COURT OF APPEAL

LONDON

PERMISSION TO APPEAL: UKEATPA/0608/18/RN, UKEATPA/0609/18/RN, UKEATPA/0610/RN, UKEATPA/0648/18RN

BETWEEN:

T KOSTAKOPOULOU

Appellant

-and-

UNIVERSITY OF WARWICK (1)

Respondents

REBECCA PROBERT (2)

STUART CROFT (3)

GILLIAN McGRATTAN (4)

GROUNDS OF APPEAL

1. Rule 3(10) of the EAT Rules was activated because Honourable Judge Eady QC rejected my Notices of Appeal and their Grounds, which were submitted on 20 July 2018 and 1 August 2018 against four interlocutory decisions of Birmingham Employment Tribunal. On 5 August 2018 I requested a hearing under Rule 3(10) which took place on 31 October 2018. I could not attend the hearing in person due to sudden commitment in Europe. I received the sealed copy of the expedited judgment on 19 December 2018 (which is enclosed) and have been given permission to seek leave to appeal from the Court of Appeal within 21 days.

2. The grounds of my appeals related to the consistent non-conformity of the Birmingham Employment Tribunal's decisions with:

i) the requirements of natural justice,

ii) the right to fair hearing and effective remedy under Article 6(1) ECHR in conjunction with Articles 47 and 20 of the EU Charter of Fundamental Rights and the related general principles of EU law which must always be observed by courts and tribunals,

iii) the Tribunal's statutory obligations and Rule 2 (the Overriding Objective) of Schedule 1 of Employment Tribunals Rules of Procedure (2013) and

iv) Article 1 of the EU Charter of Fundamental Rights which is not only a fundamental right in itself but constitutes the real basis of fundamental rights and is inalienable and unlimited. Indeed, prior to the

Charter becoming legally binding, in Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079 at paras 70-77, the Court of Justice of the EU confirmed that a fundamental right to human dignity is part of Union law. It is also enshrined in the Universal Declaration of Human Rights (in both the preamble and Article 12) which I have invoked in these legal proceedings.

3. National judges must ensure respect for the principles of natural justice and respect for fundamental rights and the general principles of EU law. Judicial discretion thus operates within the bounds of natural justice, Article 6 (1) ECHR, Articles 1, 20, 47 of the EU Charter of Fundamental Rights, Article 12 of the UDHR and national law (- it is cited below). Judges and legal practitioners are thus key actors in the enforcement of international, European Union and national law and are obligated to give concrete, that is, real and actual, effect to rights and freedoms enshrined by the Charter.

4. All the above legal provisions, which strike at the heart of the rule of law and the principles of legality in all constitutional democracies, were pleaded in my legitimate applications to the Birmingham Employment Tribunal, that is, a) an application for further information as to what I am supposed to have done wrong in order to deserve a suspension of four months by Professor Croft, the Vice Chancellor of Warwick University, who had been aware of my continuing victimisation and detrimental treatment as well as of most of my protected disclosures for more than one year before my suspension. The suspension took place during my annual leave, I was not given an opportunity to be heard, there was no prior investigation of (the false and malicious) allegations about me and I had not received any complaint by anyone or been subject to any grievance. I was kept in suspension by Professor Croft for four months despite the fact that I wrote to him and provided evidence that the allegations were false. He then subjected me to a further disciplinary hearing which took place in my absence and without my documents. Two and half months later, the Provost of the University of

