Appeal No. UKEAT/0240/14/DA
UKEAT/0423/14/DA

EMPLOYMENT APPEAL TRIBUNAL

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

At the Tribunal
On 20 March 2015

Before

THE HONOURABLE MR JUSTICE SUPPERSTONE

(SITTING ALONE)

UKEAT/0240/14/DA

MINISTRY OF DEFENCE	APPELLANT
MS D S CUMMINS	RESPONDENT

UKEAT/0423/14/DA

MS D S CUMMINS	APPELLANT
MINISTRY OF DEFENCE	RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Ministry of Defence	MR JONATHAN LEWIS (of Counsel) Instructed by: Treasury Solicitor's Department One Kemble Street London WC2B 4TS
For Ms Cummins	MS DEBORAH CUMMINS (In Person)

SUMMARY

DISABILITY DISCRIMINATION - Reasonable adjustments

The Employment Appeal Tribunal allowed the appeal by the Respondent against the decision of the Employment Tribunal that it had breached its duty to make reasonable adjustments on the ground that the Tribunal failed, as it was required to do, to make proper findings as to whether the adjustments sought by the Claimant were in fact reasonable. Further the Employment Tribunal erred in treating a failure to deal with the request for reasonable adjustment as a failure to make a reasonable adjustment. For these and other reasons, the Employment Appeal Tribunal allowed the Respondent's appeal and remitted the case to the Employment Tribunal for reconsideration.

The Employment Appeal Tribunal also allowed the Claimant's appeal against the failure of the Employment Tribunal to consider or make any findings with regard to the provisions of section 39 of the **Equality Act 2010**. That matter too was remitted to the Employment Tribunal for consideration. The issue of dismissal within section 39 however only arises if the Employment Tribunal finds the Respondent to be in breach of section 20 of the **2010 Act**.

THE HONOURABLE MR JUSTICE SUPPERSTONE

Introduction

1. By a Judgment sent to the parties on 7 May 2014, an Employment Tribunal (Employment Judge Gumbiti-Zimuto sitting alone after a hearing at Reading between 13 and 17 January 2014) dismissed the Claimant's complaints of unfair dismissal and that she suffered detriments on the grounds that she had made protected interest disclosures, but found that the Respondent had breached its duty to make reasonable adjustments.

2. The Respondent appeals against that finding. The Claimant lodged an appeal against the Judgment. She has been granted permission to appeal following a Rule 3(10) application only on her second ground of appeal, namely that the Employment Tribunal ought to have considered, having concluded (perhaps wrongly: the Respondent is appealing) that the Respondent was in breach of the duty to make reasonable adjustments, whether the Respondent had discriminated against her by dismissing her under section 39(2)(c), (5) and (7)(b) of the **Equality Act 2010**.

The Facts

3. The Claimant commenced employment with the Respondent on 10 September 2002 as a full-time civilian administrative assistant at Royal Military Academy, Sandhurst ("RMAS"). On 10 January 2006 the Claimant transferred to the post of Support and Resettlement Officer at RMAS. The Claimant's role was to provide administrative pay and resettlement support to Lucknow Platoon, a rehabilitation platoon providing support to cadets injured during training. The duties that she was required to perform included maintaining contact with cadets on sick

leave after the decision of the RMAS medical board and monitoring of progress of their discharge paperwork.

4. At the end of 2009 the Claimant was diagnosed with a gastric/pancreatic disorder. By about 2010 her workload had increased as a result of the extra administrative work that she was asked to undertake owing to the increase in the size of the platoon, which had been caused by the delays in the discharge process. In 2010 the army introduced a new mandatory service-wide procedure to be used where a soldier was unfit to continue in his present post. This was known as RECU (restricted employment in current unit). At RMAS the implementation of RECU was seen as a catalyst for speeding up the medical discharge process.

5. On 20 May 2010 there was a meeting between all those who were involved in the discharge process to discuss the implementation of RECU. There was a significant dispute about what happened at this meeting, which is set out at paragraphs 23 to 33 of the Decision. Suffice to note, the Claimant thought that she was now seen as a troublemaker because of raising concerns about the discharge process. Mr McCutcheon (who at the time was Lieutenant Colonel Peter McCutcheon and the Commander of Old College at RMAS) and Captain Osborne, both of whom had attended the meeting, agreed that the Claimant's behaviour had been unacceptable, and Mr McCutcheon decided the matter would be taken forward as a disciplinary issue. The Claimant for her part wished to make a complaint about the comment that had been made by Matron Major Crossey as the Claimant had walked out of the meeting.

