IN THE HIGH COURT OF JUSTICE

CASE NUMBERS: AGS/1203284

BETWEEN:

London Borough of Lewisham and Others

Claimant

-and-

Ms AA Vaughan

Defendant

POINTS OF DISPUTE SERVED BY THE DEFENDANT

I. Background

1.1 The Defendant was employed by the London Borough of Lewisham (LBL). She was TUPE'd in from Careers Enterprise Limited (CEL) on 1 April 2011. In 2004 the defendant was offered the post of Connexions Personal Adviser by the London East Connexions Partnership. In 2006 Prospects Services Ltd took over the contract and the defendants' employment transferred to that company. VT Group PLC's subsidiary, Careers Enterprise Ltd (CEL/VTEnterprise) took over the Connexions contract in the first week of August 2008 and the defendants' employment then transferred to that company.

1.2 Babcock International Group PLC took over VT Group PLC on 8 July 2010 and the subsidiary, CEL/VTEnterprise changed its name to CEL/BabcockEnterprise. The name of the specific division the defendant worked in was VT Education and Skills; this later became Babcock Education and Skills when Babcock International Group PLC acquired VT Group PLC on 8 July 2010.

1.3 Babcock International Group PLC is an international private corporation. It is the UK's leading engineering support services organisation with recorded revenue of £1.9bn in 2010. It employs more than 27,000 staff. Babcock delivers critical asset support to many sectors, including transport, energy, defence, telecommunications and education. Careers Enterprise LTD is in receipt of public funding and the budget for it for the year 2010/2011 was just under 3 million. Lewisham Council decided not to re-new its contract with Careers Enterprise Limited and the Connexions service shut it doors or the last time on 18 March 2011. The contract ended on 31 March 2010.

1.4 **On 25 June 2009** the defendant commenced a period of sickness absence which lasts for 3 weeks- due to stress at work.

1.5 **On 25 July 2009** the defendant returned to work and continues to work under the same conditions), where the problems continue**.** There were staff shortages and work at the centre was stressful

1.6 **Between 4 September and 1 October 2009**, the defendant and her colleague Cathy Robinson raised concerns about the alleged data protection breach and request that the company investigate what happened. The defendant received no apology from her employer.

1.7 **On 1 October 2009** the defendant and her colleague Cathy Robinson were advised by Adam Buckby (Babcock HR) to take out a grievance in relation to the alleged data protection breach

1.8 **On 27 October 2009** the defendant's colleague went off sick from work and the defendant contacted Adam Buckby to advise that she would like the joint grievance hearing to be postponed.

1.9 **On 28 October 2009**, the defendant e-mails the operations manager Beverley Bannister about the newly imposed lunch hour rule advising of the impact on her health and other staff also express concerns.

1.10 **On 29 October 2009** the defendant is involved in an incident whilst on reception duty. She e-mails Beverley Bannister and her line manager Benjamin Craig about the incident and completes an incident form. Beverley Bannister and the defendant's line manager Benjamin Craig would never respond to her e-mail.

1.11 **Between 3 and 5 November 2009** there is correspondence regarding the CRB renewals. Adam Buckby sent a group e-mail out to seven members of staff (including the defendant) giving staff the deadline of 6 November 2009 to respond regarding CRB renewals.

1.12 **On 4 November 2009** Adam Buckby e-mails the defendant to state that her existing CRB is no longer relevant and advises her that the company is in breach of its contract with Lewisham Council. Carroll Garraway (the defendant's work colleague and GMB rep) seeks written assurances that the information will be safeguarded and Adam Buckby states that he cannot do this

1.13 **On 5 November 2009**, at 9.43, the defendant receives an e-mail from Ruth Johnson regarding the CRB issue. The defendant leaves work early due to feeling unwell, and subsequently commences her first period of long-term sickness which would last 10 weeks.

1.14 **On 10 November 2009**, the defendant visits her GP and reports ongoing symptoms of stress, high blood-pressure, anxiety, sleep deprivation, tiredness, and a change in her eating habits, headaches and palpitations

1.15 **On 16 November 2009**, whilst on sick leave the defendant e-mails Adam Buckby, (copying in Carroll Garraway, Beverley Bannister, Benjamin Craig and Mick Simpkin- senior GMB officer), requesting financial assistance with credit monitoring. She also asks that the CRB grievance be dealt with in her absence because of health reasons

1.16 **On 17 November 2009**, there is e-mail exchange between Adam Buckby, Carroll Garraway and the defendant regarding her request for assistance with credit monitoring fees. Later that day the defendant sent an email to her union rep Carroll Garraway, (copying in her line manager Benjamin Craig), expressing her distress about Adam Buckby's and management's conduct

1.17 **On 23 November 2009**, the defendant visits her GP and report ongoing symptoms of stress, high blood-pressure, anxiety, sleep deprivation, tiredness, and a change in her eating habits, headaches, palpitations and a low mood. She is referred for counselling

1.18 **On 1 December 2009**, the defendant receives an email from Adam Buckby stating that the company is not prepared to pay for the credit monitoring

1.19 **On 7 December 2009**, the defendant attends her appointment for a counselling assessment at her GP surgery with Valerie Eaton. The counsellor advises that she believes that she is suffering from 'reactive depression.'

1.20 **On 9 December 2009**, GP signs the defendant off with 'stress, anxiety and panic attacks'

1.21 **On 10 December 2009**, the defendant lodges a grievance alleging 'Intimidation and bullying by Adam Buckby and HR'.

1.22 **On 11 December 2009** the defendant lodges a grievance alleging 'lack of support from management and HR'. Adam Buckby e-mails Cathy Robinson regarding hearing date and states that it is unreasonable for a grievance to be carried over for 4 months without a resolution

1.23 **On 16 December 2009** Adam Buckby admits that the delays regarding the grievances are unreasonable

1.24 **On 21 December 2009**, the defendant receives two letters from Adam Buckby regarding her grievances against him, HR and management. She is advised that Beverley Bannister has been appointed to hear the grievance

1.25 **On 21 December 2009** Adam Buckby admits that the delays regarding the grievances are unreasonable

1.26 **On 23 December 2009**, the defendant e-mails Ben Craig, Beverley Bannister and Bethany Allum (Head of HR) to complain about the inappropriateness of Adam Buckby's correspondence with her with regards to her grievances.

1.27 **On 30 December 2009** GP signs the defendant off with 'Stress & Anxiety'.

1.28 **On 7 January 2010** the defendant receives a letter from Bethany Allum confirming receipt of her grievances. The defendant is advised that Anthony Marshall has been appointed to hear the grievance instead of Beverley Bannister.

1.29 **On 12 January 2010** the defendant receives an e-mail from Sue Ely confirming receipt of her medical consent form, detailing grievance arrangements and advising the defendant that the company was having difficulty contacting her union.

1.30 **On 14 January 2010** the defendant visits her GP to report the deterioration of her health. She is prescribed propranolol.

1.31 **On 14 January 2010** Valerie Eaton's (Counsellor) wrote to the defendant's employer about her GP referral to receive counseling

1.32 **On 21 January 2010**, the defendant returns to work.

1.33 **On 26 January 2010**, the defendant receives an e-mail from Paul Kelly's regarding arrangements for he grievance hearings and inviting the defendant and her union to contact him or Sue Ely with any concerns

1.34 **On 1 February 2010**, the defendant attends her first counseling session (first of eight)

1.35 **On 3 February 2010** the defendant attends her grievance hearing with Anthony Marshall and Sue Ely. All three grievances are heard on the same day

1.36 **On 4 February 2010**, the defendant attends her appointment with 'Medigold'- VT's occupational health consultants. She is informed that they received the OH referral on 21 January 2010, (after the defendant had already returned to work). They recommend that an individual risk assessment be put in place and that the defendant's recovery will depend on whether her grievances are dealt with satisfactorily.