Warwick, Professor Ennew, chaired my appeal, disregarded all my evidence and did not even give me an opportunity to meet for the first time and cross-examine the person who conducted the disciplinary hearing (Prof. Gilson). Can the terms of natural justice be upheld in spite of the facts that I cannot know the full facts nor examine my accusers and Professor Gilson? I thus was subject to a disciplinary process which contravened natural justice, the principles of proportionality and reasonableness, the law and the ACAS Code of practice for eight months. I have done nothing wrong and until today I have not been furnished with either the factual details or the evidence of my alleged wrongdoing ; b) an application to be placed on an equal footing and to be able to submit my applications for strike out and deposit orders concerning factually incorrect claims made in the Respondents' Notice of appearance; c) an application for the disclosure of the documents related to the (fabricated) allegations made about my conduct as I have received no evidence of my alleged harassment of Professor Probert, other (thus far unknown) members of academic staff and members of administrative staff (- I had no contact at all with the only two individuals mentioned by Prof. Gilson in his decision which unjustly imposed a final written warning on me; Ms Wilson had been on maternity leave since October 2015 and Mr Doran had left the University in April 2016); d) an application to submit my considerable documentary evidence which the Respondents' legal representative excluded from the single bundle Judge Rose had ordered for the open preliminary hearing that was due to take place in early August 2018 and e) an application for an adjournment of proceedings due to the appeal which had been submitted to the EAT.

5. The refusal of those applications meant that an open preliminary hearing took place without my significant documentary evidence (a violation of a Convention right and Article 47 in conjunction with Article 20 EUCFR) and the full observation of the principle of natural justice and the equality of arms enshrined in Article 6(1) ECHR and Articles 20 and 47 of the EU Charter.

6. The outcome of the open preliminary hearing would have been different if those proceedings were compliant with the principles of natural justice, Article 6(1) ECHR, the Charter (Articles 1, 20 and 47) and the case law.

7. My applications were refused on 28 June, 4 July and 6 July 2018. The refusal of my application for an adjournment because an appeal which had been submitted to the EAT (- the activation of the right to an effective remedy under Article 47 EUCFR and the risks of injustice and breach of Article 6(1) ECHR if the preliminary hearing proceeded without my documents) took place on 31 July 2018.

8. The appeals included my request for the remission of this case to a different employment tribunal because the management of the case over a lengthy period of more than 12 months[1] had led me to believe that a fair fearing was no longer possible at Birmingham Employment Tribunal and that there was undue interference with the administration of justice due to the public profile of the Respondents and the role of the University of Warwick in the Midlands.

[1] It is noteworthy that this is a continuing victimisation and continuing detrimental treatment case and that I have been under a final written warning since 2016. Words and sentences cannot capture what I have had to endure before and following the submission of my application to the Birmingham Employment Tribunal in 2017l! Even in my office at the University I cannot be safe (- I have been subject to a considerable number of spam, phishing and malware containing emails (in excess of 600); colleagues have entered my office without my knowledge, moved my objects and sprayed my plant with liquid stain remover for washing machines; photographic evidence was submitted to the Respondents' Representative for inclusion into the single bundle for the OPH, was denied and was later on submitted to Birmingham Employment Tribunal following the OPH, but it has been ignored!). In addition, there has been continuous interference with my staff webpage, several other strange webpages depicting my research in a negative light have appeared on the world wide web and my family and I have been subject to innumerable nuisance calls by unrecognised numbers. Some of these leave messages on the answering machine stating that our secure BT wifi has been compromised and that we should contact BT.

9. None of the judicial decisions of the Employment Tribunal (28 June, 4 July, 6 July and 31 July 2018) addressed the grounds I submitted in my appeals and the Convention and Charter rights pleaded (- my applications and judicial decisions are included at the end of this document).

10. E. J. Shanks' decision (EAT), which I received on 19 December 2018, followed the same pattern. E. J. Shanks made a single reference to Article 6 (ECHR) ('para 19 ….She is right of course that ETs must abide by Article 6 of the European Convention on Human Rights and the requirements of natural justice in making all their decisions') but this abstract reference was not applied to my case with a view to concluding that, for example, the exclusion of my documents from the bundle, the ET's refusal to address this issue and to authorise a supplementary bundle and the conduct of a preliminary hearing without my documents violated Article 6(1) ECHR (an error of law). In fact, E. J. Shanks omitted completely my complaint about the exclusion of my documents from the bundle despite the fact that it featured centrally in my appeal (please see my letter to Miss Daly of 5 August 2018 (Registrar, EAT) below, the grounds of appeal and the skeleton argument for the EAT) (an error of law). In addition, E. J. Shanks did not address at all the issues of EU law and the application of the EU Charter's rights. In this respect, he erred in law.

