Appeal No. UKEAT/0002/16/DA
UKEAT/0064/16/DA
UKEAT/0065/16/DA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 28 June 2016

Before

THE HONOURABLE MRS JUSTICE SIMLER DBE (PRESIDENT)

(SITTING ALONE)

MISS C LIDDINGTON APPELLANT

2GETHER NHS FOUNDATION TRUST RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR JEREMY GEERE (Lay Representative)
For the Respondent	Written Submissions

SUMMARY

PRACTICE AND PROCEDURE - Costs

The appeal challenges a decision to award costs based on a finding of unreasonable conduct by the Claimant and a subsequent refusal to reconsider that Order.

Having dealt with a number of earlier Preliminary Hearings, the Employment Judge was familiar with the pleadings and the issues to be addressed and was in the best position to consider and determine whether the Claimant's conduct was unreasonable when looked at in the round and in the knowledge of the issues that would have to be dealt with at a Full Hearing if it came to it. The Employment Judge expressly recognised that the standard of pleading expected of a lawyer did not apply to the Claimant and that she could not be expected to provide a detailed legal pleading. However, the Employment Judge concluded that the Claimant should have been able to articulate in layman's terms what it is that was said or done, by whom and on what dates that formed the basis of her complaints. The Employment Judge found that the Claimant was not able to do this on 12 May 2015. She gave a few examples of this inability. She found that the Claimant could not identify the dates of four of the six protected acts referred to, nor the detriments relied upon, nor the names and characteristics of actual or hypothetical comparators for the direct and harassment discrimination claims. The Employment Judge held that the significance of the Claimant's inability to relay the dates of the acts was highlighted in the hearing when she concluded that certain alleged detrimental acts pre-dated the protected acts relied on and thus could not be pursued. The Employment Judge concluded that, notwithstanding that the Claimant is a litigant in person and not to be held to the standards of a lawyer, given the number of earlier hearings at which detailed particulars were

sought to be elicited from her, her inability to provide the particulars required at the hearing on 12 May 2015 amounted to unreasonable conduct.

The grounds disclosed no arguable error of law relating to either decision. The finding of unreasonable conduct was not based on inability alone. The decision is adequately reasoned and causation adequately identified. Nor was the high threshold for a perversity appeal even arguably established.

THE HONOURABLE MRS JUSTICE SIMLER DBE (PRESIDENT)

1. I refer to the parties on this appeal as they were before the Employment Tribunal. The Claimant is represented by Mr Jeremy Geere, who qualified and practised as a solicitor but has not worked as a solicitor for some time. He appears as a lay representative to assist the Claimant as best he can. He referred me to health issues he has experienced, and, although at the outset he said that he did not need any adjustments, as the hearing progressed there were a number of occasions on which he needed five minutes in order to regain his composure, and I accommodated those breaks. On each occasion when we reconvened, Mr Geere assured me that he felt able to proceed.

2. The Respondent does not appear on this appeal but has lodged a skeleton argument setting out its position in relation to the decisions that are the subject of the appeals and to the extent that the Respondent resists the appeals, that position is set out.

3. There are three appeals in total. First, appeal number 0002 which concerns a challenge to an Order of Employment Judge Perry following a hearing in August 2015 with Reasons sent to the parties on 22 September 2015. The Judge struck out a number of claims for failure to comply with earlier deposit orders that had not been appealed. In fact the Claimant had withdrawn the claims relating to those deposit orders rather than pay the deposits. Her appeal sought to challenge the strike-out decision on the basis that she had withdrawn the claims so there was nothing to strike out. Despite its technical nature and the fact that it might have been thought academic, the appeal was permitted to proceed to a Full Hearing, though the sift Judge floated the prospect of agreement being reached as a more proportionate means of addressing

the technical issue. The appeal was not resisted by the Respondent, and in the event this strike-out decision was reconsidered by Employment Judge Perry, who ruled that the claims should be considered as dismissed upon withdrawal rather than as struck out. Notwithstanding this resolution, the appeal was not withdrawn, and it was not until the beginning of the appeal hearing that Mr Geere realistically accepted that the appeal is academic and indicated that he would not pursue it. He was right to do that. The appeal is entirely academic, and the only appropriate order is to dismiss it. I deal with it no further.

