Appeal No. UKEAT/0259/12/RN

EMPLOYMENT APPEAL TRIBUNAL

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

At the Tribunal
On 10 May 2013

Before

HIS HONOUR JUDGE DAVID RICHARDSON

MR T HAYWOOD

MR D NORMAN

THE GOVERNING BODY OF ST ANDREW'S CATHOLIC PRIMARY SCHOOL & OTHERS — APPELLANTS

MRS G BLUNDELL — RESPONDENT

Transcript of Proceedings

JUDGMENT

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APPEARANCES

For the Appellants	MR SAM NEAMAN (of Counsel) Instructed by: Crossland Solicitors 99 Milton Park Abingdon Oxfordshire OX14 4RY
For the Respondent	MS NAOMI CUNNINGHAM (of Counsel) Instructed by: Irwin Mitchell Solicitors Imperial House 31 Temple Street Birmingham Warwickshire B2 5DB

SUMMARY

PRACTICE AND PROCEDURE – Costs

Appeal concerning the refusal of an Employment Tribunal to award costs, largely on grounds that (1) an underlying finding of the Tribunal was perverse and (2) the Tribunal gave insufficient and inadequate reasons for its refusal.

Appeal dismissed. **Barnsley Metropolitan Borough Council v Yerrakalva** [2012] ICR 420 and **Dean & Dean (A Firm) & Others v Dionissiou-Mousaaoui** [2011] EWCA Civ 1332 applied.

HIS HONOUR JUDGE DAVID RICHARDSON

1. This is an appeal by The Governing Body of St Andrew's Catholic Primary School ("the School") against a judgment of the Employment Tribunal dated 27 January 2013 insofar as it refused to make an award of cost in the School's favour against Mrs Gemma Blundell.

2. This is the latest chapter in a long story of litigation - described by the Employment Tribunal which had to deal with it as "bitterly contested". The case has been twice to the Court of Appeal, most recently in April 2011. We shall have to set out a substantial amount of background in order to explain the context of the Tribunal's refusal to award costs, but we think it is helpful to keep in mind the limited role of an appellate court, vested only with jurisdiction to entertain questions of law when it considers a Tribunal's decision on the question of costs.

3. In **Barnsley Metropolitan Borough Council v Yerrakalva** [2011] EWCA Civ 1255, Mummery LJ said:

> **"7. As costs are in the discretion of the ET, appeals on costs alone rarely succeed in the EAT or in this court. The ET's power to order costs is more sparingly exercised and is more circumscribed by the ET's rules than that of the ordinary courts. There the general rule is that costs follow the event and the unsuccessful litigant normally has to foot the legal bill for the litigation. In the ET costs orders are the exception rather than the rule. In most cases the ET does not make any order for costs. If it does, it must act within rules that expressly confine the ET's power to specified circumstances, notably unreasonableness in the bringing or conduct of the proceedings. The ET manages, hears and decides the case and is normally the best judge of how to exercise its discretion.**
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> **8. There is therefore a strong, soundly based disinclination in the appellate tribunals and courts to upset any exercise of discretion at first instance. In this court permission is rarely given to appeal against costs orders. I have noticed a recent tendency to seek permission more frequently. That trend is probably a consequence of the comparatively large amounts of legal costs now incurred in the ETs.**
>
> **9. An appeal against a costs order is doomed to failure, unless it is established that the order is vitiated by an error of legal principle, or that the order was not based on the relevant circumstances. An appeal will succeed if the order was obviously wrong. As a general rule it is recognised that a first instance decision-maker is better placed than an appellate body to make a balanced assessment of the interaction of the range of factors affecting the court's discretion. This is especially so when the power to order costs is expressly dependent on the unreasonable bringing or conduct of the proceedings. The ET spends more time overseeing the progress of the case through its preparatory stages and trying it than an appellate body will ever spend on an appeal limited to errors of law. The ET is familiar with the unfolding of the case over time. It has good opportunities for gaining insight into how those involved are**

conducting the proceedings. An appellate body's concern is principally with particular points of legal or procedural error in Tribunal proceedings, which do not require immersion in all the details that may relate to the conduct of the parties."

4. In **Dean & Dean (A Firm) & Others v Dionissiou-Mousaaoui** [2011] EWCA Civ 1332 at paragraph 26, Mummery LJ added:

> **"[…] This court is not entitled to interfere with the ET's discretion, even if, had it been exercising the ET's discretion, this court might have analysed the situation of the parties in greater depth, or given more detailed reasons for its decision, or acceded to the application to the extent of making an order for payment of some of the costs."**

The story until 2011

5. In the account which follows we draw gratefully on the judgment of Elias LJ [2011] EWCA Civ 427.

6. Mrs Gemma Blundell was employed at the School from 1992 until she was dismissed with effect from 21 June 2007 when she was 41.