1.37 **On 10 February 2010** Sue Ely(HR) e-mails the defendant and Tony Smith (GMB) regarding delay over grievance outcome

1.38 **On 12 February 2010**, at 01.43 the defendant requests that an individual risk assessment is put in place for her. At 12.22pm she sends an email to all the managers, Beverley Bannister, Benjamin Craig, Ethel Punter and Theresa Peters, regarding stress in the workplace and risk assessments

1.39 **On 16 February 2010**, at 12.22pm the defendant e-mails Sue Ely (copying in Anthony Marshall), requesting to know when she will receive a response to her grievances. She does not receive a reply. Beverley Bannister sends an e-mail to Lewisham Connexions staff attaching an office based risk assessment dated January 2010, (no risk assessments had ever been seen by staff since the company took over in 2008) and notes regarding H&S for discussion at the next team meeting

1.40 **On 17 February 2010**, the defendant e-mails Anthony Marshall at 05.58am, advising that she would like a response to her grievances and advising him of the impact of the delay on her medical condition. At 5.30pm the defendant receives a response from Anthony Marshall informing her that they had not yet completed their investigation.

1.41 **On 18 February 2010**, the defendant e-mails Tony Smith (GMB) regarding the grievance investigation delays, advising of the impact on her health and requesting that he intervene

1.42 **On 19 February 2010**, at 12.39pm (whilst on annual leave), the defendant receives the outcome of her grievances in an email from Sue Ely. It was seven days late and they are not upheld. The defendant is told that she will receive one years credit monitoring. The defendant's colleague Cathy Robinson was offered two years credit monitoring at the first stage of her grievance. (The defendant would never receive the credit monitoring payment from her former employer). She is advised that she can appeal the decision by email or letter to Paul Kelly and that she will need to provide all related evidence in advance. Tony Smith (GMB) e-mails the defendant a copy of his follow up letter to Beverley Bannister regarding the woeful level of communication by management in relation to H&S issues in the workplace. The defendant e-mails her appeal to Paul Kelly and advises him that she will be forwarding all related evidence by the following day. At 21.11 pm Paul Kelly e-mails her to thank him for

sending all her information and advises him that she will need to put her appeal in writing to him ‘in the form of a letter and send to him’ before he will be able to arrange an appeal hearing

1.43 **On 20 February 2010**, on a Saturday the defendant e-mails Paul Kelly advising him that she had put her appeal in a letter and posted this to him. Paul Kelly then e-mails the defendant requesting that she ‘stop sending him e-mails’

1.44 **On 22 February 2010**, at 8.30am the defendant accesses her work email and sees Paul Kelly’s e-mail that he had sent her on Saturday. She contacts Tony Smith and Mick Simpkin (GMB) by e-mail alleging that Paul Kelly’s e-mail is ‘disturbing and intimidating’ and not in line with normal procedure. She requests that Paul Kelly is replaced. She forwards the email on to Bethany Allum at 9.09 and then to Jo Robbins (Head of HR) at 9.21 am. She does not receive a response from anyone.

1.45 **On 23 February 2010** Carroll Garraway e-mails Lewisham Connexions staff attaching staff questions to management regarding H&S issues and at 17.57am the defendant receives an email from Sasha Chaudri, (Senior HR Partner), advising her to continue to liaise with Paul Kelly. She contacts Tony Smith at 19.11 PM, (copying in Sasha Chaudri), advising him of the impact of her employer’s treatment of her (reminding him that she is on prescription medication and that she did not have a history of mental health problems before these issues in the workplace began), and requesting that he take appropriate action

1.46 **On 24 February 2010**, at 2.59 am the defendant sends an e-mail to Sasha Chaudri, (copying in GMB representatives), advising that she is taking out a grievance against Paul Kelly and Anthony Marshall for victimization. She is asked to complete an expenses claim form for credit monitoring fees reimbursement, which she does, and sends to Beverley Bannister who confirms receipt. The company would go on to deny having received this at the full hearing in January 2012.

1.47 **On 26 February 2010**, the defendant e-mails Benjamin Craig and Beverley Bannister with a request to work reduced hours due to the deterioration in her health.

1.48 **On 1 March 2010**, Beverley Bannister also e-mailed the defendant regarding her Medigold OH report, which the company had received on 8 February 2010.

1.49 **On 2 March 2010**, the defendant and Beverley Bannister meet to discuss her occupational health report and reduced hours. The defendant sends an e-mail regarding the arrangements for reduced hours and asks what her new monthly salary will be in order to be able to adequately budget

1.50 **On 3 March 2010**, the defendant e-mails Beverley Bannister regarding the reduced hours and related financial difficulties. At 14.01pm, the defendant e-mails Andrea Ward (HR) about the grievance and appeal hearings. Andrea Ward e-mails her back informing her that they would all be heard on 11 March 2010. The defendant e-mails Beverley Bannister requesting to take annual leave to reduce her working hours and stress levels. Management fail to make any reasonable adjustments or offer alternative solutions which would avoid the defendant having to use her own annual leave in order to reduce her stress levels

1.51 **On 11 March 2010**, the defendant attends the grievance and appeal hearing during her annual leave period with Amanda Duckett (Regional manager) and Andrea Ward

1.52 **On 15 March 2010**, the defendant attends her counselling session where amongst other things; she discusses her ongoing eating difficulties

1.53 **On 23 March 2010**, at 12.43pm, the defendant e-mails Beverley Bannister again about the impact that the imposed early lunch hour is having on her medical condition, as she had failed to address the issue when the defendant previously raised it with her in October 2009. The defendant requests a 'reasonable adjustment'. Beverley Bannister responds at 12.51 pm and advises that this would be made

1.54 **On 24 March 2010**, at 9.27am the defendant e-mails Andrea Ward (HR) enquiring as to when she will receive the outcome of her appeal and grievances

1.55 **On 26 March 2010**, Andrea Ward e-mails the defendant to advise her that she should receive a decision the following week. The defendant responds informing her of the impact that the delay on her health. Between 3pm and 4pm the first ever Health and safety meeting at the Lewisham Connexions office takes place.

1.56 **On 29 March 2010**, the defendant attends her counselling session and her counsellor suggests that she undertake some psychotherapy. The defendant agrees to be referred to the 'Centre for Trauma and Anxiety' at Maudsley Hospital for an assessment

1.57 **On 30 March 2010**, Andrea Ward e-mails the defendant the appeal outcome from Amanda Duckett. It is eight days late and it is not upheld

1.58 **On 31 March 2010**, Andrea Ward e-mails the defendant the grievances outcome from Amanda Duckett. It is nine days late and it is also not upheld. Later that day the defendant send RR65 questionnaires to Marcus Watson MD

1.59 **On 1 April 2011**, the defendant sends her second appeal to Andrea Ward via email. She receives an email from Sasha Chaudri (the person that the defendant had taken the grievance out against) acknowledging receipt and advising that an appeal hearing would be arranged.

1.60 **On 12 April 2010**, the defendant attends her counseling session where she discusses her ongoing eating difficulties and loss of confidence and self-esteem. The defendant's counselor informs her that she believed that she is suffering from 'social anxiety'

1.61 **On 13 April 2010**, the defendant has a one-to-one with Benjamin Craig (her line manager). She advises him that her counselor had referred her to the centre for trauma and anxiety. She requests a 'reasonable adjustment'. He agrees 'in principal', but advises that he would have to run it by Beverley Bannister

1.62 **On 15 April 2010**, the defendant receives an email from Andrea Ward advising her that her appeal hearing would take place on 22 April 2010. <u>She agrees to attend the appeal hearing whilst on annual leave.</u>

2. Progress and Further Information

2.1 **On 19 April 2010**, the defendant lodges a race discrimination and PIDA detriment claim at the Employment Tribunal.