4. Secondly, appeals numbered 0064 and 0065 seek to challenge decisions of Employment Judge Perry in relation to costs, dealt with in a Judgment sent to the parties on 26 August 2015, and in relation to a refusal to reconsider the costs Judgment dealt with in a decision dated 21 September 2015. Those appeals were rejected on the sift but permitted to proceed to a Full Hearing following a Rule 3(10) application. Those appeals are therefore for consideration today.

5. The factual background can be summarised as follows. The Claimant was a community practitioner working for the Respondent. She complained that having made a safeguarding referral in relation to a patient care issue at a private care home, a responsible person at the home subsequently complained about the care she administered at the home, suggesting this was the second such instance of poor conduct. The Claimant asserted that the safeguarding referral made on 10 December 2012 was a protected disclosure. She complained that she suffered detriments thereafter and was ultimately dismissed in consequence of it. Her dismissal followed a disciplinary process, and by a claim form dated 11 October 2014 she made complaints of constructive unfair dismissal, religious discrimination, whistle blowing, unpaid

holiday pay and travel expenses, claims for notice pay, and in respect of a failure to provide her with a statement of changes to her terms and conditions. Her claims were not regarded as adequately particularised, and over the course of a number of hearings, and in correspondence thereafter, attempts were made to ensure that those claims were properly particularised. Attempts were made by a number of Judges to assist the Claimant in achieving that result.

6. On 10 April 2015 the Respondent applied to strike out the claims or in the alternative for deposit orders. The applications were initially heard at a Preliminary Hearing on 12 May 2015 by Employment Judge Perry. The Judge concluded that the claims remained inadequately particularised. Rather than make a strike-out order, the Judge expressly gave the Claimant a final opportunity to provide the relevant particulars, including details of the specific detriments that the Claimant had suffered and identifying at whose hand she suffered them and when.

7. There was a further one-day Preliminary Hearing on 3 June 2015 before Employment Judge Perry. Once again, the intention was that this hearing would address the Respondent's strike-out and deposit order applications. Mr Geere was not present at that hearing and was unable to assist me as to precisely what happened. However, the Judgment of Employment Judge Perry following the 3 June hearing shows that the Claimant's direct discrimination and harassment claims were dismissed on withdrawal. Those were claims in respect of which the Claimant had been ordered to provide further particulars, especially in relation to comparators. The Judgment also indicates that the issues that remained to be dealt with were further clarified but there was insufficient time to deal with the applications pursued by the Respondent. The Employment Judge expressed himself unable to deal with one aspect of the deposit order application relating to notice pay and constructive dismissal because unredacted copies of the

Claimant's diaries were not available. It appears that the Claimant blamed the Respondent for the failure to provide the necessary documents whilst the Respondent asserted that the Claimant held the original diary herself and was therefore responsible for the failure to provide the necessary documents. The Employment Judge did not attribute blame to either party for that hearing being ineffective.

8. Because there was insufficient time on 3 June, a further hearing was convened, this time listed for two days commencing on 17 August 2015, to consider the Respondent's applications. On that occasion, the Judge refused to make orders striking out the claims. However, so far as nine specific complaints pursued by the Claimant were concerned (including unfair constructive dismissal, whistle blowing and discrimination) the Judge concluded that those claims had little reasonable prospects of success and made £50 deposit orders in relation to each complaint as a condition of continuing to advance those claims. As already indicated, the Claimant did not pay the deposit orders in relation to eight claims and following the appeal I have referred to, those complaints were treated as having been dismissed on withdrawal. Separately, the Judge concluded that the Claimant behaved unreasonably in the way that the proceedings had been conducted. The Judge ordered the Claimant to pay the Respondent its costs of the hearing of 12 May 2015 in consequence and summarily assessed those costs in the sum of £1,481. This is the decision that is the subject of these appeals.