7. In June 2003 she announced her intention to take a period of maternity leave from the following December. She was requested to accept floating duties until the beginning of her maternity but was unwilling to do so and insisted on the right to be assigned to a particular class. It seems that relations between her and the headmistress at the School, Mrs Assid, became difficult thereafter.

8. In May 2005 she presented a claim to the Employment Tribunal alleging sex discrimination and discrimination by way of victimisation. That claim was dismissed. Mrs Blundell appealed and succeeded on a minor point before the EAT which otherwise upheld the determination of the Employment Tribunal that the head teacher had not acted inappropriately towards her. In due course Mrs Blundell was dismissed. She brought a second

set of proceedings, this time for unfair dismissal and victimisation. She alleged that the head teacher had ostracised her, had set out to harass and to find fault with her following the lodging of her first appeal to the EAT. There was a "feedback meeting" in November 2006 at which she was told by the head teacher that there were grave concerns about her ability as a nursery teacher and that her future was under review. Her dismissal arose after she had told some parents, whom she had met by chance, that she was being bullied by the head teacher.

9. The Employment Tribunal rejected most of Mrs Blundell's allegations - in particular, those alleging bullying and harassment by the head teacher. However, the Tribunal found that there were acts of victimisation discrimination, including, in particular, that the head's assessment of her abilities was unjust and that the head had been deliberately fault-finding. The Tribunal accepted her claim that the false assessment was because she had lodged her appeal against the unsuccessful outcome of the first ET claim. The Tribunal found that the real reason for the dismissal was that she had taken legal proceedings.

10. This led to a remedy hearing in which Mrs Blundell was awarded compensation. The hearing took place over four days in January 2009. The Employment Tribunal considered a report from the psychiatrist, Dr Hallstrom, who was instructed jointly by the solicitors of both parties. The evidence was that the Claimant had pre-existing medical conditions, namely arthritic psoriasis and depression, which were exacerbated by the stress resulting from her mistreatment. The Claimant herself gave evidence about the deleterious effect of her treatment. Her depression had got worse and she sometimes felt suicidal. She had applied for one teaching job but was unsuccessful. She had lost confidence and no longer and any energy or enthusiasm to teach. She did not expect to teach again. She said she had effectively lived in a bubble for the two years preceding the remedy hearing, i.e. from about January 2007 to about January 2009.

11. The Tribunal's assessment of compensation was based on a number of assumptions which were made in the light of the evidence. These included that Mrs Blundell would have recovered sufficiently to work in some capacity in less than a year, that she would return to teaching in about six years and that she would be likely to earn about £20,000 a year from when she commenced work until she went back into teaching. The Tribunal rejected her evidence, supported by the expert, that she would never return to teaching.

12. One of the issues raised during the hearing concerned the question whether Mrs Blundell had been studying at Kingston University during the year 2007/08. The School considered that this was potentially important evidence because, if it were the case, then it cast doubt on the Claimant's description of her depressive state and general lack of interest and enthusiasm in education at that time. There were two pieces of evidence which the School obtained during the course of the hearing that lent some support to the proposition that she had undertaken this course.

13. First, at the beginning of the hearing the Tribunal made an order for disclosure by the solicitors for the Claimant of medical notes in their possession. There is an entry in one of the GP notes dated 20 May 2008 which appears to indicate that the Claimant was at that time studying. In the course of a cross-examination, which lasted one and a half days, the Claimant was asked some questions about this matter. She admitted that she had enrolled on a course, an Early Years Masters degree, and had completed the first year of her course by June 2007, the month in which she was dismissed. She said that it was a part-time course involving one night a week. Her answers certainly led the Tribunal to understand that she had stopped studying at that point and had not resumed the course. This is how they recounted her evidence (see paragraph 26 of the original remedies decision).

14. The second piece of evidence did not emerge until after her cross-examination had been completed. On 22 January, that is during the period between the first and second stages of the hearing, the Claimant disclosed a document headed "personal statement", which had been included as part of her unsuccessful job application in September 2007. She said in that statement that she had completed the first year of a two-year course, had qualified for a diploma award, and then she said:

> **"I'm enrolled in the final year and plan to complete the Master's degree in 2008."**

No application was made that she should be recalled to give evidence about this document.