11. Since issues of protection of directly effective rights have been pleaded by me, both the ET and the EAT have a positive duty to examine those issues and to give full effect to the principle of effectiveness of EU law and the EU Charter of Fundamental Rights. According to Article 51(1) of the Charter, the Member States (- and thus national courts and tribunals) have a duty to respect the right, observe the principles and promote the application of the Charter. This does not only mean that they need to recognise individuals' rights, but they must also ensure that the proceedings are Charter compliant (- and natural justice compliant).

12. Judicial proceedings can never be Charter compliant (- and natural justice compliant) if a Claimant experiences the following (- here, my letter to the Registrar of the EAT which requested a 3(10) hearing is inserted for the accuracy of my submission and the reader's convenience):

The Registrar
Employment Appeal Tribunal
Second Floor
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8AE

5 August 2018

Dear Miss Daly,

T. Kostakopoulou v The University of Warwick, P. Probert, S. Croft and G. McGrattan

Thank you for your letter dated 3 August 2018. I am dissatisfied with Employment Judge Eady's Decision to reject my appeals at this stage and I write to request an oral hearing under Rule 3(10).

The Appeals relate to decisions (- and non-decisions and a simple refusal on the part of Birmingham Employment Tribunal to address my applications to it) on applications made to the Tribunal without reasons (- or adequate reasons) in violation of the principles of natural justice, Article 6(1) ECHR and Article 47 EUCFR and the related General Principle of EU law, case law, the Tribunals' statutory obligations and the Overriding Objective. Natural justice and the right to a fair hearing feature in all appeals and not only in the fourth appeal, as Employment Judge Eady states on pages 3 (line one from the bottom) and 4 of the Decision.

The Grounds comply with the EAT's Practice Statement (- I was advised by the EAT (Mr Newton) that I do not need to provide copies of the ET1 and ET3 again and that I only need to mention the EAT's case files which include these documents) and the correspondence between myself and the Birmingham Employment Tribunal is complete (- it is not incomplete

and selective, as Employment Judge Eady states on page 2, paragraph 2 of the Decision). The Grounds of Appeal do not lack focus (as Employment Judge Eady states in para 2 of the Decision) and are not 'hard to understand' (para 2 of the Decision).

The aim of all my applications to Birmingham Employment Tribunal (13 applications for further and better particulars on an important matter that strikes at the heart of natural justice [the latest was made on 6 June 2018 and, thus, contrary to what Judge Eady states on page three, line 3 from the top of the Decision, a new request was served to the Tribunal], applications for the disclosure of documents which are needed for the preliminary hearing that is listed for the 8 and 9 of August and for the provision of reasons for its denial, an application under Rules 37 and 39 set out in s 1 of the Employment Tribunal Regulations 2013 which was necessitated by the new evidence that emerged following a data protection subject request, which was completely ignored by the Regional Employment Judge Findlay, and an application to submit my documents to the Tribunal, which are extensive and are omitted from the bundle for the preliminary hearing by the Respondents' solicitor) was to assist it in meeting the requirements of the Overriding Objective. It is the refusal of those applications by the Tribunal consistently (over 11 months), often without addressing them at all, that obstructs the Overriding Objective, the requirements of natural justice and the right to a fair hearing and makes my preparation of the case for the hearing impossible. This is included in all my correspondence with the Tribunal which was brought to the EAT's attention.

Furthermore, all these applications were addressed to a judge and were denied by a judge. The denials aid considerably the Respondents and put me in a disadvantage in violation of the equality of arms. Any reasonable individual cannot but wonder for how long such an unfair legal process could continue and why the presiding judge at the forthcoming OPH would act differently. There is very strong path dependence here. If the high standards of procedural correctness in line with Article 6(1) ECHR and 47 EUCFR and natural justice have not been met during the last 11 months, thereby preventing me from preparing the case properly and obtaining the factual information that is needed and the documents the Respondents are legally obliged to share, how can any fair-minded and reasonable person have faith that there will be sufficiency of natural justice and of Article 6(1) ECHR and 47 (EUCFR) at the Open Preliminary Hearing, or any hearing at Birmingham Employment Tribunal?