9. The Employment Judge dealt with costs at paragraphs 64 to 80 of the Judgment. He identified his approach at paragraph 66 and that a two-stage test had to be applied. He dealt with unreasonable conduct at paragraphs 67 to 73 and with the exercise of discretion at paragraphs 74 to 78 inclusive. The Employment Judge considered the Claimant's means

expressly and concluded that the Claimant still had substantial net assets against which any costs order could be enforced. He was satisfied that the sums claimed in relation to counsel's fees for attending on 12 May, together with counsel's rail fare of £91, were proportionate having regard to the complexity of the issues involved and that it was appropriate to have a junior counsel with experience instructed to conduct the hearing in the particular circumstances. The Judge concluded that an Order should be made in all the circumstances of the case.

The Appeal

10. Mr Geere identified eight grounds of appeal in the Notice of Appeal. I deal with each ground in turn.

11. Grounds one and seven (to the extent that the latter is pursued) can be taken together. Ground one challenges as perverse the Judge's finding that the Claimant was guilty of unreasonable conduct in circumstances where Mr Geere contends that the pleadings and the written material before the Employment Judge articulated her claims adequately. Ground seven is not pursued beyond Mr Geere's contention that the Judge's reasoning in the Reconsideration Judgment (at paragraph 5.4) is illustrative of a lack of clarity and confusion exhibited at the August hearing.

12. Employment Judge Perry dealt with a number of Preliminary Hearings leading up to the August hearing. He was as a consequence very familiar with the issues in the case, the pleadings and the particulars that had been provided. He was in a very good position to consider and determine whether the Claimant's conduct was unreasonable when looked at in the round, in the knowledge of the issues that would have to be dealt with at a Full Hearing. He

was in a better position to do that than is this Appeal Tribunal on appeal. The Judge expressly recognised that the standard of pleading expected of a lawyer did not apply to the Claimant as a lay person and said that she could not be expected to provide a detailed legal pleading. However, the Judge concluded that the Claimant should have been able to articulate in layman's terms what it is that was said or done, by whom and on what dates that formed the basis of her complaints. The Judge concluded that the Claimant had not been able to do this on 12 May 2015 and summarised a few examples reflecting that inability:

> **"69. At this point it may be helpful if I relay a few examples of that; in my order of the hearing on 12 May 2015 I recorded [the Claimant] could not identify the dates of four of the six protected acts she referred to (see paragraph 5 of the order), the detriments she relied upon or the names and characteristics of actual or hypothetical comparators for the direct [sic] and harassment claims. The significance of her inability to relay the dates of the acts was highlighted in that during that hearing she conceded as to the victimisation claim that some of the acts of detriment predated the protected acts and thus could not be pursued (that point having been explained by me - although I note there is a typographical error in my order in that regard)."**

13. Accordingly, the Judge concluded that the Claimant had been unable to identify the dates of four of the six protected acts referred to; she had not been able to identify the specific detriments relied on; and had not been able to provide the characteristics of the hypothetical comparators she relied on. The Judge concluded that notwithstanding the fact that the Claimant is a litigant in person not to be held to the standards of a lawyer, given the number of earlier hearings at which detailed particulars were sought to be elicited from her, that her inability to provide the particulars required at the hearing on 12 May amounted to unreasonable conduct.

14. There is a high threshold for establishing perversity on appeal. Mr Geere submits that the Judge was demonstrably wrong when he held (at paragraph 69) that the Claimant could not identify the dates of four of the six protected acts she relied on. He conducted a somewhat forensic exercise of taking me through a series of different documents in which he said it was clear that the dates had been provided. However, it seems to me to be clear from the case

management summary of the hearing on 12 May 2015, and in particular paragraph 5, that the information provided by the Claimant at that hearing was the information reflected by the Judge at paragraph 5 of his Order. It is clear from that paragraph that the Judge regarded as inadequate the dates given in respect of four of the six disclosures relied on. In relation to those four disclosures, although the months and years were provided, the date was, as the Judge recorded it, "TBC". The Judge explains that there were implications for determining whether the old law, the new law or both applied. Moreover, the Judge said at paragraph 6 that the Claimant had been unable to identify the specific detriments she had suffered, but had merely pointed to general assertions, such as the failure to provide documents that were relevant in the disciplinary investigation, but without being able to say what the actual failings were, by whom and when. At paragraph 2 the Judge made clear that he spent a considerable time trying to clarify the claims with the Claimant at that hearing and ultimately decided that the Claimant should be given another opportunity (described as a final opportunity) to provide the particulars he regarded as inadequately provided thus far.