15. The School remained concerned about this point. On 12 February, that is very shortly before the Tribunal commenced its deliberations, the School sought a third-party disclosure order from the Tribunal requiring Kingston University to provide details of the Claimant's further education at the university from November 2006. More specifically it sought details of the courses enrolled on, the dates of attendance, the courses completed and the qualifications obtained. The application was acknowledged but the Tribunal never formally responded. It handed down a judgment without any reference to it.

16. The Tribunal's reasons demonstrated that it had accepted the Claimant's evidence, as the Tribunal understood it, that she had not worked after the end of the first year. They rejected a submission that her involvement in the course was inconsistent with her contention that she would not continue in education. They said:

> **"The Respondents also contend that the fact that the Claimant pursued this course is inconsistent with an assertion that she is unlikely to work in education in the future. The Respondent's submissions however appeared to be based on the premise that the Tribunal should reject the Claimant's evidence that she was only enrolled on this course until about**

> **June 2007.** ***However, there is no evidence that the Claimant continued this course beyond that date.*"**

17. The overall award was £301,207. This included compensation for injury to feelings, £22,000; aggravated damages, £5,000; psychiatric injury, £8,000; and loss of earnings, past and future, more than £250,000. These figures, we are told, are exclusive of pension loss in respect of which separate award was made. The award of aggravated damages was made because the Tribunal found that the School had acted maliciously. Moreover, the Tribunal found that the School, in the evidence it presented to the remedies hearing, attempted to go behind the findings of fact made by the Tribunal at the liability hearing. The School attempted to paint a picture of Mrs Blundell as a failing teacher. The Tribunal expressly rejected that evidence.

18. The School appealed to the Employment Appeal Tribunal arguing in particular, (1), that the Tribunal had been wrong to say that there was "no evidence" that Mrs Blundell had been working at the MA course and, (2), that the Tribunal had been wrong not to address the application for disclosure. The appeal was dismissed. The School appealed again to the Court of Appeal. Very shortly before the hearing of the appeal the School received some further information from an investigator at the London Borough of Lambeth, which suggested that the Claimant was indeed following an MA course in education in the year 2007/08. She had completed one module of the course but suspended her studies on 10 June 2008 due to ill health.

19. The Court of Appeal dismissed the appeal as originally brought but allowed an application by the School to admit this fresh evidence, finding that it might materially influence the Tribunal's assessment of the facts which underpinned the award. It remitted the question of compensation to be reconsidered by the same Tribunal.

The Tribunal's reassessment

20. For the purpose of remission, the Tribunal held a further hearing on 11 and 12 July 2011. It handed down a review judgment with reasons on 7 November 2011. There have been further corrections since the original judgment. In the result the total award to Mrs Blundell was reduced from £301,207 to £175,887. Again, however, we are told that there is an additional award in respect of pension loss.

21. We are not directly concerned on appeal with the Tribunal's award of compensation. It is, however, necessary to explain briefly the reasoning which led the Tribunal to reduce the compensation as it did.

22. In the first place the Tribunal considered whether Mrs Blundell had deliberately misled them at the remedies hearing. It set out the Tribunal's note of the evidence she had given on the subject. It said the following:

> **"12. The Claimant's evidence as we have recorded it, and our findings of fact are to the extent illustrated above wrong. We have had to decide whether this was because the Claimant was deliberately misleading us, or whether we misunderstood the evidence, or some thing in between those two poles.**
>
> **13. We do not consider that the Claimant deliberately intended to mislead the Tribunal in respect of this evidence. We note that the matters could have been more clearly expressed during the original hearing. Had the Claimant been more forthcoming with information the matter would have become much clearer much sooner. Unfortunately, as we have noted in our Remedy Judgment, this litigation has given rise to a significant level of animosity between the parties. A more open approach or better co-operation between the parties might have prevented this error occurring. In the event the error has not resulted in us concluding that the Claimant is an unreliable witness or that her evidence has been seriously discredited. We have come to our conclusion on our assessment of her whilst giving evidence throughout the original hearing, during the remedy hearing and at this review hearing."**

23. In the second place, however, they considered that the effect of the new evidence was to cast doubt about the correctness of their conclusions in respect of the extent to which Mrs Blundell was debilitated by the discrimination and also their view as to the correct length of time to make an order for compensation for loss of earnings. They considered that having

regard to the new evidence Mrs Blundell's ability to get herself back to full health and earning capacity was better than they had originally concluded. It was for these reasons the Tribunal reduced the award for psychiatric injury to £5,000 and adjusted its assumptions about the capacity for work in the future.