2.2 **On 20 April 2010**, the defendant receives an email from Andrea Ward advising her that the appeal hearing will be postponed until 28 April 2011. She is informed that this was due to fact that the HR representative that they had appointed to attend the hearing was stranded abroad

2.3 **On 23 April 2010**, the defendant receives an email from Andrea Ward advising her that her hearing will have to be postponed until 5 May 2010. Andrea Ward cites the same reason as before for the delay

2.4 **On 26 April 2010**, the defendant e-mails Andrea Ward regarding the postponement of the hearing until 5 May 2010 claiming that the delays are unreasonable and explaining the impact on her health. The company fails to find another HR rep from its immense HR team and she would later be told at the ET hearing by the head of HR that the decision was taken by her not to find another HR adviser, because she specifically wanted the HR officer who was stranded abroad to deal with the defendant's hearing.

2.5 **On 5 May 2010**, the defendant's appeal hearing is cancelled due to non-attendance, at short notice by the GMB union

2.6 **On 7 May 2010**, the defendant's appeal hearing is rescheduled for 19 May 2010

2.7 **On 11 May 2010**, the defendant receives the responses to the RR65 questionnaires; it is contradictory, equivocal, obstructive and inconsistent. The ET would later fail to make any mention to the questionnaire or the response in its judgment.

2.8 **On 19 May 2010**, the defendant attends a second appeal hearing with Deborah Francis (Head of Careers and Employability) and Sue Ely (HR). She is informed that she will receive a decision within 5 days. That same day she also receives her employer's ET3.

2.9 **On 27 May 2010**, Sue Ely sent the defendant an e-mail informing her that she would not receive a decision on her appeal within the grievance time limit. The defendant responded to Sue Ely's e-mail highlighting the impact of the continued delays on her health **[1743 - 1744]**. The defendant went on my second period of long-term sickness absence later that day at 2.30pm.

2.10 **On 28 May 2010**, the defendant attended an emergency appointment at her GP surgery and she is signed off for two weeks in the first instance with anxiety, depression and

panic attacks.' The defendant's GP also made an urgent referral for further counselling and prescribes 'Temazepam' for her depression. The defendant e-mailed Benjamin Craig and Beverley Bannister to inform them that she had been signed off by GP and expressed extreme distress about the way that the company had been dealing with her mental impairment

2.11 **On 1 June 2010**, the defendant received a call from Cliffe Obaseki, (a friend and a Unison rep) who advised her that Sue Ely (HR) had telephoned him to enquire as to whether or not the defendant would consider leaving her job if the company offered her money, the company would claim at the ET full hearing that it did not wish to consider such a proposal. **This relates to page 26 & point 26 on the Claimants bill. Why were there such costs in light of this?**

2.12 **On 2 June 2010**, at 10.14 am Deborah Frances sent the defendant an e-mail to her personal e-mail address. The defendant had not given her the details of her e-mail address and she had not given any consent for her to contact her on it. It had been disclosed without the defendant's consent, by her former employer's legal representatives. At 10.49am, the defendant e-mailed Jane Biddlecombe (her former employer's legal representatives) to complain about the disclosure of her personal e-mail address (copying in ACAS). She also e-mailed Marcus Watson MD to make a formal complaint about Jane Biddlecoombe, Debbie Frances and Sue Ely. Marcus Watson fialed to adequately investigate her complaint Sue Ely confirmed at the ET full hearing that he had not spoken to her about the incident.

2.13 **On 4 June 2010**, the defendant received the appeal outcome from Deborah Francis by post. It is six days late and it is not upheld. She would later reveal at the ET full hearing that she had been dealing with the defendant's internal appeal and her ET claim at the same time. This fact was not mentioned by the ET in its judgment, even though it formed part of the defendant's claim.

2.14 **On 10 June 2010**, the defendant e-mailed Benjamin Craig to update him on the state of her health / treatment and alleged continuing acts of harassment, discrimination and victimization by various members of VT staff whilst she had been on sick leave.

2.15 **On 11 June 2010**, at 11.18am the defendant e-mailed Benjamin Craig to inform him that she had been signed off by GP for another month with 'reactive' depression, anxiety and panic attacks. At 11.54am Benjamin Craig responds but fails to acknowledge her e-mail of the previous day alleging continuing acts of harassment, discrimination and victimization

2.16 **On 21 June 2010**, the defendant received a letter from Andrea Ward (HR) asking her to complete a medical consent form as soon as possible for a re-referral to occupational health. The medical consent form was enclosed.

2.17 **On 23 June 2010**, the defendant e-mails Benjamin Craig (copying in Beverley Bannister, Tony Smith and Mick Simpkin) to inform him that she had received a letter from Andrea Ward and that she felt harassed. She pleads with him to stop the individuals in question from harassing and victimising her. At 11.24 am she forwards the e-mail on to a senior HR person- Lynn Simpson and she copies Tony Smith and Mick Simpkin of the GMB in. The defendant informs them that she does not think that it is appropriate for Andrea Ward to contact with her because of her involvement as a HR rep with her ET claim.

2.18 **On 28 June 2010**, the defendant receives an e-mail response from Benjamin Craig advising her that he had not seen Andrea Ward's letter but that it was not intended to be harassing in any way and it was in accordance with the sickness absence policy. The defendant responded, expressing her extreme disappointed at his response (copying in Beverley Bannister) and she supplied more information on her condition. She raises concerns about a danger to her health and safety

2.19 **On 28 June 2010**, Andrea Ward e-mails Benjamin Craig suggesting that the defendant should not be contacting him, (her own line manager) and Benjamin Craig fails to inform Andrea Ward that the defendant's contact with him is in accordance with the sickness absence policy/procedure.

2.20 **On 8 July 2010**, the defendant e-mails Benjamin Craig and Beverley Bannister to advise them that she had been prescribed further medication for her condition. She also advises that she had been referred for physiotherapy for the impact on her manual dexterity

2.21 **On 12 July 2010**, the defendant e-mails Benjamin Craig and Beverley Bannister to inform them that she had been signed off for another month with anxiety, reactive depression and panic attacks.

2.22 **On 14 July 2010**, the defendant attends her first physiotherapy appointment. They undertake various investigations and ask her to return for follow up treatment. Benjamin Craig sends the defendant an e-mail regarding arrangements for developing a return to work plan. The defendant is advised that he would be accompanied by another colleague with whom she was 'comfortable with'. **(This was not honored by the defendant's former employer and she would later be forced to meet with two individuals who she did not know, without her manager even being present)**. The defendant e-mailed Benjamin Craig (copying in Beverley Bannister and her union), regarding arrangements for developing a back to work plan and citing alleged imminent danger to health due to alleged bullying, harassment and victimisation.

2.23 **On 3 August 2010**, the defendant receives her former employer's ET3. It makes reference to a GMB rep, claiming that he had informed the defendant's employer that the defendant wanted to leave her job. This was wholly false. The defendant then e-mailed the Regional Secretary of the GMB union Richard Ascough regarding the comments to her employer. Richard Ascough responds to the defendant's e-mail, refusing to name who made the comments, refusing to investigate and advising the defendant to take legal action against the GMB union if she wishes.

2.24 **On 13 August 2010**, the defendant sends a letter to Benjamin Craig updating him on her condition, reporting the conduct of the company's legal representatives and alleging that the company is trying to 'get rid' of her.

2.25 **On 12 October 2010**, the defendant sends a letter to Benjamin Craig updating him on her condition and informing him that she is still receiving regular physiotherapy.