15. So far as unlawful discrimination is concerned, paragraph 10 shows that once dates were provided for protected acts relied on, certain dates pre-dated the acts of detriment and meant those complaints could not proceed as the Claimant conceded. That underlines the importance of the particulars the Judge was concerned had not been provided. The Judge regarded as inadequate the details provided in respect of comparators and in particular the particular characteristics of those comparators, and here what underlines the inadequacy is the fact that subsequently the Claimant withdrew those complaints.

16. It is also significant, in my judgment, that the Judge's conclusions on 12 May were not isolated conclusions going against the grain, but were conclusions that had earlier been reached by two other Employment Judges - Employment Judge Cocks and Employment Judge Hughes - both of whom had read the documents available to them at the particular time and the particulars provided by the Claimant and Mr Geere, and concluded that they did not adequately particularise the claims in a way that enabled the Respondent to answer those claims and that would ultimately enable the Employment Tribunal to adjudicate upon them.

17. In all the circumstances, I am quite unable to conclude that the Claimant has demonstrated that the decision of this Employment Judge is irrational or that an overwhelming case has been made out that the Tribunal reached a decision that no reasonable Tribunal, having a proper appreciation of the information available, the pleadings and the evidence and having properly directed itself on the law could have reached. The Employment Judge was in the best position, to make the assessment he did. He dealt with the earlier hearings, and in particular and critically, the hearing on 12 May 2015, when he witnessed at first hand the Claimant's repeated inability to articulate in layman's terms, what it was that was said or done, by whom and on what dates that formed the basis of her complaints. He was required to judge the reasonableness of the Claimant's conduct in context, and did so in a way that was permissible. I do not consider that the Employment Judge was demonstrably wrong in concluding that it was inadequate simply to identify a month and year in respect of certain protected acts or that there were other failings in relation to particularisation as I have already identified. The Tribunal's finding in relation to the costs application was supported by the evidence of what had happened at earlier hearings and the Orders directing the provision of particulars, together with the failed attempts to supply such particulars. There is no suggestion that the Tribunal misdirected itself

in law, and, although a different Tribunal might have reached a different conclusion in relation to these matters, I am entirely satisfied that this Tribunal's conclusion was a permissible option in the circumstances of this case and one with which this Appeal Tribunal is not entitled to interfere.

18. Ground two seeks to challenge the Judgment as inadequately reasoned (see **Meek v City of Birmingham District Council** [1987] IRLR 250 CA) because it fails to identify what material and what evidence was placed before the Tribunal. The Claimant argues that the Judgment makes no reference to the pleadings or the witness statements, and the Tribunal Judge did not identify which bundles were available and did not deal with the complaints that had been made about the difficulties in obtaining agreed bundles.

19. I do not accept this argument. Mr Geere has submitted that it is difficult to make sense of what happened at this hearing, but I disagree. The Claimant was present at the hearing, and there is no dispute that there were two bundles available: a Full Hearing bundle, and a Preliminary Hearing bundle, both delivered to the Claimant shortly before the hearing. The Claimant did not seek an adjournment, nor did she ask for time to study the bundles, although she had made complaints in email correspondence about the difficulties, as Mr Geere explained. Not only was the Claimant present with the bundles used at the hearing, Mr Geere was himself present at the hearing centre, although not in the hearing room, and he too was aware that the two bundles were available and were used. In those circumstances, I cannot see any difficulty in making sense of what happened at the hearing arises, and certainly the failure to refer to the bundles does not reflect on the adequacy of the Reasons. Decisions of Tribunals are not required to be elaborate, formalistic products, nor are they required to contain a complete

account of the chronology of events leading to the hearing or to summarise the correspondence leading to the hearing. It is sufficient for a Tribunal to summarise its basic factual findings and conclusions leading to the decision on the issues at stake and to set out the reasons for those conclusions. That is what this Tribunal has done, and, in my judgment, the Reasons are **Meek**-compliant.