The costs rule

24. Rule 40 of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004**, so far as relevant, provide as follows:

> **"40.—[…]**
>
> **(2) A Tribunal or chairman shall consider making a costs order against a paying party where, in the opinion of the tribunal or chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so considered, the tribunal or chairman may make a costs order against the paying party if it or he considers it appropriate to do so.**
>
> **(3) The circumstance referred to in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representatives has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying part has been misconceived.**
>
> **[..]"**

25. It is well established that one of the threshold tests in rule 43 must be satisfied before the Tribunal has any discretion to award costs. It is equally well established that if a threshold test is passed, the Tribunal retains a discretion whether to award costs.

The School's costs application

26. By a letter dated 30 November 2011 the School's solicitors made the application for costs with which this appeal is concerned. The letter did not challenge the Tribunal's finding that Mrs Blundell was not deliberately untruthful in her evidence. Rather, it criticised the failure of Mrs Blundell and her solicitors to correct the erroneous impression given at the original remedies hearing. The School's argument was quite short and may be summarised as follows. (1) Even before the Tribunal met to consider remedy it was plain to Mrs Blundell and her

solicitors that the School understood her as having giving evidence that she did not participate in the second year of the MA course. If she had made it clear that she did participate in the second year, all that would have been required was a brief reconvening of the remedy hearing so that the Tribunal could be given an accurate picture. (2) Once the Tribunal's reasons were given it was plain that the Tribunal shared the School's understanding of her evidence. The School spent significant effort and cost in an attempt to ascertain the truth. This was due to the failure of Mrs Blundell and her representatives to correct the Tribunal's understanding and divulge the true position.

27. The School did not ask for a hearing to determine the application for costs as a matter of principle - only for a hearing to assess the costs "if the Tribunal agree with this application".

28. By letter dated 6 December 2011 Mrs Blundell's solicitors succinctly replied to the application. They said that there was no continuing obligation to clear up any misunderstandings that may have arisen during the hearing. They resisted the application saying that it was too weak to merit an oral hearing and should be dealt with on paper.

29. The Tribunal's reasons were succinct. It is the brevity of the Tribunal's reasoning which is, to our mind, the main point we will have to consider on this appeal. They said the following:

> **"16. The Tribunal has considered whether the Claimant's conduct or that of her legal representatives has been such as to warrant an order for costs under the rule 40 of the Employment Tribunal Rules of Procedure 2004. We do not consider that there has been conduct on the part of the Claimant or her legal advisors that merits an order for costs in this Employment Tribunal litigation.**
>
> **17. Looking at the conduct of the case as a whole, by both the parties, we consider that this litigation has been bitterly contested; it has been a long running case. However in our view there is no conduct which we are able to identify which would merit the award of costs in favour of any party under rule 40 of the Employment Tribunal Rules of Procedure 2004. The specific grounds for the application made by the Respondent in the letter of 30 November 2011 do not, in our view, set out conduct justifying the making of an award of costs.**
>
> **18. If the Tribunal were wrong in the conclusion that there is no conduct that justifies consideration of making an order for costs, the Tribunal would not have made an order for**

costs. The Tribunal does not consider that this is a case where justice requires us to make an order for costs. The circumstances of the case taken as a whole do not in our view justify an award of costs in favour of either party."

30. In this case the Tribunal declined to find that a threshold test had been passed. That is the effect of paragraphs 16 and 17 of its Reasons. It went on to hold that if contrary to its view threshold test had been passed, it would have declined to order costs in the exercise of its discretion.

The appeal

31. It is convenient first to deal with a submission by Mr Neaman on behalf of the School concerning the Employment Tribunal's Judgment on review. He submits that the Employment Tribunal was perverse to conclude that Mrs Blundell did not intentionally mislead them at the original remedies hearing. He has mounted a sustained argument to the effect that Mrs Blundell must have intentionally misled the Employment Tribunal at that hearing. He argues further that the Tribunal only considered her demeanour in the witness box in reaching its conclusion rather than the totality of the evidence. He criticises the Tribunal for taking into account that it was a bitterly contested long-running case, something which he says is irrelevant to the question in hand.