2.26 **On 13 October 2010**, the defendant e-mails Benjamin Craig to inform him that she has been signed off for another month with anxiety depression and panic attacks

2.27 **On 18 November 2010**, the defendant contacts Benjamin Craig by e-mail to inform him that she anticipates being able to return to work much earlier than expected and she attempts to make back to work arrangements which her employer frustrate.

2.28 **On 1 December 2010**, at 9.49 am Benjamin Craig contacts the defendant via e-mail and 'instructs' her to attend an OH consultation, warning if she did not comply she would face disciplinary action. She is informed that a GP 'fit note' is not acceptable. She advises that she would be returning to work the following week and objects to an OH re-referral

2.29 **On 6 December 2010**, the defendant visits her GP and she is given a referral letter for an OH consultation and a 'fit note'

2.30 **On 8 December 2010**, the see an independent OH consultant, which the defendant's former employer had agreed to.

2.31 **On 9 December 2010**, the defendant attempts to return to work but she is informed by Beverley Bannister and Amanda Duckett (senior mangers) that the company cannot make any 'reasonable adjustments' and she is 'instructed' to go home.

2.32 **On 17 December 2010**, there is e-mail correspondence between the defendant and Amanda Duckett. The defendant is informed that her request for 'reasonable adjustments' were 'extensive and numerous'

2.33 **On 21 December 2010**, the defendant e-mails Benjamin Craig and reiterates the impact of delays and enquires as to when she will be permitted to return to work. At 4.22 & 7.37pm there is e-mail correspondence between Amanda Duckett and the defendant, (Beverley Bannister and Benjamin Craig are also copied in). The defendant am informed that the independent OH report is not sufficient and she is 'instructed' to consent to a re-referral to 'Medigold' or an independent OH specialist, **(which is a step that the company admits had never been taken in relation to any other employee)**

2.34 **On 23 December 2010**, Benjamin Craig contacts the defendant via e-mail to inform her that disciplinary action would be taken against her if she refused to reconsider and agree to another OH assessment commissioned by the company. She was given until after the Christmas period to respond.

2.35 **On 24 December 2010**, the defendant e-mails Benjamin Craig (copying in Alexander Khan- the new MD and Beverley Bannister) and she agrees to another OH consultation, she clarifies her request for a 'reasonable adjustment'.

2.36 **On 29 December 2010**, the defendant lodges her third claim at the ET. The GMB union's legal representatives provide her with the response to her DDA questionnaire. It states that Mick Simpkin did not say that he believed that she wanted to leave.

2.37 **On 5 January 2011**, in the morning the defendant receives a copy of the OH referral 'pack' that had been sent to the OH company. The defendant's former employer included copies of both the Tribunal ET1's and e-mail correspondence in the OH referral pack (totalling more than 150 pages of legal documentation that the defendant had not consented to inclusion in the referral). The defendant was so horrified that she telephoned the OH company to discuss her concerns about the content of the referral 'pack'. At 2.16 pm the defendant e-mailed Beverley Bannister, (copying in Benjamin Craig and Alexander Khan), to request that the company identify an alternative role for her and she advises of the financial loss that she suffering whilst the company refuses to allow her to return to work.

2.38 **On 12 January 2011**, the defendant e-mails Benjamin Craig, (copying in Beverley Bannister and Alexander Khan), attaching a copy of her GP 'fit note' which indicates that she is not suffering from any significant condition(s) that would prevent her from carrying out her role**.** At 12.18 pm Beverley Bannister e-mails the defendant regarding the OH referral and again disciplinary action is threatened.

2.39 **21 January 2011,** there is e-mail correspondence between the defendant and Beverley Bannister. The defendant advised to attend a meeting with Benjamin Craig and Michelle Naylor (HR) on 25 January 2011 at 11am at a venue which was not her place of work. The defendant is told that she must remain on sick pay. The defendant responds to Beverley Bannister, (copying in Benjamin Craig, Michelle Naylor and Alexander Khan) advising her that she would prefer the meeting to take place at her own office and she asks for confirmation that a risk assessment will be carried out on the day.

2.40 **24 January 2011**, there is a telephone conversation between the defendant and Benjamin Craig regarding the arrangement for the return to work meeting. It is agreed that it is more sensible to have one meeting where everything could be addressed together. Following the telephone conversation, Benjamin Craig e-mails the defendant offering her the option to attend just one meeting where everything could be addressed together.

2.41 **27 January 2011**, the defendant accesses her e-mail and sees that Michelle Naylor had contacted her the previous day to inform her that a meeting had been arranged for 31 January 2011 at 12.30pm with Babcock's head of health and safety John Bacon

2.42 **28 January 2011**, the defendant telephones Benjamin Craig in the morning and she is advised by him that he is not aware of the meeting that is due to take place on 31 January 2011, but that he is happy to attend. He agrees to confirm this in writing. Michelle Naylor sends the defendant an e-mail informing her that Benjamin Craig will not be attending and she is advised that she will have to attend two meetings rather than one. The defendant respond, copying in Benjamin Craig, John Bacon, Alexander Khan and other key individuals, expressing her disappointment / concerns

2.43 **31 January 2011**, the defendant attends the first of those meetings with Cliff Obaseki, (friend and Unison rep) Michelle Naylor and John Bacon- two individuals who she did not know.

2.44 **4 February 2011** the defendant attends the second return to work meeting with Michelle Naylor and Benjamin Craig and she is advised that she can return to work on Monday 7 February 2011.

2.45 **On 1 April 2011** the defendant turns up to LBL offices with over 20 of her colleagues at approximately 9.30 am to petition LBL for work. Her name is amongst the 5 names that are called out by LBL's Consultant Nick French. The defendant and her other colleagues are advised that the individuals whose names have been called will be the only CEL employees who will be transferred to LBL. The rest of the defendant's colleagues are sent away. The defendant's employment transfers to LBL.

2.46 **On 16 & 17 June 2011** the defendant attends a PHR at the ET. LBL and Babcock attempted to get her claims struck out and £10,000 cost ordered against her but they were unsuccessful **[Appendix S]**. They did not apply for a deposit order or attempt to get the defendant's claims struck out on the basis that they were misconceived. The judge advises parties that there would be a 20 day hearing in the New Year.

2.47 **On 25 July 2011:** the defendant is signed off sick for two weeks due to 'stress at work'. She had been seeing a Psychologist for depression, **[Appendix Z & II]**.

2.48 **During September 2011** the defendant made straight forward amendment applications, which were granted.

2.49 **In November 2011** the defendant lodges her ET claim for disability discrimination. She did not receive the Claimants' full response to this claim until August 2012, as the ET allowed them to delay providing one for a protracted period of time **[Appendix TT]**.

2.50 **On 5 January 2012** the EAT directed the respondents' to put the defendant's removed evidence back into the ET trial bundle.

2.51 **Between January and February 2012** parties attended the 20 day hearing at the ET.

3.1 **On 2 March 2012**, the Tribunal wrote to parties dismissing all my claims under race and disability discrimination and PIDA detriment.

3.2 **On 12 March 2012** the defendant lodges her Notice of Appeal regarding the dismissed claims at the EAT.

3.3 **On 5 April 2012** the decision was taken to dismiss the defendant.

3.4 **On 11 April 2012** the defendant is signed off sick from work by her GP with depression and anxiety **[Appendix PPP]**. The dosage for her anti-depressant is increased and she is referred for counseling.

3.5 **On 13 April 2012** the defendant lodges her ET claim for unfair dismissal.

3.6 **On 19 and 20 April 2012** the defendant attends the Tribunal for the PHR/CMD. She had previously been informed by the ET that there would not be a full panel **[Appendix VV]**, however, one was appointed. The defendant submitted her PHR bundle and evidence demonstrating her inability to pay costs **[Appendix JJJ, KKK, LLL, MMM & OOO]**, which

she supported with her written representations, **[Appendix QQQ & RRR]**. A cost order is awarded to the Claimants.