6. A meeting was arranged to take place on 25 May 2010 for both the disciplinary issue and the Claimant's complaint to be discussed. At paragraphs 38 to 47 of the Decision the Tribunal note what was said at the meeting. Mr McCutcheon pointed out that this was the first occasion

that the Claimant had brought to his attention that she had a specific medical condition. Following the meeting the Claimant raised an informal grievance, the outcome of which she did not accept, and she then submitted a formal grievance, which was considered by the Commandant of RMAS, who concluded that considerable efforts had been made to resolve the issues that had been raised by the Claimant and confirmed that the record of the meeting on 25 May 2010, about which she was concerned, would not be held on her personnel file.

7. Thereafter, on 23 October 2010, a meeting between the Claimant and Mr McCutcheon took place, at which it was agreed that when the Claimant was fit to return to work she would work a flexible working pattern, which would permit her to start and finish flexibly and to be able to work one day a week from home. It was confirmed that the Claimant would return to work on 2 November 2010. When she did so, she worked that pattern without any difficulties or problems until Mr McCutcheon ceased to be in post in December 2011 when Lieutenant Colonel Gavin Jones took over.

8. In May 2011 Mr Aiken was posted to RMAS as a Training Instructor, and from 9 May 2012 until May 2013 he served as Platoon Commander of Lucknow Platoon. At paragraph 60 of the Decision the Tribunal noted:

> **"In May 2012, Lucknow Platoon had a strength of 83 which compared to a normal platoon strength of 30. This was considerably larger than the size of the platoon at the time when the Claimant had commenced her employment. It had resulted in a significant increase in the amount of work that the Claimant was required to do. Unfortunately, over the preceding few years, the Claimant's health had also been deteriorating affected significantly by the stress that she has felt at work. …"**

9. The Claimant was off sick from 25 June 2012 until her employment came to an end in February 2013. At paragraph 61 the Tribunal state:

> **"… The Claimant and Mr Aiken could only have worked together for a maximum of six weeks. In fact, the period of time in which they worked together was considerably less than that as for significant periods of that six weeks, the Claimant was absent from work through**

sickness. The unfavourable impression that the Claimant made on Mr Aiken therefore occurred in a relatively short period of time."

10. On 18 May 2012 Captain Lynn had a meeting with Mr Aiken during the course of which they were discussing delays in the discharge process. The Claimant was called into the meeting, and Mr Aiken explained to her that Captain Lynn had proposed that she complete a document known as Appendix 11, which was part of the PAP 10 process, which was the Army's procedure for the administration of injured service personnel at the same time as completing the other paperwork. The Claimant's response was that she would not do so as she believed it should be done by the medical centre. Mr Aiken said that he would discuss it with Captain Lynn but that until further notice she was to complete the form. He says that the Claimant responded by saying that she felt unwell and she was going home for the day. The Claimant gives a different account of events, which was set out paragraphs 69 to 71 of the Decision.

11. The following week the Claimant and Mr Aiken met. At paragraph 72 the Decision records:

"… The purpose of the meeting from Mr Aiken's point of view was to understand why the Claimant had reacted so badly to the requirement that she complete Appendix 11. At that meeting, Mr Aiken says that the Claimant responded by telling him that she felt overworked in her role, that she also provided an overview of a number of her medical conditions from which she said that she was suffering. Mr Aiken states that this was the first time that he was made aware that the Claimant had any issues with her health. Mr Aiken said that the Claimant said that she found it disruptive having to change line managers every three months and that it was embarrassing having to explain the nature of her medical conditions every time that there was a change. Mr Aiken says that the Claimant said to him that she wanted to make an application for her post to be adjusted to remove a number of duties that she currently performed in order to reduce her workload, and that she confirmed that she would send in a request in writing later on in the week. Mr Aiken says that the meeting concluded with the Claimant stating that she was unwell and going home."

Paragraph 74 continues:

"The Claimant was absent from work for the rest of the week, i.e. the week of 21 May 2012. On 25 May, the Claimant sent to Mr Aiken an email setting out a request that he make adjustments to her post. The document was headed "Request for a reasonable adjustment".

