Employment Appeal Tribunal

London

Cc: Mr Browne,

SMA, Birmingham

August 18, 2019

Dear Mr Newton,

Re: Application to the EAT to pursue a leapfrog appeal to the Supreme Court

I hereby would like to apply for the grant of a certificate to pursue a leapfrog appeal to the Supreme Court. I submit this application within the prescribed deadline following the receipt of Mr Justice Choudhury's decision to dismiss my appeal on 12 August 2019.

The reasons underpinning this application relate to:

Summary of the points of law	a) A very serious and persistent disregard of primary EU law, the ECHR and the HRA (s.6(1)) attributable to the EAT; b) Breach of the general principles of EU law and the duty of the EAT to give full effect to the primacy of the EU Charter of Fundamental Rights (the principle of effectiveness); c) Breach of the case law of the Court of Justice of the EU, the case law of the European Court of Human Rights and precedent in the UK legal order; d) Breach of natural justice; e) Breach of the common law rights of procedural justice and the common law duty of procedural fairness, an aspect of the right to access to justice.

Summary of legal grounds and their public importance (the role of the Supreme Court)	In *Simms* ([2000] 2AC115), Lord Hoffmann commented on the principle of legality and stated that 'fundamental rights cannot be overridden by general of ambiguous words'. In fact, fundamental rights and the values on which the European Union (Article 2 TEU) and its constituent national constitutional democracies are founded are not privileges to be ignored by public authorities and their organs. They constitute the sine qua non of democracy, equality and the rule of law, and courts and tribunals have a positive duty to respect and promote them (Articles 2 TEU, 4(3) TEU, 19(1) TEU and 47 EUCFR). The EU Charter of Fundamental Rights, which is primary EU law, requires the promotion and protection of fundamental rights and imposes on judges a clear duty to ensure that the fundamental rights of

	individuals are affirmed and protected. They must comply with the Charter in all their decisions and must ensure the highest level of protection of fundamental rights. The Human Rights Act 1988 is also designed to protect and empower the individual and, explicitly, requires the robust enforcement of the European Convention of Human Rights by the courts and tribunals. The Fundamental Rights Agency of the EU has described the ECHR as an 'especially prominent twin source'. The HRA requires British courts and tribunals to take into account the jurisprudence of the European Court of Human Rights. If senior judges repeatedly fail to protect fundamental rights and to enforce them in a robust way as required by the HRA 1998, the ECHR, primary EU law and the General Principles of EU law, they do not only commit a very serious error of law but undermine the principle of legality underpinning constitutional democracies. They have an obligation to respect the 'constitutional fundamentals'. National courts and tribunals are the primary guarantors of EU law and by failing to apply it, and failing to address the EU law-based submissions of the Claimant they undermine the obligations of the UK under Articles 4(3) TEU, 2 TEU, the Charter of Fundamental Rights and Article 19(1) TEU. Common law has recognised the rights to natural justice as fundamental components of the rule of law. The common law rights of procedural justice and the common law duty of procedural fairness safeguard the right of access to justice. If the above requirements are not observed and senior judges act, or are perceived to act, in bad faith, that is, with the intention to favour a party who has committed human rights violations and to prevent a claim and the evidence supporting it from being heard, then they undermine the very principle of natural justice, the requirements of the rule of law and individuals' rights to effective judicial protection. The 'Overriding Objective' requires that Employment Tribunals must act in good faith and must not act in a way that is incompatible with the right to a fair hearing and an effective remedy (Articles 6 and 13 of the European Convention on Human Rights and Article 47 of the EU Charter of Fundamental Rights coupled with the General Principle of EU Law pertaining to the right to a fair hearing and an effective judicial remedy).