If Birmingham Employment Tribunal has a preconceived bias in the outcome of the hearing and consciously favours the Respondents, as the Grounds of my Appeals have demonstrated and the EAT's decision in Khan v University of Warwick and others has confirmed, how could natural justice and the right to a fair hearing be observed at the OPH, as Employment Judge

Eady states on page 4 of the Decision? There is more than a real likelihood that the Tribunal will act in the same way as it has acted thus far.

I observe that natural justice is not even mentioned once in Employment Judge Eady's Decision. If it is the EAT's conclusion that I am incorrect in submitting that Employment Judges' 'broad judicial discretion in the Case Management Proceedings' is circumscribed by the requirements of natural justice, Article 6(1) ECHR, Article 47 EUCFR, the case law of UK courts, the Court of Justice of the EU and the ECHR, then it is a legal imperative that these issues are authoritatively determined by the higher courts in the UK and in Europe.

Furthermore, such a determination needs to take place before the continuation of any proceedings at Birmingham Employment Tribunal in order to prevent injustice and flagrant violations of fundamental rights, not to mention further legal proceedings, costs, wasted resources and the investment of time.

This is because a number of questions remain unanswered, which the higher courts would need to address, as follows:

(a) Why is it that Birmingham Employment Tribunal has to date refused at every turn every application, 13 in all, for further and better particulars on a matter that natural justice requires and the respondents have a legal duty to clarify and substantiate?

(b) Why does Employment Judge Findlay believe it is not necessary for the Respondents to provide the evidence relating to what I have done wrong which I have been asking them to provide for 48 months? How could a judicial body that a democratic society expects to safeguard the rights and reputation of individuals refuse to provide effective protection and to foil unnecessary suffering and various injuries to one's good name, character, career and reputation for such a long time?

(c) The Respondents' representative, Mr David Browne, has categorically stated that it is his intention to resist any disclosure request of my wrongdoing. Why does Employment Judge Findlay believe that Mr David Browne should be at liberty to deny my right to know what I have done wrong prior to any hearing at Birmingham tribunal or at the Employment Appeal Tribunal?

(d) Why has Employment Judge Findlay refused my application for strikeout and deposit orders without justifiable reasons thereby placing me at a disadvantage?

(e) Why is it that Birmingham Employment Tribunal has allowed the Respondents to omit my documents from the bundle which are important material evidence and necessary for all matters relating to the agenda of the OPH?

(f) In light of Birmingham Employment Tribunal's decision not to address my application for a separate bundle and Mr Browne's omission of my documents from the bundle, how can any court or tribunal in any state that is a signatory of the ECHR and any EU Member State argue that a fair hearing is possible? How can I rebut the claims of the Respondents' representative and support my arguments if I am denied the opportunity by Employment Judge Findlay to draw on my own bundle of evidence?

(g) Why is it that Regional Employment Judge Findlay believes it is necessary to ignore crucial material evidence showing that the Vice Chancellor of Warwick University, Professor Croft, knew that there was no evidence against me and that I had been targeted before proceeding to suspend me on 2 August 2016 and to refuse to request the Respondents' representative to disclose their evidence of my wrongdoing?

(h) How could a Tribunal allow for more than 10 months the Respondents to intentionally withhold information and potentially exculpatory evidence and to continue to make or repeat or assert allegations of misconduct on my part which they know to be factually false? The only answer a fair minded and reasonable individual could give to the above question is *bias and a failure by the Tribunal to abide by its legal duties*.