> **It was accompanied by a personal statement in support of the request. The Claimant stated that she was writing to request that a reasonable adjustment is made to her current workload/objectives. She stated that she was requesting that the responsibility for a number of tasks are removed and re-allocated."**

At paragraph 75:

> **"On receiving this request, Mr Aiken sought advice from Lt Col Jones. He also sought advice from the Regimental Administrative Officer. The Regimental Administrative Officer indicated that if the Claimant's job description was reworked as she was requesting, there would be minimal work for the Claimant left. The Regimental Administrative Officer also expressed surprise that the Claimant was line managed by the Platoon Commander of Lucknow Platoon as the RAO was responsible for the line management of every other clerk at RMAS. He suggested that the Claimant might be moved to the RAO's line management responsibility. …"**

12. On 7 June 2012 Mr Aiken wrote to the Claimant setting out the issues that he would need to consider in responding to her request for an adjustment to her role. He said he would be referring her to Occupational Health for an update assessment. At numbered paragraph (5) in his letter he wrote:

> **"An area that must be re-assessed is that of working from home on a Wednesday as the tempo within Lucknow has increased to in the main to process and the increased restriction on data protection documentation. I do not believe that a day per week can be facilitated any longer. Whilst I note that this was an agreement in place prior to my time, this must now be re-assessed. I have no paperwork regarding the previous agreement currently in place. Therefore if you have any, please can you provide me with a copy."**

13. Mr Aiken informed the Claimant that a meeting had been arranged for 13 June. That meeting did not take place, as the Claimant requested that it be re-arranged. At paragraph 80 the Decision notes:

> **"… Although attempts were made by Mr Aiken to rearrange the meeting, he was never able to arrive at a date when the meeting would take place. Either he was unavailable, or the Claimant was unavailable or the Claimant's trade union representative was unavailable or one of the other people that Mr Aiken wanted to arrange to attend the meeting was also unavailable and so he therefore never offered the Claimant an alternative date for a further meeting. The Claimant and her representatives also attempted to contact Mr Aiken with a view to arranging a meeting. The Tribunal accepts that both sides made attempts to contact each other during this period with little success."**

14. On 22 June the Claimant wrote to Mr Aiken a letter outlining her response to his response to her request. At paragraph 83 the Decision continues:

> **"The Claimant was off sick from 25 June onwards. Despite the fact that the Claimant was off sick, it was anticipated that a meeting would take place as soon as it could be arranged. The fact that the Claimant was off sick was not a bar to the meeting taking place. No meeting took place."**

Paragraph 84 reads:

> **"It was not until October 2012 that Mr Aiken proposed a meeting with the Claimant and her union representative. He proposed a meeting on 26 October 2012. It is not clear from the evidence before the Tribunal exactly when this date was suggested to the Claimant. The information before the Tribunal however suggests that it would have been on or after 22 October 2012. Mr Aiken received no response from the Claimant or her representative, Mr Chadbone, and the meeting did not take place."**

15. Around 16 October 2012 the Claimant decided that she should apply for ill-health retirement and submitted her application on or about 26 November. She was notified in January 2013 that her application for ill-health retirement was refused. Paragraph 87 continues:

> **"… The Claimant being anxious about the fact that she believed that she had been [labelled] a troublemaker because she had raised concerns about legitimate matters during the course of work and also in the interests of her own health made the decision to resign her employment."**

The Claimant's resignation letter is dated 5 January 2013. Her employment with the Respondent came to an end on 2 February 2013. She presented a complaint to the Employment Tribunal on 13 January 2013. At paragraph 91 of the Decision the Tribunal state:

> **"At the time that Mr Aiken had made the Claimant the offer to attend a meeting on 26 October to discuss arrangements necessary in order for the Claimant to make a phased return to work, he was unaware that the Claimant had resolved to make an application for ill health retirement."**

The Law

16. The duty to make reasonable adjustments is contained in section 20 of the **Equality Act**. At paragraph 134 of the Decision the Tribunal summarises what section 20 provides, so far as is relevant:

> **"(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed to is referred to as A.**
>
> **(2) The duty comprises the following three requirements.**

> **(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."**

17. At paragraphs 135 to 140 the Tribunal set out their findings and analysis of the Claimant's complaint on this issue and conclude at paragraph 141:

> **"Taking all the circumstances in this case into account we are satisfied that the Respondent by failing to address with the Claimant her request for reasonable adjustments the Respondent was in breach of its duty to make adjustments. This complaint made by the Claimant is therefore well founded and succeeds."**

The Respondent's Case

Ground 1

18. Mr Jonathan Lewis for the Respondent advances five grounds of appeal. First, he submits that the Tribunal failed properly to apply the reasonableness test in section 20 of the **2010 Act**. It was, he submits, incumbent on the Tribunal to identify whether there were steps which were reasonable for the Respondent to have taken before making a finding that the Respondent failed in its duty to make reasonable adjustments.