3.7 **On 11 May 2012** the defendant is signed off for another month by her GP as suffering from depression **[Appendix TTT]**.

3.8 **On 30 May 2012** the defendant lodges her Notice of Appeal regarding the cost order at the EAT.

3.9 **On 12 June 2012** the defendant is signed off for another month by her GP as suffering from depression **[Appendix WWW]**.

3.10 **On 12 July 2012** the defendant is signed off for two months by her GP as suffering from depression **[Appendix XXX]**.

3.11 **On 27 July 2012** the defendant lodges her 'Stay' application and attached statement **[Appendix AAAA]** and supporting evidence **[Appendix PPP, SSS, TTT, VVV, WWW, XXX, YYY & ZZZ]** at the High Court.

4 The High Court cannot correctly understand the action and the matters or events leading to the action without knowing the root of them, i.e. matters and events leading to the cost order following the defendants' alleged unfair dismissal from employment at Lewisham Council including the individual respondent (Marina Waters') refused cost application, which the defendant had objected to **[Appendix HH]**. Details of the defendant's unfair dismissal were included in the PHR trial bundle **[Appendix EEE]**, the defendant has made an application to the ET to submit recordings allegedly proving that the Claimants discriminated against her and unfairly dismissed her. The Claimants are objecting to the application

5 Further matters and events leading to the cost order are set out in the defendants' written representations for the PHR dated 16 April 2012 **[Appendix QQQ & RRR]**.

6 The ET accepted the fact that the defendant has insufficient means to pay costs, but went on to refer to ***Arrowsmith v Nottingham Trent University*** [2011] EWCA Civ 797 and the fact that costs do not need to be confined to parties ability to currently pay, because it may well be that their circumstances improve in the future.

7 In the reasons for the cost order Judge Balogun stated that the defendant is relatively young and has at least 15 years experience and that the defendant's intention, (when fully fit) will be to seek employment in her current field. Judge Balogun mentioned that up until recently the defendant was earning £30,000 a year and that there is no reason to believe that the defendant won't resume a career in her chosen field, at this level in the future. On the evidence this was a conclusion that the Tribunal was not entitled to reach, therefore this was perverse.

8 It is important to note that the defendant experienced lengthy periods of absence from work due to disability and that her employment with the Claimants' lasted 8 years and that she has been unlawfully dismissed by them. It is on the defendant's work record that she has been dismissed for SOSR and that the above set of circumstances will affect her future employment prospects, not to mention the stigma. Jobs in the defendant's current area of wok in the public sector are being cut and/or people are being asked to take pay cuts (the Tribunal also made reference to cuts in its judgment). This scenario does not suggest that there is the slightest possibility that the defendant will be able to resume a career in her chosen field, at this level in the future. The defendant advised the Tribunal on the witness stand that even if she were able to gain employment, it would be on a substantially reduced level of salary than what she was earning before.

The Conduct of Those Acting on Behalf of the Respondent Party and the Defendants' attempts to settle

9 In this case, it's quite clear that Claimants' have engaged in unreasonable, oppressive and vexatious conduct in relation to their application. The defendant believes that this behaviour is calculated to cause me the maximum amount of distress.

10 On **8 November 2011** the Claimant' representatives had written to me again warning that it would apply for costs if the defendant refused to settle the case. The defendant agreed to settle the claim for £75,000 **[Appendix LL]**, but the Claimants' still decided to progress to a full hearing and incur costs which far exceeded the amount that the defendant had agreed to settle for. The Claimants' did not accept any of the defendants' counter offers.

11 The Claimants' approach to the settlement discussions was carried out in 'bad faith' and as a means to intimidate/threaten the defendant. The defendant raised concerns about this **[Appendix OO, PP & UU]**. The Claimants' wrote to the defendant on 22 November 2011, with a settlement offer, which she 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)*', [Appendix NN]**. It is important to note that the previously drafted contracts did not include this clause **[Appendix KK & LL]**. When the defendant challenged LBL's legal representatives about this, the response was as follows **[Appendix QQ]**:

'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'.

All of this was raised by the defendant in written representations to the ET dated 16 April 2012 **[Appendix QQQ, paragraph 18 & 19 & 31 & 32]**.

12 The defendant refers the court to ***AQ Ltd v Holden*** [2012] UKEAT 0021_12_1604. In this case the claimant made an offer to settle prior to the hearing, the ET rejected dismissed the claimants' case, but also rejected the respondents' application for costs on the basis that a claim was vexatious, an employment tribunal was fully entitled to take into account the fact that the respondent took no steps during the proceedings to seek a PHR to canvass the point, apply for a strike out or a deposit order. The defendant raised this issue at the ET but this argument was ignored. You will see that there is no mention of the defendants' submissions in the ET's judgment/Cost Order.

13 The ET stated that it has considered the defendants' submissions, but gave no further detail on the conclusions drawn from it. That is insufficient as reasoning. The Tribunal failed to comment on whether or not it was persuaded by any of the submissions. It does not say what those submissions were, and if it wasn't, why they were rejected. The defendant believes that the judgment neither articulates the issues as fully as the rule requires nor sets out the facts relating to those issues adequately nor explains its reasons for reaching the conclusions adequately.

14 The Tribunal failed to deal with the specific criticisms that the defendant put before it. To this day the defendant does not know if she is to conclude that the Employment Tribunal had rejected the defendants' evidence and submissions that it made no reference to. Applying the defendants' conclusions on the law to this judgment, she is driven to the conclusion that the judgment does not comply with Rule 30(6) either in form or substance and, is inadequately reasoned to the extent that it is erroneous in law. This is also a ground of the defendants' appeal.

15 The Claimants' alleged cost warning letter made no reference at all to the fact that it believed that the defendants' claims were weak or misconceives. In relation to the issue of costs it merely stated the following:

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

16 The defendant did not act unreasonably, as she could not have engaged with the Claimant's costs warning letter, as the cost warning letter failed to set out the contention that the defendants' claims were misconceived and it would be applying for a cost order on that basis, and the Claimant's had failed to give earlier warnings and/or seek a deposit order and/or a strike out application and PHR on this basis, which would have led them to an earlier assessment of the merits of the defendants' claims. 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 the defendant at any stage that it believed the defendants' claims were allegedly weak.

17 The Claimants' actions leading up to the full hearing did not put the defendant on alert that it would make an application for costs on the basis that her claims were misconceived from the outset and the letter dated 8 November 2011 **[Appendix KK]** failed to set out in any detail whatsoever why her claim would not succeed. She was therefore unaware of its position.

18 Making and considering settlement offers are 'part and parcel' of any litigation proceedings. Before 19 April 2012, the Respondent failed to point out any alleged 'lack of merit' in my claim in open correspondence. Instead, from the start the Claimants made settlement offers of £75,000 and £95,000 **[Appendix H, M, U, W, KK, LL, NN, QQ & RR]**, (at pages 60 – 67, 80 – 88 & 91 – 99 of the claimant's PHR bundle).

19 If the Claimants really believed that the defendants claims were misconceives the offers to settle would not have increased so dramatically during the course of the proceedings, from £10,000, to £30,000, and then £40,000 (at pages 3 – 4, 11 – 13, 24 – 25, 30 – 31, of the defendants' PHR bundle). There were also global settlement offers of £75,000 and £95,000 (at pages 60 – 67, 80 – 88 & 91 – 99 of the defendants' PHR bundle). There were no deposit orders made. Instead, from the start the Claimants made settlement offers, which progressively increased throughout the proceedings. The Claimants application is therefore too much of a pendulum swing to be credible and they unreasonably refused the defendants' initiatives to settle the case.

