure that they attend the ET to give evidence at the hearing. In addition, I have brought legitimate claims against all the individual Respondents' and it is therefore my right to pursue such claims.

138. Lewisham Council also stated the following:

> '***4. Proportionality Direction: An application by the Respondents that the Tribunal address the parties on the issue of '(keeping) a proper sense of proportion to the issues raised for decision, in the selection of legal points worth taking and of relevance to the quantity and quality of the evidence that they need to call' in accordance with Gayle v Sandwell & West Birmingham Hospitals NHS trust [2011] IRLR 810 CA. In that regard, at the minimum, the Respondents ask that this guidance be communicated to the Claimant and Respondent and/or inserted in any PHR Order.***'

139. The respondent is raising the issue of proportionality, yet it made an application (which was granted by the ET) to consolidate 4 and a half claims, which cover some 76 allegations. It is clear from this application that the Respondent was not really concerned with proportionality, if it were it would not have taken such an approach, as it would have known that such an approach would result in the need for a vast number of issues to be heard/evidence to be adduced, particularly as my pleaded case covers disability discrimination, PIDA detriment, defamation, human rights breaches, breach of contract and unfair dismissal. By making an application to consolidate all the claims (and 76 allegations), the Respondents' have willfully protracted the issues and are now unfairly and unjustly trying to use this as a reason/basis to narrow the issues. On 4 July 2012, the ET wrote to parties stating that they should be ready to deal with the issue of consolidating a further claim during the PHR. If the ET decides to do this it will result in the consolidation of 5 and a half claims and it will bring the total number of allegations to 86.

140. The length of the proceedings is likely to be protracted because of the disability issue, which the Respondent has asserted should not be decided on as a preliminary issue. The respondent has made no attempt to fairly propose any ways and means of reducing the areas of dispute. I am trying to assist the ET in ensuring justice, expedition and the saving of cost, by seeking to resolve as many issues as possible at the preliminary stage. It is also important to note that I will only be calling two witnesses (including myself); this will also save on time and costs. The respondent is denying all my allegations (making no admissions en though the Respondent will be aware of the damming content), which resulted in me having to make an application to adduce audio evidence in order to prove my allegations- the transcripts for the covert recordings will be lengthy. In any event, the issues that the respondent is seeking to narrow have been pleaded by me and there will be an error of law if they are not dealt with by the ET.

141. '*The EAT has said that that an ET 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 EAT 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. Any limitations will mean that I cannot deal with those matters at the full hearing and I will be unable to obtain related disclosure at the preparatory stage. This will have far-reaching consequences for the final outcome of my case. There is tension between what expedition requires and what fairness requires. In the end, 'Justice should be preferred to expedition', ***Senyonjo v Trident Safeguards Ltd*** [2004] UKEAT/0316/04. See also EAT's comments in ***Sodexho v Gibbons*** [2005] IRLR 836, EAT. Article 6- The right to a fair hearing and article 14 non-discrimination of the European Convention on Human Rights should also be taken into account.

142. The list of issues will be used as a case management tool. It will be used amongst other things to determine the scope of disclosure and factual evidence. In my view, the Respondent is clearly trying to obstruct the just disposal of proceedings by attempting to force me to narrow the issues, prevent me from submitting all the necessary evidence to prove my case and backing it up with all relevant legal arguments. It is clear that the respondents' are trying to stop me from making reasonable applications and bringing legitimate claims, by abusing the process, persistently using the threat of costs at any given opportunity and seeking to dictate to the Tribunal what direction it should give.

143. 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. Any order requiring me to limit this, in my view would constitute an interference with my Article 6 and 14 rights. It would result in me having to omit the details of my extensive claims and other important information. It is important to note that in the last hearing (which considered only **3** consolidated claims), my own witness statement totalled nearly **300 pages** and my written submissions totalled just over **360 pages**. There were 8 bundles of evidence, but the ET's judgment was only 50 pages long.

144. The forthcoming hearing involves is likely to involve **5 and half** consolidated claims and the claims covers more jurisdictions/areas of law. I will need to cover and elaborate on all the information set out in my pleadings, (which total nearly 300 pages alone) and include references to the documentary and audio evidence. There is no rule about how long a statement or submissions should be. It will vary from case to case and witness to witness. However, it will need to be proportionate to the length of the hearing (which in this case will be long) and the issues and witnesses involved, (which in this case are extensive and numerous).

145. It is important to note that witness statements are now taken as read. This recent change was made to reduce the length of employment tribunal hearings. It has the disadvantage that a witness will be unable to correct any typing errors in their statement or clarify what they meant, and so it is more important than ever that a witness statement is fully accurate and contains everything that a witness wants to say. It is therefore vital that my statement is carefully prepared and that it directs the tribunal to any documentary and audio evidence which it needs to consider. It is important to note that in relation to the unfair dismissal claim alone, LBL's SOSR bundle was over 300 pages and mine was also over 300 pages. As witness statements are a means of adducing evidence, my witness statement will need to take this into account. The test that should be applied by the parties when considering whether a document should be included in the bundle is, a) are their witnesses going to refer to this document? And b) are they going to cross-examine the other side's witnesses about this document?