In the light of the foregoing, I believe that the argument that a fresh appeal can be made following the Open Preliminary Hearing on 8 and 9 August 2018 cannot be used as a justification for shielding crucial decisions made before the OPH, and which affect the process and outcome of the OPH, from scrutiny for their compatibility with law and natural justice. There are justifiable concerns about the absence of fairness, the legality of Case Management Directions and sufficient guarantees of impartiality on the part of the Tribunal.

Those decisions have had significant costs and impact on me and my family, my work and my health.

If the EAT would prefer to grant me leave to appeal to the Court of Appeal instead of activating Rule 3(10), I would be very pleased to follow its guidance on this.

If, on the other hand, the EAT does not wish to grant me leave to appeal to the Court of Appeal, I would be grateful if you could let me know the arrangements for the oral hearing under Rule 3(10) at your convenience.

Yours sincerely,

Professor T. Kostakopoulou

13. Direct effect allows individuals to invoke the Charter in proceedings before national courts and tribunals and the principle of supremacy of EU law requires judges to give effect to these provisions of EU law. It is an error of law if they do not apply the Charter. It is also an error of law if they do not address the submissions of individuals in this area.[2] Furthermore, it is an error of law, if they do not assess the impact of their decisions on individuals' fundamental rights and meet their obligation to comply with the case law of the CJEU, the ECtHR and the general principles of EU law. The decision of E. J. Shanks suffers in this respect and hence this application to the Court of Appeal.

14. If E. J. Shanks had applied the principles of natural justice, Article 6(1) ECHR, Articles 1, 20 and 47 EUCFR, the requirements of the Overriding Objective and the relevant case law which is included below, he would have concluded that:

a) Article 51 EUCFR cannot be ignored and Article 52 EUCFR includes a general provision concerning limitation on rights. Some rights are absolute. According to the Charter Explanations, the ECHR and

[2] The principle of effectiveness of EU law requires this. For case law on this, please see Case C-240/98 *Oceano Grup Editorial SA*.

the case law of the European courts, it is submitted that Article 1 of the Charter on Human Dignity does not permit any limitations.

b) My fundamental right to human dignity was violated when, as an unsuspected individual, I received Professor Probert's letter instigating disciplinary action against me falsely alleging that I disrupted the staff meeting of June 15 2016 via email and by ignoring the informal stage of the disciplinary procedure if she had any legitimate concerns and when I received all of a sudden Professor Croft's letter ordering my suspension because he 'had received information that I had engaged in conduct constituting harassment of Professor Probert, other members of academic staff and other members of administrative staff' without telling me what I was supposed to have done to them (- two and half years later I am still ignorant), without the required evidence, without a prior investigation, without a grievance as ACAS requires and without being given an opportunity to be heard. My psychiatric injuries, the reputational and career damage, protracted periods of ill health, family anguish, disruption of work, my banishment from the workplace and my students, the mental health injuries my supervisees suffered and so many other detriments all flow from the harm inflicted on my human dignity which continues until today. Natural justice, Article 1 EUCFR, Article 12 UDHR, Article 1ICCPR, Article 1 ICESCR and Article 17 CRPD all prohibit 'grudge informer' situations, false allegations to actualise victimisation and the suffering of individuals and their families without being told what, when and where they had done something which was deemed to be wrong and without being given the incontrovertible evidence that proves the truth of those allegations.

c) No institution in the United Kingdom and no employer are free to violate a person's human dignity in this way in contravention of natural justice, international law, European Union law and national case law (*White v University of Manchester* which is cited below). Nor are they free in liberal