20. Ground three argues that the Tribunal wrongly treated the alleged inability of the Claimant as unreasonable conduct by itself. Mr Geere submits that inability on its own cannot amount to unreasonable conduct. He accepts that if there were a finding that the Claimant had failed to comply with a particular Order or had been obstructive he could make no complaint about that, but submits that the only thing relied on by this Employment Judge was an alleged inability and that simply cannot form the basis of a finding of unreasonable conduct. Moreover, the Claimant, a layperson suffering from stress, had in fact gone to considerable efforts to articulate her claim in writing and to assist the Tribunal and this was not acknowledged and was instead ignored and then erroneously identified as unreasonable conduct.

21. I do not accept Mr Geere's reading of the Judge's findings and conclusions. While it is correct that the Judge found the Claimant's inability to articulate her claim was unreasonable conduct here, the Judge did not find that this inability resulted from stress, anxiety or the severe abdominal pain that the Claimant complained about. The Judge accepted that the Claimant was not trying to be obstructive but found that she was not prepared in the way that she should have been, by reference to the lower standards to be expected of a litigant in person pursuing these claims. It was that lack of preparation that caused her inability to provide particulars. There was no medical evidence to suggest that the Claimant was not fit to represent herself, nor had

the Claimant applied to postpone hearings on this ground. The Claimant told the Judge that it was principally the stress of the claim and the treatment she had received from the Respondent that gave rise to issues for her. But the Judge was entitled to conclude that those were factors that would not go away in the course of these proceedings until the claim had been concluded and that those issues did not excuse the Claimant from particularising her claim properly or amount to a justification for her inability to explain the essence of her claim. The Claimant had been required on a number of earlier occasions, following a number of hearings with different Judges, to particularise her claim. The Judge was satisfied that she knew that her claim needed to be clarified and that she had been given four opportunities to do so.

22. In those circumstances, and in circumstances where the Judge expressly applied a lower standard to the Claimant in relation to the pleading of her claim, he was entitled to conclude that her inability to articulate her claim in this case was unreasonable conduct. That was not a conclusion that inability by itself amounted to unreasonable conduct as Mr Geere has submitted, but that inability in circumstances of having been given four opportunities and been directed to what was required was unreasonable for the reasons he gave. Again, that was a conclusion open to the Judge and not arguably in error of law as has been submitted.

23. Ground four addresses causation and challenges the Judgment as failing to consider whether the costs awarded were incurred or wasted because of the alleged unreasonable conduct found. In particular, it is said that the Judge was not willing to consider the strike-out application on 12 May and nor did the Judge feel able to deal with the strike-out application on 3 June. That means that the costs of those hearings would have been incurred in any event.

24. I do not accept that argument. The hearing on 12 May was, as the Judge made clear, adjourned to allow the Claimant a last opportunity to clarify her claims before applications for strike-out and/or deposit orders were entertained. Had the Claimant acted reasonably in the Judge's view in preparing for the hearing on 12 May, that adjournment would have been unnecessary, and the costs of that hearing would not have been wasted. That the Judge understood the basis of the application in this way appears from paragraph 65. It is implicit in the Judge's findings that the Claimant was not adequately prepared on that occasion and that her lack of preparation meant she was unable to articulate her claims to such an extent that her conduct was characterised as unreasonable. This was the basis on which the Judge accepted causation had been established. The question of causation was plainly considered and, if not expressly, was implicitly addressed in those circumstances.

25. To the extent that Mr Geere relies on the fact that the 3 June hearing was ineffective to address the Respondent's applications so as to render the 12 May hearing a wasted hearing in any event, I do not accept his argument. I accept that the 3 June hearing did not deal with the strike-out and deposit order applications. I do not accept that the record of that hearing attributes the inability to deal with those applications to any failure on the part of the Respondent. It is clear that the Respondent was maintaining that the unredacted diaries were in the hands of the Claimant not the Respondent. Those were diaries the Claimant wished to rely on and needed to rely on in order to assert her claims. Mr Geere has confirmed that the Claimant had those unredacted diaries and indeed provided them subsequently. The Respondent maintained throughout as the correspondence shows, that the unredacted diaries had not been disclosed to it. In those circumstances, it is at least possible that the reason the hearing did not proceed was because of the Claimant's failure to provide copies of the

unredacted diaries. I do not need to resolve that question. Whether the 3 June hearing was wasted or not, and if so, by whom, cannot be determinative of the question whether the 12 May hearing was itself a wasted hearing. I do not accept that the ineffectiveness of the 3 June hearing undermines the Judge's conclusion that the Claimant's conduct caused a wasted hearing on 12 May in the circumstances of this case, and the contention that the Judge erred in law in his conclusion is accordingly rejected.