146. As a disabled and unrepresented claimant I should be given a full opportunity to make all my points. An ET would act in arbitrary way in imposing any restrictions in respect of a Claimant's witness statement and/or submissions both on law applicable and on merits of individual cases. This would be tantamount therefore to a denial of "Natural Justice" at common law by being denied "audi alteram partem", (it should be heard [audiatur] also the other party", "hear [audi] the other side too", or "hear the alternative party too". The right of a party to make submissions on points of fact and law in an Employment Tribunal is an important right to ensure a fair hearing and is expressly provided for by rule 27(2) of the Employment Tribunal Rules of Procedure. Very good cause must be shown before a litigant is deprived of that right. If the ET decides to impose any limit on my written representations, issues and/or evidence I would have to seek a review of that decision and appeal it if necessary, in order to protect my case. I the worst case scenario, I would be forced to

make any submissions that I might have been prevented from making in written format, orally. This would then obviously put me at a disadvantage as a disabled and unrepresented claimant.

147. I have pleaded that the respondents' have publicly defamed me and the ET therefore has a duty to give me the opportunity to clear my name and give me a fair opportunity to make any relevant statement and evidence which I may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to my prejudice. I should be given an opportunity to state my case- be given a reasonable opportunity of being heard in answer to the allegations made against me which resulted in my dismissal. The Respondent cited ***Gayle v Sandwell & West Birmingham Hospitals NHS trust*** [2011] IRLR 810 CA, however, it is my contention that the ET has no jurisdiction to make Order in line with the Respondents' request and any making of such an Order would offend against principle of "proportionality" as applied by European Court of Human Rights in recent cases.

148. In all cases an ET 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 ET's must give litigants adequate opportunity of dealing with all aspects of their pleaded case. Any restriction would be a very draconian measure.

149. The limitations that the Respondents' are seeking would restrict and reduce the access left to me in such a way and an extent that the very essence of this right will be impaired. The restriction that the respondents are seeking does not pursue a legitimate aim 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.

150. It is submitted that my approach is in line with the overriding objective, ensuring that the parties are on an equal footing; dealing with the case in ways which are proportionate - to the amount of money involved, (this is a high value claim); the importance of the case, (my reputation, future job prospects and mental health are on the line it is a public interest case); to the complexity of the issues (the case currently involves 4 and a half consolidated claims- which is likely to grow to 5 and half, involving disability discrimination, PIDA detriment, unfair dismissal, breach of contract, human rights and defamation; and ensuring that it is dealt with expeditiously and fairly; and allotting to it an appropriate share of the court's resources, (particularly given the fact that the ET has taken the decision to consolidate a large number of claims). The issue of proportionality is dependant on the nature and gravity of what is at stake and the duty of the ET to protect Convention rights.

Conclusion

151. My career, 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 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. If the Respondents' disagree then it is submitted that half of the claims should be 'stayed' in order to ensure the just disposal of proceedings.

152. The respondents' should not make assumptions about my motives for making any applications, when it is clear that those applications are perfectly legitimate and reasonable. This also applies to my ET claims which they have not made any applications to strike out, seek a deposit order for, or seek further and better particulars for at the relevant time/in 'good time'. If the Respondent faces a difficulty in defending my claims it is a difficulty of their own making.

153. The respondents' position and approach changes on a regular basis. First requiring me to prove my disability status, (and when I attempt to do so in the appropriate forum- the PHR); it states that it is not seeking medical evidence at this stage. Further to this, the respondents' assert that my claims have no reasonable prospect of success and threaten costs and when I raise the issue of a deposit order, it asserts that none should be made and that the disputed evidence should not be resolved by way of the submission of my covert recordings. This is clearly vexatious conduct, which is also illogical, inconsistent, contradictory, designed to cause me the maximum amount of distress and obstruct the just disposal of proceedings.

154. Whilst the Employment Tribunal has wide powers to conduct hearings in such a manner as the Chairman thinks most appropriate for the clarification of the issues and for the just handling of proceedings, it is submitted that those powers do not extend to preventing me from submitting supporting evidence, covert recordings and relying on without prejudice communication, which is referred to in my pleadings as part of my claims, as this may lead to inadequate justice. It also does not extend to excluding from my witness statement or evidence, matter that I intend to rely on in order to prove my case.

155. In relation to my applications relating to without prejudice communication, covert recordings and supporting evidence, it is submitted that the ET should take into consideration Rule 14(2) of the Employment Tribunals Rules of Procedure 2004, it is provided as follows:-

"So far as it appears appropriate to do so, the Chairman or Tribunal shall seek to avoid formality in his or its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts."

That provision does, in my view, give the ET a very wide discretion to admit evidence that may not be admissible in other jurisdictions. Discrimination cases are, by their very nature, fact-sensitive and that certainly in most, if not all, cases the Tribunal does have to draw inferences from primary facts as it finds to be proven. It therefore follows that I should be permitted to adduce all relevant evidence to support my claims so that the ET has all the facts before it to enable it to make findings and, if appropriate and legitimate, to draw inferences from those findings. The recordings should be admissible, particularly in light of the fact that the respondents' have lied about what took place during those telephone calls and meetings and the recordings are therefore the only way of proving what actually happened.

156. It is submitted that if my applications are not granted that this would be a great injustice. It is submitted that as a matter of law I was covered by disability legislation at the relevant time, and that I am entitled to submit my supporting evidence post-February 2011, rely on 'without prejudice' communication and the covert recordings. It is critical for the proper vindication of my rights that my applications are granted and I am permitted to proceed to trial with all my claims and all my evidence. 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 applications.

Ms Ayodele Adele Vaughan

Date: 23 July 2012