32. On behalf of Mrs Blundell, Ms Cunningham has argued that the Employment Tribunal's conclusion was correct and, in any event, cannot be characterised as a perverse conclusion. She too has taken us to notes of the Employment Tribunal's evidence. She also points out that the letter by the School's solicitor applying for costs was not put on the basis that Mrs Blundell had intentionally misled the Employment Tribunal but rather on the basis that once it became clear that her evidence had been misunderstood, Mrs Blundell and her solicitors should have corrected the position rather than resist the School's application and appeals. This being so, she

argues that it is impermissible effectively to appeal a finding in the underlying judgment. Mr Neaman in reply says that it is permissible to do so and relies also on the fortuitous circumstance that the Employment Tribunal happened to hand down a corrected judgment on figures for compensation on the same day.

33. On this part of the case our conclusion are as follows. We do not think that the Employment Tribunal's considered finding on the question of Mrs Blundell's evidence can possibly be characterised as perverse. The difficulty of succeeding on a perversity appeal before the Tribunal is well-known. It is essentially a complaint about the Tribunal's finding of fact. Parliament having expressly provided that there is only to be an appeal on a question of law, there must be only the most limited scope for such an appeal. Thus, in the leading case, **Yeboah v Crofton** [2002] IRLR 634 at paragraph 93, Mummery LJ said:

> **"93. Such an appeal ought only to succeed where an overwhelming case is made out that the Employment Tribunal reached a decision which no reasonable tribunal, on a proper appreciation of the evidence and the law, would have reached. Even in cases where the Appeal Tribunal has "grave doubts" about the decision of the Employment Tribunal, it must proceed with "great care",** ***British Telecommunications PLC v Sheridan*** **[1990] IRLR 27 at para 34."**

34. In this case the Employment Tribunal carefully considered its notes of evidence as to what was actually said by Mrs Blundell. It also placed weight on its assessment of her evidence as a whole. It was entitled to do so; we see no basis for suggesting that it was inappropriate to do so. The Tribunal did not say that it restricted itself to considering its assessment of the Mrs Blundell as a witness and we see no reason for supposing that it did so. Contrary to Mr Neaman's submission, it was not irrelevant for the Tribunal to keep in mind, on the question whether Mrs Blundell was deliberately misleading the Tribunal, the fact that the case was long-running and bitterly contested. The very short passage of evidence concerning the MA

course has to be seen in the context of a robust cross-examination lasting one and a half days in a bitterly contested case.

35. It is an interesting question whether in a case such as this the School is entitled in effect to appeal against a finding made during the remedies hearing when later appealing a refusal to award costs. In view of our clear conclusion on the question of perversity, we do not need to decide this point. Suffice it to say that in the vast majority of cases it would be an abuse of the process not to appeal against conclusions reached during a liability or remedies hearing but then to seek to impugn them when appealing against a decision on the question of costs. We see that there may be an exception where a finding in a liabilities or remedies judgment is not itself susceptible of disclosing an error of law in that judgment. We need not decide that matter today.

36. We turn next to Mr Neaman's arguments concerning the Employment Tribunal's reasoning for refusing the costs application. He argues that the Tribunal's reasoning was not **Meek** compliant, that is to say, that the Tribunal did not comply with its legal duty to give reasons for its decision. There is, he submits, no real reasoning to deal with the question whether it was unreasonable conduct for Mrs Blundell or her solicitors to make clear that she did attend at least part of the second year MA course. He does not submit that it is always the duty of a litigant to correct an inadvertent mistake by a court or tribunal in its reasoning. He submits, however, that it was unreasonable conduct for the purposes of rule 40 for Mrs Blundell or her lawyers to stand in the way of every attempt by the School to ascertain the true position as regards the MA course; and he argues that the Tribunal has not addressed this question. He recognises that the Tribunal held, in any event, that it would not have exercised its discretion to award costs. He argues that the Tribunal erred in law in reaching this conclusion. He says it fettered itself by applying an "interests of justice" test, that it has given no sufficient reason for

its conclusion and that its conclusion was perverse. He argues that the Tribunal's focus should have been on the misconduct alleged and that it was not entitled to look at the overall picture such as the result of the case or the conduct of another party in reaching its conclusion on the question of discretion.

37. In response, Ms Cunningham submits that a Tribunal is not required to give reasons if it refuses an application for costs. She submits that it is the exception rather than the rule for costs to be awarded and if the Tribunal applies the rule rather than the exception no further reasoning is required. Further, she draws our attention to **English v Emery Reimbold and Strick Ltd** [2002] 1 WLR 2409 at paragraph 14 on the general approach to reasons on questions of costs. She submits that the Tribunal's reasoning is sufficient to comply with its legal duty. She argues that its reasons can and should be read in the context of the application and the response of Mrs Blundell's solicitors. She argues that the overall findings of the Tribunal were well-known to the parties and required no repetition.