19. At paragraph 138 of the Decision the Tribunal state:

> **"The Claimant asked that the Respondent take a number of steps in respect of her role. The Claimant's requests were not considered."**

The Tribunal does not state expressly what those steps are, however, Mr Lewis acknowledges that the Tribunal recognised what she was requesting. In her request Ms Cummins sets out what she would like. She says:

> **"… In summary, I request that the responsibility for Lu PI JPA Management Prints/EC register and the admin/pay of OCdts awaiting approval for discharge on medical grounds (post Ac clearance routines) are removed and reallocated; …"**

And at the conclusion of her personal statement, which accompanied her request, she said:

> ***"… I therefore request that, from the point an OCdt has cleared from OC, responsibility for their 2026s, pay, expenses, absences, duty travel, Move & Tracks on JPA, resettlement expenses and termination on JPA, WISMIS & TAFMIS be reallocated.*** **Removal of these responsibilities should decrease the likelihood that I will feel the need to 'go into bat' on behalf of Lu PI OCdts (RECU) with those outside my direct LM team over policy or other related issues concerning RECU/administration and therefore hopefully remove a major stress trigger in the workplace." (Claimant's emphasis)**

Where the Tribunal erred, Mr Lewis submits, is in failing to consider whether it would have been a reasonable step for the Respondent to make that adjustment.

20. At paragraph 75 of the Judgment the Tribunal notes that, in response to the request made by the Claimant by her email dated 25 May, as I have already said and quoted, Mr Aiken sought advice from Lieutenant Colonel Jones. He also sought advice from the Regimental Administrative Officer. The Regimental Administrative Officer indicated that, if the Claimant's job description was reworked, as she was requesting, there would be minimal work for the Claimant left.

21. Mr Aiken responded to the request in his letter of 7 June 2012 and, at paragraph 3, he said:

> **"You have been very specific in the areas of your work load that you wish to be adjusted, therefore with assistance from Old College Adjutant and the Academy RAO I will assess your job description; taking note of the impact of the removal of these items, as well as what capacity is therefore created, and whether the role/work load matches that expected to be undertaken by an E1 clerk (Lucknow Platoon Support Officer)."**

In the evidence before the Tribunal there was the statement of Colonel Jones, who explained in his witness statement at paragraphs 13 to 16 why it would not be reasonable to reallocate the tasks the Claimant asked to be reallocated. Mr Aiken's witness statement, at paragraph 22, explained why if the Claimant's job description was reworked as she was requesting there would be a minimal amount of work left for her and why the work remaining would not justify

an E1 clerk, but would be the work of a lower grade E3 clerk. Mr Lewis submits that the Tribunal failed to engage with this evidence and erred in failing to consider, let alone making a finding, as to whether the adjustments sought by the Claimant were in fact reasonable. He submits that the Tribunal failed to address the evidence given by the Respondent's witnesses as to why the requested adjustments were not reasonable.

22. Ms Cummins, in her written and oral submissions, submits that the Tribunal correctly reminded itself of the applicable legal principles including the burden of proof, and properly applied them. She refers to the evidence that she gave at the hearing and the contention she made in her final submissions that her request was reasonable.

23. At paragraph 98 of the Decision the Tribunal record that the Respondent's oral and the Claimant's written final submissions were taken into account.

24. In relation to her request for reasonable adjustment, the Tribunal note at paragraph 129 of the Decision that "there was a failure to deal with [the] matter at all." However, in my judgment, the fact remains that the Tribunal failed, as it was required to do, to make proper findings as to whether the adjustments sought by the Claimant were in fact reasonable. That being so, ground 1 is in my view made out.