democratic societies to stain individuals' career, reputation, professional advancement, mental and physical health by accusing them, sanctioning them, banishing them from the workplace for four months, bringing them on the verge of suicide without telling them the facts surrounding their accusations and presenting the incontrovertible evidence to them. This has happened to me. There is no justice when an individual is condemned to suffer unnecessarily for more than three years. The Nolan principles of good governance also require institutions to act with honesty and integrity and the ACAS Code of Practice must be respected. The fact that the ET and EAT have sanctioned the violation of Article 1 EUCFR (- and have disregarded the violations of the ACAS Code of Practice noted in my ET1 documents) and have further imposed limitations on an absolute Charter right which are not provided by law and affect the essence of this right, such as the rejection of 15 applications for further and better particulars (- the basic information of what I am supposed to have done wrong, when and how) until now on grounds, such as the 'prematurity of my applications' (-I have had to endure the violation of my human dignity for additional 14 months), 'the respondents have provided an amended response' (- it was obvious to the ET, E. J. Simler and E. J. Shanks that the amended response did not provide the information I am seeking), 'I am not a defendant in a criminal trial' (E. J. Shanks's Judgment para 21), 'I confess I am slightly puzzled as to why she required these Particulars: presumably they had been supplied to her in the course of the disciplinary proceedings or, if they had not, then it would certainly have been open to her to rely on that fact as support for her case' (E. J. Shanks, para 7), 'preliminary hearings like this…. are not an opportunity for the Claimant, in this case, to put in her own applications on a 'tit-for-tat' basis' (E. J. Shanks, para 21) and that the full hearing would allow me to 'muster my full case' (E. J. Shanks, para 22) cause great concern.

d) One can only contemplate the unimaginable terror in society and workplace, if innocent individuals all of a sudden received letters suspending them for protracted periods of unlimited duration from

the workplace without giving them the details of their alleged misconduct and provided no factual evidence for it. Let us imagine, for a moment, that ordinary taxpayers experienced what I experienced; knocks on their door or letters arriving through the letter box stating: 'I received information that you engaged in conduct constituting harassment of X and Others and have decided to banish you from the workplace from today. I will never tell you what you did in order to harass X, when you did it and where you did it. Nor am I going to tell you who the Others were and what you did to them. Nor am I going to provide any evidence. I will refuse all your requests for the facts and the evidence for two years and if you bring a case at the tribunal, I will deny all your requests for further 15 months. If you manage to survive this process, have not been dismissed internally because you are on a final written warning and there is a full hearing, then you would be able to muster your full case. In the meantime, I turn a blind eye to your pain, the defamation of character, your psychiatric injuries, ill-health and the agony and distress caused by the allegations. I am also indifferent to the career damage I inflict, the disruption of, and impediments to, your work, and the destruction I have created in your life and your family'.

e) My applications were denied without being addressed and without reasons and this is an error of law (E. J. Shanks stated at para 14: '*On 5 July 2018, it appears the Applicant renewed her application for disclosure and that was turned down on 25 April 2018, apparently without reasons being given. It is not clear if she is appealing that Decision*'. But my Grounds of Appeal noted the following issues which E. J. Shanks did not address:

'40. On 28 June 2018, Acting Regional Employment Judge Findlay refused my new application for further and better particulars made on 6 June 2018 stating that 'it had been superseded by the amended response and, in any case I cannot see why you need the information requested (about the response) at this point, in order to deal with these preliminary issues. If the claims

(or some of them) proceed, further directions can be given at the preliminary hearing (including directions in relation to information provided)'.

41. Acting Employment Judge Findlay's response did not even acknowledge my letter and applications dated 25 June, my submission that the amended response provided no information relating to my requests for FBP, the importance of the information for the OPH, my application for the application for the principle of equality of arms and the inclusion of my strike out applications and request for deport orders, the vital information which the data protection act disclosure had unearthed and my request for the submission of a separate bundle if my documents were excluded by the Respondents. In this respect, the Tribunal erred in law. Employment Judge Findlay relied on an irrelevant consideration (i.e., that an amended response had been provided) while it excluded relevant considerations and refused a number of applications I had made (not only the application for FBP) without addressing them and without reasons.