20 In response to the Tribunal's decision to refuse Marina Waters' application for a cost order, as per her threat **[Appendix GG)**, the Tribunal specifically makes reference to the same set of circumstances as being the basis of its refusal to grant her the cost application **[Appendix UUU]**. Marina Waters' alleged cost warning letter stated the following in relation to the issue of costs:

> ***'I request a pre-hearing review to have the case against me struck out. In view of the legal costs I will incur I will also be making an application for the defendants' costs if this goes to a tribunal, as I believe there have been false allegations made against me, evidenced in section 88(r)'.***

21 There was essentially no difference between both Claimants' letters threatening cost, yet both applications resulted in two completely different outcomes. The judge treated the two applications inconsistently.

22 In the case of AQ Ltd v Holden, the appeal from the respondents' was rejected by the EAT. The case supports the defendants' argument that a cost order should not have been made against the defendant, as the circumstances of the defendants' case almost mirrors that of AQ Ltd v Holden. In the case of AQ Ltd v Holden, paragraph 34, the EAT held:

'We do not consider that it was irrelevant for the Tribunal to take into account the absence of an application on behalf of AQ for a pre-hearing review. If the claim had truly been misconceived or vexatious there could have been an application to strike out (or a deposit order). The matter was not in any sense decisive of the application for costs; but it was not irrelevant.'

Perjured Evidence of the Claimants' and Making up Evidence against the Defendant During Proceedings

23 The defendant believes that the ET's assessments her in its judgment were vitiated by underlying findings and conclusions which were unjustified. The Employment Tribunal reached a decision that had not been open to it on the facts. In the defendant's view, it has demonstrated perversity and an error of law, particularly in light of the fact that the Tribunal contradicted itself with regards to the issue of whom was managing Director- at **[Appendix DDD]** of the judgment dated 2 March 2012. The Claimants' Barrister also contradicted himself in relation to this issue. He asserts in his closing written submissions that Deborah Francis was the Managing Director of Careers and Employability, (a small section of CEL), **[Appendix CCC, para 10]**. He then contradicted himself by applying to Deborah Francis the title of Managing Director of the entire company that the defendant worked for - CEL **[Appendix CCC, para 34]**.

24 The defendant wrote to the ET and requested a review of its decision **[Appendix EEE]** in light of the Claimants' perjured evidence and provided supporting evidence **[Appendix HHH & III]**. The Claimants' did not deny the defendants' perjury allegation **[Appendix FFF & GGG]**. However, the ET refused to accept fresh evidence regarding this issue. This is one of the defendants' grounds of appeal for her EAT application to overturn thee cost order. The following evidence which the ET also was presented with, will be provided to the EAT **[Appendix I, J. K, P, YY, WW, ZZ, AAA, BBB]** for consideration at the hearing on 25 October 2012.

25 The defendant contends that the Tribunal placed its decision to order costs against her upon the Claimants' false, contradictory, inconsistent and perjured evidence a weight which it could not

possibly bear. The defendant raised these issues in her PHR written representations dated 16 April 2012 **[Appendix QQQ, paragraphs 15a, 17, 24d & Appendix RRR, paragraphs 28a, 30 and 43d]**. This is also demonstrated in appeal to the EAT.

26 The Tribunal did not make essential findings of fact for the purpose of considering the perjured evidence and the effects that this had on costs. The Employment Tribunal failed take this into account and it failed to examine the overall effect of the way in which the Claimants' behaved in relation to this issue.

27 ***Robson v Inland Revenue Commissioners*** [1998] IRLR 186 EAT, at pages 5 and 7 of the authority, demonstrates that the perjured evidence of the Claimants' is sufficient on its own for the case to have be decided in the defendants' favour. It was shown the Tribunal erred in law by preferring the evidence of the Claimants' on the basis of a reason which should not have given any weight nor taken into account at all, let alone used as a basis to make a cost order against the defendant.

28 In its judgment the Tribunal stated that the 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 the defendant should therefore pay a third of their costs. It is clear from this comment that the judge was unable to disabuse her mind of any irrelevant personal beliefs or predispositions.

29 Further to the above, this was a matter that the Tribunal should not have taken into account. It is important to note that standard clauses for all public authority contracts require the contractor (CEL- the defendants' former employer), not to discriminate unlawfully and to indemnify the public authority). The defendant had submitted evidence to this effect to the Tribunal during the main hearing in January/February 2012 **[Appendix A]** and **[Appendix SS]** - an extract of documentary

evidence from the trial bundle which is related to the defendants' main hearing witness statement. Therefore this was a perverse finding and not a matter which the Tribunal were entitled to take into account, in relation to the statement that it made about cost cutting and austerity measures - '*it cannot be right for the claimant to walk away with no financial repercussions*'.

30 There is no factual basis contained in the decision for the Tribunal reasoning in relation to the above. The Tribunal determined the defendants' case on this basis. Such error was enormous and there was an error of law in this connection which formed a significant part of the findings of the Tribunal. The Tribunal proceeded on this basis and in doing so it erred. It is plain to the defendant that this Tribunal was in error of law.

31 It is submitted that the Claimants' conduct and the ET's failure to take this into account, inhibited the ability of the ET to dispose fairly of the case. The defendant relies upon the Court of Appeal's decision in ***Arrow Nominees Inc v Blackledge*** [2001] BCC 591, [2000] All ER (D) 854 C.P. Rep. 59 for the proposition that the ET's decision on the cost order should be overturned.

32 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'.

33 The ET was wilfully misled by the Claimants'. The evidence used by the Claimants' to make an application for a cost order against the defendant was unlawfully obtained against the European Convention or improperly interpreted by ignoring its background and specific conditions, and so they have very low credibility or are not valid for use under the proceedings. Further improper, unreasonable and dishonest use of them also violated the court's directions and rules as well as the law.

34 A person will be in contempt of court if he presents a deliberately false statement of case, witness statement (under CPR part 31). The court can also dismiss a claim or defence if there has been a deliberate destruction or falsification of evidence. In ***Arrow Nominees Inc v Blackledge*** [2000] C.P. Rep. 59 **[paras 34 – 62 and 74 – 79]**, the Court of Appeal allowed the appeal on the basis that the respondent's production of fraudulent documents led to a substantial risk of injustice, had been such that he should have been deprived of the right to pursue his case, and made it impossible for the parties to be placed on an equal footing, that it had added significantly to the costs of the proceedings, and that it had occupied a great deal of the court's time to the detriment of other litigants.

35 It is submitted that the Claimants' committed an abuse of the ET's process in consequence of giving false testimony. This was extraordinary audacity on the part of the Claimants' to confound the judicial process, mislead the ET and then apply for a cost order off the back of such conduct.

This is particularly disturbing as the conduct complained of did affect the outcome of the case and resulted in an extreme order by the ET against the defendant.

36 In relation to the cost order, the fairness of proceedings had been put in jeopardy and the Claimants' subverted the ET's process, which led to the adverse costs order. In the defendant's view, the Claimants' dishonest conduct is a compelling reason so as to satisfy the granting of her appeal on the cost order. The fairness of proceedings was compromised as a consequence of the misconduct of the Claimants' and the judgment was obtained by fraud.

37 It is submitted that the Claimants' should not be rewarded, when it is clear that they did not 'play by the rules', they deceived the ET and strived to undermine the judicial process

38 The ET was wilfully misled by the Claimants'. The evidence used by the Claimants' to make an application for a cost order against the defendant was unlawfully obtained against the European Convention or improperly interpreted by ignoring its background and specific conditions, and so they have very low credibility or are not valid for use under the proceedings. Further improper, unreasonable and dishonest use of them also violated the court's directions and rules as well as the law.