Specific Reasons for the Application

Two Interim Applications of 9 June 2019 for further and better particulars and the removal of a Google image, which has as a source a Californian internet web address, and directs billions of individuals who might search for my name and my publications on the world wide web to E. J. Camp's judgment of 19 November 2018, which is under appeal at the EAT and was the subject of a complaint to Judge Doyle (Office of Judicial Complaints) as being downright intolerable

The interim application for further information on my alleged misconduct was a **fresh** application made on 9 June 2019. It was **the 18th application** for further information since the case began. The first application citing the breach of my fundamental rights and natural justice was made on 19 September 2017. The 15th Application was submitted on 15 September 2018 and was refused by E. J. Camp on 5 October 2018. The 15th application stated:

'*The Tribunal's reluctance to protect my fundamental rights and to address my request in an appropriate and timely manner by making this Order since 19 September 2017 has not only disregarded my natural justice entitlements but has also infringed my interests and fundamental rights under national law (HRA), international law (Article 8 ECHR) and supranational law (EU Law; the general principles of EU mentioned in my previous letters coupled with Articles 47, 7 and 1 on the protection of human dignity of the EU Charter of Fundamental Rights in so far it has allowed false allegations which damage my reputation, career (- including career progression) and health to be maintained for more than 2 years).*

The damage from the Birmingham Tribunal's (in)action thus far has been physical (i.e., relating to my health and well-being), reputational and professional as well as material (- economic disadvantage and financial loss resulting from my inability to apply for and/or to accept professional opportunities due to a suspension of four months and the unjust imposition of a disciplinary sanction by Professors Stuart Croft, Vice Chancellor of Warwick University on 2 August 2016, Gilson and Ennew, Provost of Warwick University).'

The 16th application was made to the Court of Appeal on 9 January 2019 (-the decision is enclosed) and the 17th application was made to the EAT last Easter when I wished to stand as a candidate for the European Parliamentary elections and was refused by E. J. Richardson on 6 June 2019.

Accordingly, the 18th application was made on 9 June 2019. It was accompanied by documentary evidence (i.e., the 15th application, the Court of Appeal's Decision and my communication to the Provost of Warwick University, Professor Ennew. It complemented the second interim application for an order for the removal of the Google image which violated my rights under Article 8 ECHR and 7 and 8 of the EU Charter of Fundamental Rights (- enclosed below).

The EAT's Treatment of the applications

The interim applications were made in circumstances giving rise to urgency and in order to prevent serious and irreparable damage to my fundamental rights, interests, and reputation. Yet, following several emails to the EAT requesting its urgent attention and a decision and which expressed my distress, I had to involve my MP, Mr. Paul Farrelly, in order to receive a decision from the EAT.

On 11 July 2019, I wrote again to the EAT reporting that the Google image would be traced to a firm called Fastly based in San Francisco and that the IP address appeared to be 64.233.171.26 which was Google (- not UK Government) related. I attached several screenshots of my investigation and urged the EAT to address the matter urgently. There was no response from the EAT even though I noted:

'*I hope the EAT realises not only the serious damage to my rights and reputation every day that passes and this black Google image is shown to billions of individuals, but also the misrepresentation and re-victimisation associated with this since there are corporate connections and associations which implicate the Respondent*s'.

There was no response by the EAT and I requested my MP's involvement. Following Mr Farrelly's letter to E. J. Choudhury, I received the Registrar's decision on 24 July 2019. Ms Daly's (the Registrar's) reasoning is replicated in E. J. Choudhury's dismissal of my appeal as follows:

'*The Registrar's decisions on the two interim applications were also correct. A challenge to a decision of HH David Richardson would have to be made by way of an appeal to the Court of Appeal as stated, and the EAT has no jurisdiction in respect of the register of decisions maintained by or on behalf of the Employment Tribunal*.'

The Role of the Supreme Court

The Supreme Court will be invited to assess whether it is permissible, acceptable or desirable for the Registrar and the President to mis-state the grounds of my interim applications and to reframe their subject matter in order to evade the fundamental rights issues pleaded by me. In my view, this is a flagrant breach of Article 6 (1) ECHR and 47 EUCFR and the related general principle of EU law as well as of natural justice and the overriding objective.

My constant concern has been the fairness and impartiality of the judicial process at the ET since June 2017 and at the EAT which has rendered the protection of the fundamental rights guaranteed by the Convention, EU law and the EU Charter manifestly deficient. As the Court of Justice stated in *Schrems* (Case-362/14, para. 95) 'the very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law'.