42. Following the receipt of Employment Judge Findlay's letter, I wrote to the Tribunal on 30 June 2018. My email communication stated that Judge Findlay's letter did not address at all my letter dated 25 June 2018 and my applications to the Tribunal despite their direct relevance to the contents of her letter and the urgency of this matter. I noted, once again, that the Respondents' amended response did not address any of the questions contained in my application for further and better particulars which was submitted on 19 September 2017 and had been resubmitted on several occasions during the past 9 months. I also observed that Employment Judge Findlay's letter did not address Employment Judge Dimbylow's arbitrary confinement of the OPH issues to Respondents' strike out applications and deposit orders in violation of the principle of equality of arms and in repetition of his actions with respect to Khan v University of Warwick and Others. I requested the Tribunal's urgent response to my applications dated 25 June 2018 and an explanation as to how Employment Judge Findlay's decisions are compatible with Tribunals' statutory obligations to operate in line with the principles of natural justice, Article 6(1) ECHR, Article 47 EUCFR, the General Principle of EU law pertaining to an effective judicial remedy and the right to a fair hearing and the Overriding Objective. I concluded this communication by writing: '*The Tribunal has thus far failed to protect my rights and freedoms and to do what justice required and requires. Continuing to do so will only confirm the existence of inappropriate interference in the administration of justice and my suspicion the only purpose of the OPH is to aid the Respondents by unfairly weakening my (meticulously documented) claim as per Khan v University of Warwick and Others*'.

43. On 4 July 2018 I received a letter from the Tribunal stating: '*...acting Regional Employment Judge Woffenden has considered your correspondence – she refers you to the response of Employment Judge Findlay dated 28th June 2018 in which your application for further information was refused. Your letter of 2nd July contains no material change of circumstances on which her decision should be revisited*'. The Tribunal thus erred in law in not considering my applications and refusing them without reasons.

44. As I was unable to proceed with the preparation of my case, on 5 July I wrote to the Tribunal noting that neither Employment Judge Findlay nor Employment Judge Woffenden had

addressed and responded to my letter of 25 June 2018 and its applications. I politely requested '*for the third time the consideration of my letter dated 25 June 2018 and a reasoned decision on the applications contained therein. This matter is urgent. Please find my letter dated 25 June 2018 attached once again*'.

45. On 5 July 2018 I also made an application for an Order of Disclosure of documents under Rule 31 and the standard civil procedure rules. I received a letter refusing my applications of 25 July 2018 and the application for an order of Disclosure on 6 July 2018. No reasons were provided. The letter stated: '*Acting Regional Employment Judge Perry has considered your recent correspondence on this case, including your email of 25 June 2018. Your application contains no material change to that of 2 July is thus refused. Reasons for refusal have previously given*'. The Tribunal erred in law in refusing my application for the disclosure of important documents I needed to include in the bundle for the OPH without providing any reasons.

46. On 6 July 2018, I wrote to the Tribunal to ask on what legal basis Employment Judge Perry refused my application of 5 July 2018 for the disclosure of documents which the Respondents have an affirmative legal duty to provide. I also enquired *inter alia* whether the Tribunal's authorisation of the withholding of such fundamental evidence serves the Overriding Objective and the statutory obligations of Employment Tribunals, including the observance of natural justice, Article 6(1) ECHR and Article 47 EUCFR. To date I have received no reply from the Tribunal.

47. The Tribunal erred in law in persisting in treating the parties unequally by confining the issues to be dealt at the forthcoming OPH to strike out applications and deposit order applications by the Respondents only. It refused my oral request at the Preliminary Hearing and my subsequent application of 5 December 2017 for applications to strike out all or part of the Respondents' ET3 because it has no reasonable prospects of success and deposit orders. This request was in line with the Tribunal's power to make a deposit order under rule 39(1) where it "… considers that any specific allegation or argument in a claim or response has little reasonable prospect of success" and the Overriding Objective. It has refused my renewed request following the unearthing of crucial evidence following a data subject access request under the DPA 1998 which was made on 25 June 2018 without providing any reasons.

48. The tribunal erred in law in not responding positively to my request to submit a bundle with my documents thereby expecting me to attend an OPH which will have as a core bundle the bundle prepared by the Respondents which not only excludes crucial information and evidence but also crucial protected acts following the Respondents' intentional misidentification. This is a clear violation of Article 6(1) ECHR and Article 47 EUCFR and the relevant General Principle of EU Law. The principle of equality of arms dictates that each party must be afforded a reasonable opportunity to present his/her case under conditions that do not place him/her at a disadvantage vis a vis the other party.