26. Ground five contends that the Judge ignored submissions made by the Claimant that the Respondent's conduct was unreasonable. Mr Geere particularly focuses on the Respondent's conduct in relation to pleadings, medical evidence, the failure to send the bundle to the Claimant in accordance with Tribunal Orders and the continued failure or refusal to include documents in the bundle requested by the Claimant. I accept, as Mr Geere has submitted, that in her written submissions available to the Tribunal and made in response to the Respondent's application for strike-out or deposit orders and for costs, the Claimant denied any unreasonable conduct, asserting that the costs application was itself wholly unreasonable and abusive, and at paragraph 8.5 of that document, having said that she had fully engaged with the Tribunal process and complied conscientiously with Tribunal directions and Orders, that:

> **"8.5. It has been the Respondent who has constantly been causing confusion, misrepresenting and distorting the Claimant's case and statements the Claimant has made and making wholly unfounded assertions and claims. The Claimant has been subjected to this treatment constantly since autumn 2012 and it has seriously damaged her health and made it very hard for her to function."**

27. Although there was a complaint about the Respondent's conduct dating from autumn 2012 onwards, the Employment Judge made a clear finding that the cause of the wasted costs and the wasted hearing on 12 May was the Claimant's inability to articulate her claim in the respects already described. That having been determined, it is difficult to see how the

Respondent's conduct, as criticised in those broad terms by the Claimant, was relevant to the Tribunal's finding here. If the Claimant was contending that her inability to articulate particular matters - the dates of protected disclosures, the nature of the detriments or who subjected her to particular detriments - was the fault of the Respondent for some reason, it was incumbent on her to say so. It is clear that she did not do this. Rather, as appears from her submission, she contended that she had fully engaged with the Tribunal process and that she had complied with the directions and the Orders of the Tribunal. Her complaint about the Respondent was not that it had prevented her from articulating her claims or had contributed in some way to her inability to particularise her claims but rather that the Respondent was misrepresenting her claims and making unfounded assertions and claims of deficiency. The Tribunal was entitled to reach a concluded view on the case advanced by the Claimant and in the absence of any suggestion that the Respondent was responsible for failures on the Claimant's behalf for whatever reason, was entitled to reach the conclusions it did. This was not to ignore submissions or to fail to consider the Claimant's complaint but was to deal with the complaints that were actually raised in the context of the costs application. That is the way in which paragraph 5.2 of the Reconsideration Judgment is to be understood, and I am not persuaded in the circumstances that the Judge was in error of law in reaching the conclusion he did in the costs Judgment. Nor was he in error of law in saying that the Claimant had not asserted that it was the Respondent's failings that led to her inability to particularise her own claims and identify matters that were within her own knowledge. This ground accordingly fails.

28. Ground six argues that the Tribunal failed to take into account the health problems of the Claimant that had been raised by her and were, it is said, well evidenced before the Tribunal

and undisputed by the Respondent. I deal with this complaint shortly because it is clear that having found the threshold for a costs order established, the Employment Judge did not conclude automatically that costs should follow. Rather, he recognised that it was open to him to exercise his discretion to decide whether or not to order costs and to do so in light of all the circumstances. One of the important circumstances expressly considered was the ill health complained of. In those circumstances, it is not even arguable that this was a factor that the Tribunal simply failed to take into account.