Ground 2

25. In the light of the conclusion I have reached on ground 1, I can take the other grounds more shortly. Ground 2 arises from the characterisation of the Claimant's complaint in paragraph 133 of the Decision

> **"… that the Respondent failed to deal with her application for reasonable adjustments and therefore there was a breach of the duty contained in section 20 of the [Act]. …"**

At paragraph 141 the Tribunal concluded that it was satisfied that the Respondent "by failing to address" with the Claimant her request for reasonable adjustments, it was in breach of its duty to make adjustments. Mr Lewis submits that a failure to deal with a request for a reasonable adjustment cannot amount to a failure to make a reasonable adjustment. At paragraphs 133, 138 and 141 the Tribunal criticise the Respondent for failing to deal with, fairly to consider and fairly to address the request respectively. However, this Tribunal, in **Swissport Ltd v Taylor** UKEAT/0134/13 and 0140/13 make clear that the duty is to do what is reasonably required. At paragraph 38 Cox J said:

> **"As Mr Hay submitted, an employer may therefore be found to have complied with his duty to make reasonable adjustments in a way that is unconsidered, or when he is in ignorance of the existence of a duty to comply, or even when he holds invidious views. Conversely, if an employer fails to do what is reasonably required, it will not avail him that he has considered the matter and consulted the employee."**

26. Ms Cummins essentially resists this ground on the same basis that she resisted ground 1. I accept Mr Lewis' submission. In my judgment ground 2 is made out.

Ground 3

27. I can take ground 3 (failure to make a finding as to reasonableness in respect of the request for further adjustments) and ground 4 (perversity: inconsistencies in findings in relation to reason for delay) together. Mr Lewis submits that the Tribunal failed to identify a timeframe in which the Respondent should have responded to the Claimant's reasonable adjustment request. The request was made by email on 25 May 2012. Mr Aiken sought advice from Lieutenant Colonel Jones and from a Human Resources Officer and he responded to the request in writing on 7 June.

28. At paragraph 80 the Tribunal accepted that, after the meeting on 13 June did not take place and the Claimant requested that the meeting be rearranged, both sides made attempts to

contact each other during this period with little success. The Claimant was off sick from 25 June. There could have been a meeting even though she was off sick, but no meeting took place. It is not however suggested, and certainly there is no finding, that the fact there was no meeting between July and October was the fault of the Respondent.

29. At paragraph 84 the Tribunal records that in October 2012 Mr Aiken proposed a meeting with the Claimant and her union representative on 26 October, to which he received no response. Around 16 October the Claimant decided that she would apply for ill-health retirement and she submitted her application on or about 26 November. At paragraph 129 the Tribunal state that they recognise there was a long delay in dealing with the Claimant's request, which in their view was due to

> **"… the attitude that Mr Aiken had formed about [the] Claimant. This was as a result of his interaction with her. …"**

30. Mr Lewis submits that this amounts to a finding by the Tribunal that it was a deliberate decision by Mr Aiken not to follow up on the Claimant's reasonable adjustment request. This, he contends, is inconsistent with the findings to which I have referred as to the communications between Mr Aiken and the Claimant during the period from June to October 2012 and the meetings that he attempted to arrange. Mr Lewis draws to my attention the decision of this Tribunal in the case of **Secretary of State for Work and Pensions v Wakefield** UKEAT/ 0435/09. At paragraph 40 of the Judgment it is stated:

> **"We also accept Mr Basu's criticism that the tribunal should also have made a proper assessment of what was a reasonable timescale for taking such action as the tribunal felt was needed to comply with the statutory provisions."**

31. Ms Cummins resists these two grounds of challenge. She submits that the Tribunal was entitled to make the findings that it did on the evidence. She refers in her written submissions to some of the evidence that the Tribunal heard.

32. In my view ground 3 is made out. I accept Mr Lewis' submission that the Tribunal failed to identify the timescale in which they would expect matters to be dealt with.

Ground 4

33. As for ground 4, a perversity challenge requires consideration of the notes of evidence, which are not presently available to this Tribunal. As this case will have to be remitted to an Employment Tribunal in any event by reason of the conclusion I have reached on other grounds, I will not make any ruling on this ground.