The Supreme Court will also be invited to uphold the law on the absolute and inviolable nature of the right to human dignity (Article 1 EUCFR) (- it permits no derogations, limitations or delays of 48 months) and the impermissible and unlawful limitations (please see Article 52(1) of the Charter and case law at the ECtHR and CJEU) imposed on Article 8 ECHR and Articles 7 and 8 on the right to data protection EUCFR which have breached their essence owing to the unwillingness of E. J. Choudhury to order the provision of the information I have requested on my alleged wrong doing and to order the removal of the Google image on the internet which was brought before any individual with any Google search of my name, of any of my books and my publications and my photograph (- an intrusion into the inviolable core of privacy and a violation of the data protection principles).

E. J. Choudhury's decision fails to respect my right to human dignity under Article 1 EUCFR and the essence of Articles 7, 8 and 47 EUCFR. There are clear points of law which determine the grant of the interim applications (natural justice, fundamental rights, such as Article 1 EUCFR, which as an absolute right does not permit limitations, Article 47 EUCFR, general principles of EU law, Article 6(1) ECHR, Article 13 ECHR, Article 8 ECHR, Article 7 and 8 EUCFR coupled with Article 20 EUCFR, and case law in the UK and in Europe. I have stated the legal authorities that determine the provisions of further information in my favour since 1958 and provided a detailed account of the EAT's ruling in White v University of Manchester in my previous submissions to the EAT.

The EAT must also comply with the overriding objective and the general legal principles applying to discovery and particulars which have been formulated by appellate courts. It is an error of law not to do so. It is also an error of law for the EAT not to address the legal grounds pleaded by me concerning the particularly serious interference with my fundamental rights. And it is an issue of public importance for the Supreme Court to rule on whether judicial discretion can consistently override the 'superior rules of law' mentioned above for a period of 23 months and the rights and freedoms of a human being who was subjected to a disciplinary process for 8 months and was suspended for 4 months without being told what she had done wrong and being given any factual evidence of her alleged misconduct. The Court also needs to assess the compatibility of the refusal of this information with the absolute character of the right to human dignity under Article 1 of the EUCFR and the inappropriate interference with Article 8 ECHR and Article 7 as well as the breaches of proportionality.

After all, the information I requested should have been provided to me at the outset, that is, prior to the commencement of disciplinary action, by the Respondents. They were required to do so by multiple laws in the context of the UK and the EU legal orders, natural justice, the fundamental rights and the ACAS Code of Practice.

Finally, the Supreme Court will provide an assessment as to whether a breach of 6(1) ECHR and 47 EUCFR has occurred because E. J. Choudhury simply endorsed the reasons in the Registrar's decision when the main complaint underpinning my appeal was the inadequacy of her reasoning and her failure to address specific human rights violations.

E.J. Choudhury's decision to split the pending appeals from last year (Preliminary Hearing ordered by E. J. Auerbach on 7 March 2019 and Rule 3(10) Hearings of the Appeals submitted on 8 November 2018 and 19 December 2018 against E. J. Camp's Judgments of 5 October, 19 November and 6 December 2018) and the appeal submitted against E. J. Monk's dismissal of my case on 3 May 2019 and the prioritisation of the latter on the grounds that 'unless her appeal against the strike out succeeds, the Remaining Hearing will be rendered academic as there will be no longer any extant claim'.

Substantial appeals were made against E. J. Camps' decisions of 5 October, 19 November, and 6 December 2018. The EAT's sift process lasted 76 days for the first one and 119 days for the rest. E. J. Auerbach ordered a preliminary hearing on whether E. J. Camp was correct to strike out my whistleblowing claim on the ground that it had no reasonable prospects of success, whether the claim declared by E. J. Camp as out of time was in fact in time and whether he was correct to remove the individual respondents, Professor Croft, Professor Probert and Ms McGrattan on the basis of Rule 37. In addition to these three issues which were of crucial importance to any continuation of the proceedings at Birmingham, on 17 March I wrote to the EAT stating A. J. Auerbach's omission of 12 legal errors which made E. J. Camp's decisions intolerable and in breach of the right to a fair hearing and natural justice. Both E. J. Auerbach's decision and my letter of 17 March 2019 are in the possession of the EAT and will be submitted to the Supreme Court.