49. The principle of equality of arms requires that both the ET1 and the ET3 should be equally treated with respect to strike out applications and deposit orders if, in a victimisation case where basic and crucial facts have not been disclosed by the Respondents 11 months since the

submission of a claim, a judge wishes to delay a hearing by embarking upon 'the deceptively attractive shortcut' of scheduling an OPH for strike out applications and deposit orders by the Respondents 48 weeks following the submission of an ET1.'

f) The essence of Article 6(1) ECHR, Article 20 and 47 EUCFR (the latter is both a general principle of EU law and a fundamental right) is violated when a party's documentary evidence is precluded from presentation at a judicial hearing. This happened in my case and E. J. Shanks was wrong not to address this.

g) Without the submission of the written documentary evidence, which in my case is considerable because all the dates in the ET1 documents correspond to written documents, a party cannot be considered to have had fair hearing and an effective remedy.[3] Accordingly, the OPH which took place on 8 August 2018 was operating in a deficit and was affected by absence of considerable documentary evidence and the denial of my applications for further and better particulars, disclosure and the opportunity to make strike out applications which would have included the strike out of all the incorrect statements of the Response and the Amended Response, including their statements that my claims are time barred when clearly they are not. Because that hearing operated in a deficit and took place in violation of natural justice, Article 6(1) ECHR and Articles 20 and 47 EUCFR, it should be declared null and void.

h) It flows from the principles of supremacy and direct effect that national judges are bound to enforce Article 6(1) ECHR (- it is part of the general principles of EU law), EU law (and the Charter) and to give

[3] In so far as E. J. Shanks's reference that 'I am not the Defendant in a criminal trial' implies that Article 47 EUCFR applies only to criminal trials, it is respectfully submitted that Article 47 EUCFR guarantees the right to an effective remedy and a fair trial in all domains.

full effect to them.[4] They are also required to provide adequate reasoning for dismissing my applications and the appeals. If they do not fulfil this obligation, then the right to a fair hearing and an effective remedy and the requirements of natural justice are not respected. They have a duty to render natural justice, the ECHR, EU law and fundamental rights effective. Paragraphs 18 – 23 of the E. J. Shanks's Judgment, which form the core of his judgment, fall short of these requirements.

i)They also have a duty to apply the existing case law and to draw on it. They are bound by precedent (- all the case law of the ECtHR, CJEU and the national case law on the discovery of documents and further and better particulars is included in the skeleton argument) and Article 6(1) ECHR in conjunction with Article 47 EUCFR would require at least a reasoned explanation as to why the Tribunal and the EAT (E. J. Shanks) do not follow the established jurisprudence and decide to depart from it. E. J. Shanks's Judgment falls well short of the above requirements and thus he erred in law. It has been acknowledged by the highest courts in Europe that if national courts fail to explain why they decide to depart from the established jurisprudence (- the latter was included in my skeleton argument for the EAT hearing), then the individual's right to a duly reasoned decision would be violated.

15. In the skeleton argument, which accompanies the grounds of appeal, I elaborate on my claim, the context and conduct of proceedings thus far, the facts, the law and case law.

[4] The Fundamental Rights Agency of the EU has provided extensive guidance to governments, national courts and national administrative authorities. In its Fundamental Rights Report 2018 (available freely at fra.europa.eu), it advises that 'national courts as well as governments and/or parliaments, could consider a more consistent '"Article 51 (field of application) screening' to assess at an early stage whether or not a judicial case or legislative file raises questions under the EU Charter of Fundamental Rights. ….The FRA Handbook on the applicability of the Charter could serve as inspiration in this regard.'; p. 42.

16. For the reasons set out above the Court of Appeal is invited to set aside E. J. Shanks's Order disallowing my appeals and to order the provision of the additional information I have requested from the Respondents since 19 September 2017 within the next 14 days.