Ground 5

34. Finally, ground 5. The Claimant presented a claim on 13 January 2013. Accordingly, for the Claimant to be in time, the act complained of must have taken place after 12 October 2012. Mr Lewis submits that the Respondent was no longer reasonably expected to take any steps after the Claimant disengaged from the process and abandoned her request for reasonable adjustments to be made. The Claimant submitted her application for ill-health retirement on or about 26 November. Paragraph 86 refers to Mr Aiken contacting the Claimant's representative in about mid-October. At paragraph 87 the Tribunal records that:

"Around this time, the Claimant decided that she should apply for ill health retirement …"

35. Mr Lewis submits that the Respondent specifically raised with the Tribunal the issue of limitation. In the order of the Tribunal made on 26 June 2013, following the case management

discussion, it is noted at paragraph 16.2 that the Tribunal will need to consider whether it is either just and equitable to extend time or if the events form continuing matters for the purposes of the **Equality Act 2010**.

36. Mr Lewis submits that it was incumbent upon the Tribunal to make a finding as to when the Claimant disengaged from the process in order to consider whether the claim was in time. The Tribunal erred in failing to do so. Ms Cummins submits that the act about which she complains continued until her resignation, alternatively until she made the application for retirement on health grounds. In my judgment this ground again is made out. The Tribunal failed to make a finding on this issue, as it was required to do.

The Claimant's Appeal

37. Turning next to the Claimant's appeal: her appeal was rejected under Rule 3(7) but allowed to proceed on ground 2 only by HHJ Shanks following a Rule 3(10) Hearing. Ms Cummins submits that, having found there to be a breach of sections 20 and 39(5) of the **2010 Act**, the Tribunal should have gone on to consider whether the cumulative impact of her mental and physical health by reason of the Respondent's actions and failures to act entitled her to resign.

38. Section 39 provides, so far as is relevant, as follows:

> **"(1) An employer (A) must not discriminate against a person (B) -**
>
> **…**
>
> **(2) An employer (A) must not discriminate against an employee of A's (B) –**
>
> **…**
>
> **(c) by dismissing B;**
>
> **(d) by subjecting B to any other detriment.**
>
> …

(4) An employer (A) must not victimise an employee of A's (B) –

…

(c) by dismissing B;

(d) by subjecting B to any other detriment.

(5) A duty to make reasonable adjustments applies to an employer.

…

(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment -

…

(b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice."

39. Ms Cummins submits that the Tribunal failed to consider or make any findings with regard to the provisions of section 39. She submits that the issue of dismissal within the provisions of section 39 was one of the agreed issues. In support of this contention she refers to paragraphs 94 and 97 of the Decision. At paragraph 94 the Tribunal refers to the order made following the case management discussion on 13 June where it is recorded that the Claimant "relies only on direct discrimination".

40. Mr Lewis' response involves a short point of construction. He submits section 39(7) cross-refers to sections dealing with direct discrimination and victimisation. It does not cross-refer to subsection (5), which deals with reasonable adjustment. Hence the section does not assist the Claimant. Very fairly, Mr Lewis accepts there are contrary submissions of construction that could be made. The fact is that the Tribunal did not consider this issue and made no decision in relation to it.

Conclusion

41. In summary my conclusions are that both appeals should be allowed, for the reasons I have given, and the finding that the Respondent had breached its duty to make reasonable adjustments, together with the section 39(7) issue that Ms Cummins has raised, should be remitted to the Employment Tribunal for determination. Of course the section 39(7) issue only arises for consideration if the Respondent did breach its duty to make reasonable adjustments.

Disposal

42. In my judgment this case should go back to the same Tribunal. I apply the well-known principles. In my view it would be disproportionate for it to go to a new Tribunal for the Tribunal to have to hear all the evidence afresh, albeit that the legal issues will be more limited than they were before the original Tribunal. With regard to the finding about which the Respondent is concerned (see paragraphs 29 and 30 above) and is the subject of criticism, that finding can be challenged before the Employment Tribunal. Submissions can be made with regard to the finding before the Tribunal. It will require the notes of evidence, and it may be that in advance of the hearing (and it is not a matter for me, I leave it to the Respondent), it may be sensible, if there is to be a challenge, for the notes of evidence of the chair to be obtained, so that submissions could be made as to whether that was a finding that the Tribunal should have made or whether it wishes to revisit and reconsider it. I have, I hope, set out what I consider to be the principal findings made by the Tribunal with regard to limitation and the parties will have every opportunity, I am sure, to make the submissions that they wish to make to the Tribunal with regard to that issue.