39 **Points of Dispute**

Point 1 General point (20, 23,38,41,47, 55, 83,103, 108 – 109, 121, 124, 132, 137, 150, 157 –	The engaging Jane Biddlecomb and Clive Dobbin throughout the case. All costs related to both their time and expenses are disputed and it is submitted that the Claimant is not entitled to recoup costs for both individuals- **see point 8 re duplication** **Reduce document time by 50%**	It is submitted that this was excessive and unnecessary, particularly as the firm was dealing with an unrepresented claimant.

159, 172 – 174, 178, 184 – 185, 193 – 194, 196, 201, 203 – 204, 208 – 209, 212 – 214, 225, 228, 233, 236, 238, 241 – 249, 262, 271, 280 – 283, 286 – 287, 289 – 291, 293 – 294, 296, 333 – 336, 340 – 341, 344 – 345, 358, 362, 379 – 380, 383, 394, 406, 412, 424, 434, 442 – 443, 464, 476 – 482, 502, 505, 508 – 512, 516, 522 – 524, 535, 539 – 541, 545, 577, 580 – 582, 607, 611 – 612, 617, 622, 624, 629, 634, 636, 666, 676 –		

677, 683 – 684, 691, 702 & 710)		
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 2 Point of principle (10 – 11, 16 – 17, 53, 105, 134, 170 – 171, 175 – 177, 180 – 183, 265, 273, 403, 518 – 520, 537, 547, 579, 583 – 584, 592 – 593, 596, 599 – 600, 603, 608, 613, 618, 627, 632, 637 & 668)	The need for so many other individuals, (Partners, Solicitors & Trainees) to be involved with the case. The costs of these other fee earners are claimed to be £230, £220, £160, £150 & £120 per hour. Rates claimed for the assistant solicitor and other fee earners are excessive. Disallow completely or reduce to £100 and £70 respectively plus VAT. Each item in which these rates are claimed should be recalculated at the reduced rates.	It is submitted that the involvement of these individuals was unnecessary and unreasonably high and that costs in relation to this should not be allowed.
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 3 Point of principle (267, 305, 337 & 362 – 364)	Costs related to Adam Buckby. These costs are disputed and it is submitted that the Claimant is not entitled to recoup 100% costs fin relation to these items.	It is important to note that Adam Buckby <u>had not</u> been represented by the Claimant throughout the case **[Appendix T)**. He had left the company in March 2011 **[Appendix O]**. What dates do these costs relate to? Why did 8 letters go out to him during the time that he was not being represented by the Claimants? (at page 56, point 305)

	Receiving Party's Reply	
	Costs Officer's Decision	
Point 4 Point of principle (2, 23 – 24, 27, 184, 188, 208 – 209, 228 – 231 & 242 – 254)	All costs relating to advising employer in relation to the defendants' former employer's internal procedure (appeals and grievances). Many of the costs relating to discussions and/or research were around work related issues, (which the defendants' former employer should have been able to deal with without having to take legal advice from a law independent firm) and the discussions did not specifically relate to the tribunal proceedings. These costs are disputed and it is submitted that the Claimant is not entitled to recoup any costs in relation to these items.	The defendants' former employer accepted that the internal procedure and ET process were separate and that it was treating it as so **[Appendix I & P]**. Therefore there was no need for so many telephone calls regarding every single development, particularly in relation to the defendants' former employers' other internal work processes, i.e. 4 telephone calls regarding the defendants' refusal to consent to an OH referral , totalling 30 minutes (at page 49, point 229).
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 5 General point (1 – 22, 23 – 50, 55 – 82, 90 – 101, 108 – 131, 137 – 149, 158 – 177, 184 – 199, 208 – 235, 241 –	Letters and telephone calls: There is no evidence provided for the extensive alleged bills in relation to letters and telephone calls- dates and times etc, (i.e. page 50, point 249). **Reduce by 75%**	The Claimant's representatives' could have used e-mail or fax rather than letters and/or phone calls. E-mail is a free method of communication and fax is also much cheaper than letter. It is important to note that e-mail and fax is the way that the Claimant's representatives communicated with the defendant and the Tribunal.

258, 261 – 270, 280 – 291, 300 – 308, 327 – 345, 358 – 368, 372 – 385, 394 – 405, 407 – 415, 424 – 436, 442 – 469, 476 – 515, 522 – 544, 577 – 638, 666 – 679, 691 – 718 & 728 – 729)		
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 6 General point 275 – 279, 568 – 569, 571 – 574, 654 – 659, 660 – 664 & 726)	Clive Dobbin and/or Jane Biddlecomb attending the ET hearings with counsel in April 2011 and on 16 - 19 January 2012 and 1 & 2 February 2012- this was unnecessary and Clive Dobbin attending the ET hearing with counsel on 19 April 2012: **Disallow**	Counsel had already been briefed and the Claimant's representatives have detailed extensive costs for briefing. There is no need for two fee earners to attend each conference. These costs are disputed and it is submitted that the Claimant is not entitled to recoup any costs in relation to these items.
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 7 General point (550 – 551, 573 & 688	The number of conferences with counsel is excessive and should be reduced by 50%	

– 690)		
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 8 Point of principle (275 – 279)	All costs relating to the postponement of the PHR on 14 April 2011 until 16 June 2011: this was beyond the defendant's control. These costs are disputed and it is submitted that the Claimant is not entitled to recoup costs for two solicitors in relation to these items.	The respondent sent the defendant two supplementary bundle indexes dated 28 March and 5 April 2011. The two drafts were completely different and this exercise was clearly unnecessary **[Appendix Q & R]**. This is evidence that the Claimant's representatives' were duplicating work, so there are reasonable grounds for suspecting that this went on throughout proceedings.
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 9 General point (157, 369 – 371, 386 – 392, 406 & 421 – 422)	Cost relating to the numerous face to face meetings between the Claimant's/witnesses and their legal representatives: The claim for timed attendances is excessive. **Reduce document time by 50%- the time spent is more than twice what a reasonable firm would have taken.**	Conference calls could have been held instead. The length of the meetings were unreasonably excessive
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 10 General point (470 – 474, 516 – 521, 545 – 548 & 639 – 643)	Cost relating to the amount of time that is claimed was spent on documents (including the trial bundle & the alleged time spent on paginating documents that they claimed not to have received) and witness statements are around **600 hours**. This is an unreasonable allowance	The Claimants would have received all the documents listed in the bundle index that the defendant sent in September 2011 **[Appendix CC & EE]**. The Claimants representatives received the defendants' evidence in chronological order and the documents were also listed. This would have saved the Claimants an awful lot of time and money **[Appendix DD]** The time spent is more than twice what a reasonable firm would have taken.

	in respect of documents concerning court and counsel and for documents concerning witnesses and other documents. **Reduce document time by 50%** .	
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 11 General point (509 – 511)	BDO: This cost is disputed as I do not have the full details of what it relates to.	What does 'BDO' stand for? What does this cost relate to?
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 12 General point (515)	The length of the call is unnecessary: **Reduce by 75%**	The Claimant's representatives could have made the query by letter, e-mail or fax.
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 13 Point of principle 71 – 74, 117 – 120, 144, 223, 268, 284, 364, 454 – 456 & 459)	All costs related to discussions with Alexander Khan and Marcus Watson: **Disallow**	These individuals did not attend the ET hearing, nor were any witness statements by them. Marcus Watson had also left the company by early 2011**[Appendix III]**.
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 14 Point of principle (26) – see	All costs related to any discussions around protected disclosures before December 2011: **Disallow**	The Claimants unreasonably contended that the defendant had not made any protected disclosures for a protracted period of time **[Appendix L]**. This denial widened the issues and increased costs. The Claimants'