Needless to say that E. J. Camp had made a judgment as to whether my protected disclosures and acts amounted to protected disclosures and protected acts without considering the documentary evidence which had been excluded and without hearing any evidence. Accordingly, the OPH chaired by E. J. Camp, which took place on 8 August 2018, was operating in a serious deficit. 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, I had submitted that it should be declared null and void.

Other important legal errors include:

1. Breaches of superior rules of law (violation of Charter and Convention rights, general principles of EU law and natural justice) and manifest disregard of the limits in the exercise of judicial discretion in the management of a case

2. Misapplication of the case law on striking out victimisation and whistleblowing cases without a prior determination of the facts, hearing all the evidence, reading all the documents the Claimant has and by allowing the Respondents to omit important material evidence from their bundle. E. J. Auerbach did not cite the guidance in Ezsias, and in the other related cases, correctly (point 4 on page 3 of the judgment) and did not consider the tables submitted to the ET and the EAT (- these are included below for convenience) as well the case law I included in paras 84, 88 and 94 of the Grounds of Appeal. Lord Hope's statement in Anyanwu (para 37) which refers to the hearing of the evidence was not followed.

3. Misapplication of the case law on continuing discrimination/victimisation and continuing detrimental treatment and the legal authorities' guidance that such issues need to be determined during a full hearing because victimisation and whistleblowing cases are fact sensitive (point 1 on page 3 of the EAT's judgment) and the full evidence must be presented and studied. Case law also prohibits the compartmentalisation and fragmentation of a continuing victimisation claim as well as a disciplinary process, which in my case commenced on 27 June 2016 and ended on 24 February 2017 with the confirmation of a final written warning and the dismissal of my appeal by Professor Ennew, Provost of Warwick University, and which included a suspension of four months by Professor Croft, Vice Chancellor of Warwick University.

4. E. J. Camp wrongly decided to strike out my entire whistleblowing claim as out of time, while, in fact, it is in time. The EAT erred in sanctioning this by writing 'but the Judge explained that it had been assumed in the Claimant's favour that certain most recent complaints were in time' (point 5 on page 4 of the Judgment). The EAT should have examined carefully the dates (24 February 2017: the last detriment was the confirmation of the final written warning by Professor Ennew, Provost of Warwick University), the clear statements of my ET1 and the relevant paras of my appeal which show that factually and legally it is in time and displayed due regard to the extraordinary and unreasonable longevity of the unfair disciplinary process (8 months), Professor Probert's unsuccessful attempts to harm me before the disciplinary process aided by Human Resources and the case law which requires a full evidential hearing for an assessment of the continuing character of discrimination and whistleblowing.

5. The EAT erred in finding that my claims of perversity and bias are unfounded and they have 'no other basis other that disagreement with the Judge's reasoning' (point 8 of the Judgment). E. J. Auerbach should have proceeded to investigate the matters raised in paras 66, 67, 68, 69, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 95, 96, 101-134 as well as why a judicial organ should proceed to strike out a claim as being out of time while in fact it is in time without hearing all the evidence and why the Claimant's ET1 documents and other documents in the Tribunal file were not taken into account by E. J. Camp.

6. The EAT disregarded my submissions that E. J. Camp incorrectly added in his judgment that my Representative stated that he would not rely on Protected Act 8 – this is impossible because this is a protected act that led to my suspension by Professor Croft, the Vice Chancellor of Warwick University one week later. I will definitely rely on

Protected Act 8 because I have challenged the lawfulness of my suspension by Professor Croft and the sanction of a final written warning of two years.

7. Judge Camp's refusal to make a reference to the Court of Justice of the EU without giving any reasons during the preliminary hearing of 8 August 2018. This is a clear error of law and it is an additional error of law for the EAT not to address this legal ground of my appeal (breach of Article 6(1) ECHR and Article 47 EUCFR).

8. E. J. Camp erred in striking out the whistleblowing claim on the grounds that all complaints of detriment for making protected disclosures have no reasonable prospects of success (para 1 of the Reserved Judgment) and by not providing clear and intelligible reasons for this (para 87 of the appeal). Notwithstanding E. J. Auerbach's admission that this is arguable and should be considered further, I contend that it is also unsatisfactory and amounts to an error of law for a Tribunal to simply state a conclusion or a decision without showing how it arrived to this conclusion.