38. On the question of reasons, the starting point is that a court or tribunal is expected to give reasons for its decisions. This is a fundamental principle of English law and European Human Rights law as **English** makes plain. See, as to Tribunals, rules 30(1) and (6) of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004**.

39. Mr Neaman placed weight on what is called **Meek** compliance. This is a reference to **Meek v City of Birmingham District Council** [1987] IRLR 250 in which Bingham LJ stated that although the Tribunals are not required to create "an elaborate formalistic product of refined legal draughtsmanship" their reasons should:

> **"[…] contain an outline of the story which has given rise to the complaint and a summary of the Tribunal's basic factual conclusions and a statement of the reasons which have led them to**

reach the conclusion which they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be sufficient account of the facts and of the reasoning to enable the EAT or, on further appeal, this court to see whether any question of law arises; and it is highly desirable that the decision of an Employment Tribunal should give guidance both to employers and trade unions as to practices which should or should not be adopted."

40. This formulation, however, plainly applies to a judgment on the issues or some of the issues in the proceedings themselves. If the Tribunal has determined those issues and is then presented with an application for costs neither **Meek** nor rule 30(6) requires an elaborate rehearsal of all the background which the Tribunal has taken into account in reaching its findings. The parties will already know from the Tribunal's reasons on those issues what the Tribunal's findings were and why they were reached. In our experience, reasons given for decisions on questions of costs are often succinct. It is frequently a short matter of judgment whether conduct relied on is or is not capable of being characterised as unreasonable and then equally a short matter of judgment whether, in all the circumstances, a discretion should be exercised in favour of awarding costs.

41. At paragraph 14 in **English v Emery Reimbold and Strick Ltd** [2002] 1 WLR 2409, Lord Phillips, the Master of the Rolls, referred to the fact that decisions relating to costs are customarily given in summary form after all argument at the conclusion of the delivery of a Judgment. He said:

"[…] Such a practice can, we believe, only comply with Article 6 if the reason for the decision in respect of costs is clearly implicit from the circumstances in which the award is made. […] Where the reason for an order as to costs is not obvious, the Judge should explain why he or she has made the order. The explanation can usually be brief. The manner in which the Strasbourg Court itself deals with applications for costs provides a model of all that is normally required."

42. In this case we consider that the parties sufficiently know the reasons why the Tribunal reached the conclusions it did. On the threshold question arising under rule 40(3), it was not alleged in the application for costs that Mrs Blundell or her solicitors were under any legal duty

to disclose information about the second year of the MA course. The question for the Tribunal was whether it was unreasonable not to volunteer such information. That was a short question for the Tribunal to decide. The Tribunal decided that it was not. That, in the context of the application and the response from the parties, is, to our mind, clear.

43. The Tribunal said that it had in mind the bitter and long-running nature of the dispute. That is not surprising and it needed no explanation to the parties. This was not litigation according to old-fashioned rules of chivalry. The Tribunal found the School had sought to reopen the question of Mrs Blundell's capability going behind the findings in the liability Judgment. The Tribunal had made an award of aggravated damages. The papers which we have seen indicate the lengths to which the litigation had gone. There had even been an application for disclosure of photographs of a party, an application by the School given short shrift by the Tribunal. The Tribunal was entitled to take the view, which in our judgment it plainly did, that it was not unreasonable Mrs Blundell, in the absence of any legal duty, to take the stance she did.

44. In any event the Tribunal stated its conclusion that it would not have awarded costs having regard to the overall picture. Contrary to Mr Neaman's submission, we consider that at this second discretionary stage the Tribunal is entitled to look at the overall picture when it decides to make an award of costs. In this case the overall picture was well-known to the parties. It did not require elaboration in great detail by the Tribunal for them to understand the position.

45. Each side had been successful on some aspect of the litigation. But significantly, the School had been found to have victimised the Claimant, accusing her of being a failing teacher, and making the allegations maliciously and persisting in them even at the remedies hearing.

We appreciate and accept that the Tribunal's reasoning is succinct. It might have been well advised to have spelt out its reasons in more detail but we are quite satisfied that given the background it was obvious to both parties what matters the Tribunal had in mind. Echoing the words of Mummery LJ in **Dean**, we do not think we are entitled to interfere merely because we, as an appellate court, might have given reasons in more detail.

46. For those reasons, the appeal will be dismissed.