part 7		subsequently conceded that the defendant had on 30 November 2010 in a letter to the tribunal **[Appendix N]**. On 4 November 2010 at the PHR, Judge MacInnes asked the Claimants' solicitor if they had not considered that the defendant was just trying to re-label the facts, (which would not have required a PHR). The solicitor's simple reply to that question was 'yes', **[Appendix N]**.
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 16 Point of principle (55 – 59, 77 – 79 & 83 – 84)	**All costs relating to the postponement of the CMD in July 2010: Disallow**	The defendants' requests for the postponement, was successful and the Claimant's representative's objections clearly unreasonable **[Appendix C - G]**.
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 17 Point of principle (138 – 143, 147, 149, 153 – 156 & 160 – 167)	All costs relating to the PHR in November 2010: **Disallow**	The defendants' joinder application was successful and the Claimant's representative's objection clearly unreasonable. The Tribunal decided unanimously in the defendants' favour **[Appendix N]**. The Claimant's representatives details cost for the PHR which took place in November 2010, however, the PHR would have been avoidable had the Claimant's representatives simple allowed the defendant to re-label the facts (add Babcock as a respondent).
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 18 Point of principle (522 – 524, 555, 576, 580 – 585,	January 2012- The EAT Appeal: The costs were unreasonably incurred by the Claimants- **Disallow**	The Claimant's representatives states that they had to prepare for the EAT hearing and that work was undertaken to prepare for supplementary witness statements in relation to the additional documents received from the defendant in January 2012. The Claimant's representative was not invited to the EAT

626 – 628 & 639 – 643)		hearing, it was an appellant only rule 3(10) hearing **[Appendix XX]**. The alleged 'additional' documents were not additional documents. The documents had been disclosed to the Claimant's representatives on 28 September 2011 **[Appendix CC - EE]** and the Claimant's representatives removed them from the trial bundle, (without the defendants' consent), when it was aware that it should not have done so. This action was taken in an effort to suppress the evidence and ensure that it never came to light. The defendant was forced to make an application to the EAT to ask for the evidence to be put back in. The Claimants' representative Mr Clive Dobbin, (faced with the prospect of dealing with a full EAT hearing over the issue), then advised the EAT Judge that he was happy for the evidence to be put back in and the EAT therefore made an Order to this affect. The Claimants actions regarding supporting evidence were not based on any legal argument and the associated costs would not have been incurred by the Claimants and the defendant, had it not taken the vexatious and unreasonable action. It was merely an exercise by the Claimants to try to inflict he maximum amount of mental distress upon the defendant and prevent her from proving her case. The defendant found their actions deeply distressing and stressful. It was intimidating, scandalous, disruptive, vexatious, oppressive, discriminatory and malicious. In the defendants' view, the Claimants have tried to disrupt the just disposal of proceedings and have conducted themselves in an unreasonable and vexatious manner throughout. The Claimants had known all along that the defendant should be allowed to rely on the supporting evidence. The defendant had to fight for two months to get the removed evidence placed back into the trial bundle. This was an extremely traumatic experience for the defendant and she also incurred enormous costs.

		Once again, the defendant did not have experience in and knowledge of the appeal process and she represented herself. It is important to note that the defendant never made any application for costs against the Claimants' even though she could have made a cost application to the EAT. It is also submitted that no costs relating to: **a)** Preparing for the EAT hearing; **b)** Attending the EAT hearing on 5 January 2012 (at page 82, point 555 – 556); **c)** contact with the EAT (at page 87, point 626 - 627) **d)** discussing outcome of the appeal hearing (from page 84), **e)** the removal of the defendants' evidence from the trial bundle from 14 October 2011; **f)** Preparing supplementary witness statements and **g)** the extensive alleged bills for letters and telephone calls should be granted.
	Receiving Party's Reply	
	Costs Officer's Decision	
Point 19 General point (733 – 735)	Preparing bill of costs: The time claimed for preparing and checking the bill is excessive. **Reduce solicitor's time to 50% and reduce the costs draftsman's time by 50%.**	
	Receiving Party's Reply	
	Costs Officer's Decision	

Conclusion

40 In the above cases it is clear that there has been no attempt to keep costs down and that the costs have "unreasonably incurred" and are "unreasonable in amount". The defendant refers to the overriding objective and the duty of the parties to save expense. The costs amounts claimed are at least 40%+ over what the Claimants' know to be reasonable compared to cases run by other firms. The defendants' opening statement detailing the background/chronology sets out

why she regards the case as having been reasonably and proportionately conducted- it also references supporting documents.

41 In particular the defendant invites the court to consider whether this is an exaggerated claim, which unreasonably caused inflated costs (also impacting on proportionality) and if the court should resolve adversely to the Claimant the issue of whether costs after the removal of the defendants' evidence from the Trial bundle in October 2011 and her offer to settle in November 2011, were reasonably incurred, and conclude that they were inflated.

42 The defendant referred to Blackstone's Civil Procedure at 68.33 in support of the need for case planning and Zuckerman on Civil Procedure at 26.87. She also refers to ***Jefferson v National Freight Carriers plc*** [2001] EWCA 2082 in which the Court of Appeal endorsed comments by Judge Alton in an earlier case the name of which is not referred to in judgment, supportive of case planning. The comments approved were:

"In modern litigation, with the emphasis on proportionality, it is necessary for parties to make an assessment at the outset of the likely value of the claim and its importance and complexity, and then to plan in advance the necessary work, the appropriate level of person to carry out the work, the overall time which would be necessary and appropriate spend on the various stages in bringing the action to trial, and the likely overall cost. While it was not unusual for costs to exceed the amount in issue, it was, in the context of modest litigation such as the present case, one reason for seeking to curb the amount of work done, and the cost by reference to the need for proportionality."

43 The defendant contends that unnecessary costs have been incurred because of the exaggeration of the claim, whether it was intentional or unintentional, and that the bill of costs should be significantly reduced. The defendant refers to CPR 44.3(5)(4) which states that, when assessing costs, the court should consider the conduct of the parties including the extent to which a claimant has exaggerated his claim. The defendant also relies on the case of ***Painting v University of***

Oxford [2005] PIQR Q5,[2005] 3 Costs LR 394,[2005] EWCA Civ 161, where the receiving party was heavily penalised on costs in circumstances of less extravagant exaggeration than the present case. The bill of costs is unreasonable in all the circumstances. The defendant invites the court to take the question of exaggeration into account under 44.3(5)(d) and to make a special order for costs- that the claimants' not get 100% of their costs.

44 The court should only allow costs which are proportionate to the matters in issue and the defendant respectful requests that the court reduce on the basis of what has been "unreasonably" incurred, to ensure that the final amount allowed is "proportionate". The correct approach has been identified by the Court of Appeal in ***Lownds v Home Office*** [2002] EWCA Cic 365:

"what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which Part 44.5(3) states are relevant. If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonably incurred and the cost for that item should be reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work in relation to each item was necessary and, if necessary, that the cost of the item is reasonable."

45 This test begs the question of what is the difference between "necessary" and "reasonable". Surely costs that are not necessary will not be reasonable. Equally, costs that are not reasonable will not be necessary. The fact that, at the first stage, the costs as a whole appear to be proportionate does not prevent the court from finding that individual items are disproportionate and applying the test of necessity to them alone (***Giambrone v JMC Holidays*** [2002] EWHC 2932 (QB)).

46 If the Claimants' bill of costs is allowed to stand it will set a dangerous precedent and deter unrepresented claimants from bring ET claims, through fear of being hit with crippling cost, which will put them in debt for years to come. The bill of costs is extremely high and well beyond the

defendants' means and will have very serious potential consequences for the defendant and it will also act as a disincentive to other claimants bringing legitimate claims. It simply sends out the wrong message and makes it even harder for minorities, disabled, lay and unemployed people to obtain justice. This is even more so if an individual, (like the defendant), fits all these categories. These points are of public importance.

Served on 16 August 2012 to Paris Smith Solicitors

Signed

Ms AA Vaughan