   Accordingly, the EAT erred (the EAT's failure infringes the Claimant's right to a fair hearing within the meaning of Article 6(1) ECHR and 47 EUCFR) in not examining carefully my submissions about the absence of clear and intelligible reasons and the dates noted in ET1 which show that the whistleblowing complaint is in time (that is, Paragraphs 89, 90, 91, 92, 93, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116 of the Grounds of Appeal).

9. E. J. Camp erred in law in striking out my entire continuing victimisation claim with the exception of the final appeal hearing and the email communication of 19 December 2015 (paras 8 – 11 of the Reserved Judgment). The EAT erred in sanctioning this by writing 'However, the Judge explains why the other claims are struck out – being because it was not sufficiently arguable that what they relied upon amounted to protected acts'.

10. Exclusion of my documentary evidence (- hundreds of pages) from the single inclusive bundle ordered by E. J. Rose and thus the preliminary hearing of 8 August 2018. This means that E. J. Camp judgments about my claims are unsafe and incorrect because he did not consider the evidence.

Error in Law: 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 which is directly effective) is violated when a party's documentary evidence is precluded from presentation at a judicial hearing.

Facts: All those documents were submitted to the Respondents' representative, all were excluded, I was threatened with costs by Mr Browne and the OPH proceeded with missing evidence. This was stated in the two tables submitted during the OPH to E. J. Camp. That was a sufficiently clear breach of Article 6(1) and Articles 47 and 20 EUCFR which the EAT disregarded without reasons (point 9 of E. J. Auerbach's decision).

11. E. J. Camp's refusal of the application for further and better particulars on my alleged misconduct – the 15th application since 19 September 2017, by E. J. Camp. The refusal of the application on further and better particulars on what I am supposed to have done

at the hearing of 8 August 2018 and following the hearing (- a fresh application was made on 15 September 2018) (Grounds of Appeal para 135, para 142 et seq).

12. No reasons were provided E. J. Camp's Decision of 19 November 2018 which removed the individual respondents and the subsequent refusals to furnish them.

Because of the above irregularities, I had made an application for a stay in the proceedings pending the determination of the appeals on 20 December 2018.

There was no response by the Tribunal. This application was ignored.

It was a matter of common sense that the 'dismantled' by E. J. Camp case could not continue since any continuation of the proceedings would fall foul of Article 6 (1) ECHR and 47 EUCFR and the principle of effectiveness of primary EU law. When Mr. Browne persisted in preparing for the final hearing of a downright intolerable remnant of the case by asking the Tribunal for an unless order for the submission of documents for the bundle preparation, I registered my objections and submitted my legal grounds. These were never addressed by E. J. Monk.

When E. J. Monk issued the unless order, I made an application for the order to be set aside on 9 March 2019 (please see the email communication of 18 July 2019, which E. J. Choudhury ignored). That application was ignored again.

Accordingly, E. J. Choudhury has made a number of factually incorrect statements in seeking to make a decision which leads to a flagrant violation of the right to a fair hearing both substantively and procedurally, that is, by procuring an unreasonable lengthening of the proceedings (for more than another year) thereby prejudicing my interests and rights as follows:

a) Para 4, line 4 et seq: 'The Rule 3(10) Hearing will deal with the discrete issue of whether the Tribunal erred in law in striking out her claim for non-compliance with an Unless Order. It is not an appeal against the underlying Unless Order itself or the reasons for making it'.

   This is a profoundly incorrect statement – please see the appeal submitted against E. J. Monk's decision.

b) Para 4, line 8 from the bottom of para 4: 'However, the fact remains that the Rule 3(10) Hearing will deal with a discrete issue that is not encumbered by the issues to be determined in the Remaining Hearings. Those issues include three issues to be determined at a Preliminary Hearing, none of which, even if determined in the Claimant's favour, would have any direct bearing on the failure to comply with the Unless Order.'