29. Moreover Mr Geere has accepted in the course of argument that the Tribunal Judge was not shown any medical evidence in the hearing. He says that the Respondent failed to include all medical documents in the bundle, including only some of them and in her confusion, the Claimant did not take the Employment Judge to those documents that had been included in the bundle and accepted in the course of the hearing that there was no medical evidence. In any event, what is also clear is that there was no medical evidence about the Claimant's state of health on 12 May 2015 or in the period immediately before that hearing. The Claimant provided evidence of ill health at the hearing on 17 August 2015 but still provided no medical evidence as to her fitness or lack of fitness to represent herself at that earlier hearing. Having considered the evidence available, the Tribunal was entitled to conclude that the Claimant's ill health was not a reason not to make an order for costs. Moreover, Mr Geere's reading of paragraph 5.3 as indicating that the Judge did not believe that the Claimant was ill is not my reading of that paragraph. In my judgment, the Judge makes clear at paragraph 5.3 that he did take account of the Claimant's submissions that she had been ill, but he was not taken to any medical evidence in relation to that matter. That was true, and there is nothing to suggest that the Judge disbelieved the Claimant as Mr Geere has submitted.

30. Ground seven is not pursued. It was based on a misreading of paragraph 5.4, as has now been accepted.

31. Ground eight argues that the Tribunal failed to consider what proportion of the costs requested should be awarded and instead awarded the full sum on an indemnity basis without applying the principles laid down at paragraph 10 of the decision in **Howman v Queen Elizabeth Hospital Kings Lynn** UKEAT/0509/12. Paragraph 10 of **Howman** deals with the question when indemnity rather than standard costs should be ordered. It does not deal more broadly with when costs should be ordered or not. This ground appeared to proceed on a misunderstanding of what the Tribunal said and to be directed at a challenge to costs being awarded on the indemnity rather than the standard basis here. It is clear that the Tribunal did not order indemnity costs but simply referred to the indemnity principle in relation to any VAT that might otherwise have been claimed. Mr Geere contends the challenge is not as just articulated but to the fact that the Tribunal ordered the whole of the costs to be paid rather than only a proportion of them.

32. This ground raises no error of law. The Tribunal conducted a summary assessment by examining the fee claimed for counsel's attendance against the number of hours spent preparing for the hearing, the complexity of the case and the issues raised. The Tribunal addressed the reasonableness of the amount claimed and its proportionality. The Tribunal took into account the Claimant's financial circumstances when considering the level of the costs award to be made. It seems to me that having expressly referred to proportionality it is simply not arguable that the Tribunal erred in law in concluding that the costs claimed for counsel's fee summarily assessed in the sum identified should be paid. This is not a case where the Tribunal awarded

the whole of the costs that were incurred by the Respondent on the occasion of 12 May. The Tribunal limited itself, as the Respondent had done, simply to counsel's fee. That was a permissible course to adopt. I can discern no error of law in that assessment.

33. So far as the Reconsideration Judgment is concerned, the grounds of appeal are, as Mr Geere submits, essentially the same in relation to that Judgment as those he has articulated both in writing and in oral submissions in relation to the Costs Judgment. Mr Geere contends that it was an error of law for the Judge not to hold a hearing at which the reconsideration grounds could have been properly aired and discussed, and he lays particular emphasis on the statement by the Judge at paragraph 5.2 of the Reconsideration Judgment that the conduct of the Respondent was not a matter that had been argued before him at the Preliminary Hearing. He says it clearly had been raised, the Judge was simply pretending that this was not the case and that cannot be right. I have already dealt with the way in which the Respondent's conduct was relied on by the Claimant and the absence of any submission to the effect that her inability to articulate her claim was something that could be laid at the Respondent's door or attributed to a failure by or to conduct on the Respondent's part. That was never said, and it was in that context that the Judge said this ground was not argued before him.

34. In his Reconsideration Judgment the Judge identified the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage. In this case, the Judge addressed each ground in turn. He considered whether was anything in each of the particular grounds relied on that might lead him to vary or revoke his decision. For the reasons he gave, he concluded that

there was nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision, and accordingly he refused the application at the preliminary stage. As he made clear, a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.

35. Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing reconsideration accordingly.

36. For those reasons, despite the tenacious arguments advanced by Mr Geere on the Claimant's behalf, both appeals fail and are dismissed. The Order for costs accordingly stands,

and the application for a preparation time order on behalf of the Claimant must accordingly fall away.