   The issues are very much encumbered and entangled and it is profoundly problematic if E. J. Choudhury endorses E. J. Monk's failure to reply and to address the legal grounds of two applications to the ET for several months as well as my objections to the Unless Order. Were those manifestations of professional and proportional action advancing the substance of the right to a fair hearing and respecting the essence of the

Claimant's fundamental rights? Is the right to a fair hearing respected when a Judge ignores important applications made by the Claimant and does not take into account her submissions? (There is considerable jurisprudence from the ECtHR on this).

The Role of Supreme Court

It is a matter of public importance if a judicial organ is allowed to 'dismantle' a case and to remove individual respondents, who have harmed the Claimant and acted against the law, without the consent of the Claimant and without a full evidential hearing by citing Rule 37 and, more importantly, without reasons. The Court would be invited to rule on the limits of judicial discretion, the obligations of Courts and tribunals in the MS to ensure the effectiveness of EU law particularly when directly effective rights need to be protected and to give primacy to the ECHR (Articles 6(1), 8, 13) which is a source of law in the EU legal order. Judicial organs have a legal duty to render EU law effective and to act in compliance with the EU Charter which is primary law. They have to follow the case law and to avoid making strike out decisions and removing individual respondents, who hold public office, on the basis of Rule 37 following a preliminary hearing which did not include the Claimant's evidence, the Claimant's documents, the evidence of the Respondents and had disputed facts and no witnesses.

Such actions impair the essence of the right to a fair hearing and thus prejudice any continuation of the proceedings. For a judicial organ to be determined to proceed pretending that no hearing at the EAT had been ordered, that there were no serious and well-substantiated grounds and doubts about the lawfulness of E. J. Camp's decisions, no application for adjournment had been submitted by the Claimant, no objections to the Unless Order had been presented in writing and no application for setting aside the Unless Order had been made (- as E. J. Choudhury's statements in para 4 of his decision seem to imply), then we are confronted not only with a disproportionate and intolerable interference of Article 47 EUCFR, but the very possibility of an intentional obstruction of justice.

Accordingly, there is no 'distinct issue' to be determined by the latest appeal. Nor does para 4 of E. J. Choudhury's decision provide a reasonable and legitimate justification for using delaying tactics and lengthening the proceedings by more than one additional year in a case of continuing victimisation and detrimental treatment which continues to be unheard since September 2017.

The Supreme Court will scrutinise the EAT's compliance with Article 47 of the Charter, the right to an effective remedy and to a fair trial, which is a fundamental right and a general principle of EU law. Because this right encompasses the right to a fair hearing, the right to have one's case adjudicated within a reasonable time and the principles of independence and impartiality of courts and tribunals, the Supreme Court will assess whether the decision of the EAT makes my rights under the ECHR and the Charter 'theoretical and illusory' (ECtHR, Artico v Italy, No 6694/74, 13 May 1980, para 33).

If the Supreme Court is unable to discern the real reasons for fragmenting the appeals and preventing me from showing the profound illegalities of E. J. Camp's judgments and thus the inappropriateness of E. J. Monk's subsequent actions which culminated in the dismissal of my case contrary to the requirements of primary EU law and the general principles of EU law, clarifications by the Court of Justice of the EU via the preliminary ruling reference procedure would be warranted.

Article 20 of the Charter stipulates that everyone is equal before the law. It corresponds to a general principle of law included in all European constitutions and is recognised by the CJEU as a basic principle of EU law. The principle that everyone should be treated equally by an independent and impartial tribunal irrespective of political affiliation, nationality, creed or status in society forms part of the essence of the right to a fair hearing and effective judicial protection. It strikes at heart of the rule of law alongside the protection of fundamental rights and freedoms (Case C-619/18 *Commission v Poland*, Judgement of 24 June 2019; Case C-64/16 *Associacao Sindical dos Juizes Portugueses*, Judgement of 27 February 2018). In fact, the rule of law encompasses not only the supremacy of the law, but also equality before the law and the protection of fundamental rights and freedoms (see A. V. Dicey, 'Introduction to the Study of the Law of the Constitution' [1915]). By failing to adhere to all these three principles as argued above, E. J. Choudury's decision does not only deny me the protection of the law but it also serves to undermine the framework of recognised rules and principles which constitute the rule of law. These are important constitutional issues which the Supreme Court of this country has to address.

Yours sincerely,

Professor T. Kostakopoulou