Neutral Citation Number: [2023] EAT 99

Case No: EA-2022-SCO-000121-JP
EA-2022-SCO-000122-JP

IN THE EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street, Edinburgh EH3 7HF

Date: 13 July 2023

Before :

THE HONOURABLE MRS JUSTICE EADY DBE, PRESIDENT

- -

Between :

MR LORENZO RAMOS

Appellant

- and –

LADY COCO LIMITED T/A SHAMELA'S FRESH HOT AND COLD FOOD

Respondent

- -
- -

The **Appellant** in person

Hearing date: 11 July 2023

- -

JUDGMENT

SUMMARY

Topic - Sex discrimination

Upon an application made under rule 3(10) **EAT Rules 1993**, the appellant's proposed appeals against the decisions of the Employment Tribunal - (1) dismissing his claim of sex discrimination on the merits; and (2) to make a Preparation Time Order in favour of the respondent – were dismissed as raising no arguable question of law; it being held that the appeals were totally without merit. The appellant was also found to have conducted the proceedings before the EAT and ET in a vexatious manner and the ruling on these appeals will be referred to the Registrar for consideration as to whether there might be grounds for the claimant's litigation conduct to be considered by the Lord Advocate.

The Honourable Mrs Justice Eady DBE, President:

Introduction

1. In giving this judgment, I refer to the parties as the claimant and the respondent, as below. This is a hearing under rule 3(10) **Employment Appeal Tribunal Rules 1993** (as amended) in the claimant's proposed appeals against the decisions of the Glasgow Employment Tribunal (Employment Judge Hoey, sitting (remotely) with lay members): (1) to dismiss the claimant's claim of unlawful sex discrimination (a judgment sent to the parties on 16 September 2022, following the full merits hearing of the claimant's claim on 14 September 2022; "ET"); (2) to grant a preparation time order ("PTO") in favour of the respondent (a judgment sent to the parties on 21 September 2022, following the hearing of the respondent's application on 14 September 2022).

2. In considering this matter on the initial, on-paper, sift, His Honour Judge Barklem was unable to see that it identified any arguable question of law such as to engage the jurisdiction of the Employment Appeal Tribunal, taking the view (pursuant to rule 3(7) **Employment Appeal Tribunal Rules**) that no further action should be taken on the appeals. The claimant having exercised his right to ask for an oral hearing, this matter comes before me today. The claimant represents himself, as he did below, albeit that he had the opportunity to receive advice and assistance, prior to the hearing, from Mr Jonathan Deans, Advocate, acting under SEALAS (indeed, the start time of the hearing was put back by some 20 minutes to allow further opportunity for that discussion). The respondent appeared before the ET by its director, Ms Yeo; as is customary on a hearing under rule 3(10), however, it has had no right to appear or make representations at this stage of the appeal proceedings.

3. The question for me today is whether the claimant's proposed appeals identify any question of law arising from the ET's decisions, that should be permitted to proceed to a full hearing.

Preliminary observations

4. Before turning to the ET decisions that are the subject of the appeals before me, I set out some preliminary observations regarding the appellant's conduct of the appeal proceedings.

5. On 23 January 2023, the claimant requested an oral hearing in respect of these appeals, exercising the right provided under rule 3(10) **EAT Rules 1993**. Having obtained the claimant's dates to avoid, by Notice of Hearing set out on 13 February 2023, he was notified that the hearing would take place at 10.30 am, 11 July 2023, at 52 Melville Street, Edinburgh. By separate letter, also dated 13 February 2023, the claimant was advised of his need to comply with the **EAT Practice Direction 2018** in relation to the lodgement of the hearing bundle, skeleton argument and authorities (the relevant provisions within the **Practice Direction** being referenced in the letter).

6. Pursuant to the **Practice Direction**, the claimant ought to have filed two copies of the core bundle for the hearing by 13 June 2023. He failed to do so. This was drawn to his attention by email from the EAT staff on 14 June 2023, with a request that the bundle was filed by 16 June 2023. That was not done. By letter of 19 June 2023, a letter was sent out to the claimant on behalf of the EAT Registrar reminding him of his obligation to file the hearing bundle and of the potential consequences if he failed to do so; it was stated that the bundle should be filed by 4pm 20 June 2023.

7. By email of 20 June 2023, the claimant requested a list of the documents that:

> "the EAT wants are included in the bundle I have not received the list of documents from the EAT that the EAT wants are included in the bundle. I have had also other appeals in the EAT in London and always they sent to me the list of documents that I have to include in the hearing bundle It is important to have this list to be sure that all documents that will be required during the hearing of the 11 July 2023 are included in the bundle".

I observe that the documents that are to be included in the bundle are apparent from the provisions in the **Practice Direction** referenced in the EAT's earlier correspondence. It is correct that the EAT's London office follows a different practice and includes a list of those documents in a letter to the appellant. It is also correct that the claimant has extensive experience of pursuing appeals filed with the London office of the EAT; present records suggest that the claimant (either under the name Garcia or Ramos; his full name is Lorenzo Ramos Garcia) has filed some 26 appeals with the EAT in London since 2019 (this compares to the six appeals filed in Edinburgh, which all relate to the same advertisement in issue in the present proceedings).

8. In his email of 20 June 2023, the claimant also asked that the time of the hearing be changed to an afternoon listing (from 1 pm or 2 pm) to enable him to travel to Edinburgh from London that morning.

9. By further email, on 22 June 2023, the claimant applied for an extension of time to lodge the hearing bundle for his rule 3(10) applications. He explained that his experience of EAT appeals in London meant that he had expected to receive a letter listing the documents to be included in the bundle (the practice of the Edinburgh office being to refer litigants to the **Practice Direction**, which (as I have said) provides the same information), and said he would be in Spain (and unable to take the necessary steps to compile the bundle) until 28 June 2023. The respondent objected to that application, observing that the claimant was well versed in the procedures of the EAT and clearly knew what had to be included in the hearing bundle and that he had had plenty of time to comply with the EAT's

directions. Acknowledging the points made by the respondent, by letter of 27 June 2023, the Registrar nevertheless "*exceptionally*" granted an extension of time to 29 June 2023. The required documents were listed in that letter. At the same time, however, the Registrar refused the claimant's request to re-list this matter for a later time.

10. By email of 29 June 2023, the claimant renewed his request for this hearing to be moved to an afternoon listing. Acknowledging that he had not raised this issue when providing his dates to avoid, the claimant said he assumed that the EAT would have taken into account that he lived in London and would need time to travel on the day of the hearing. He also referred to the fact that he had a number of other appeals before the EAT and "*cannot do all at the same time*".

11. As for the hearing bundle, the claimant did not comply with the Registrar's direction but, by email of 30 June 2023, said he was attaching an electronic bundle (containing 42 documents) to the Edinburgh office of the EAT, saying that he would send hard copy bundles by post. Subsequently, by email sent at 10:07 on 3 July 2023, the claimant said he was attaching a further electronic bundle, now containing 59 documents. When the EAT staff sought to open the claimant's bundle, however, it was unable to do so; that was explained to the claimant by email sent at 11:02 the same day. Further email correspondence followed during the course of 3 July 2023, with the EAT staff agreeing that when the hard copy bundle was received, the documents would then be scanned by the office to create a digital bundle.

12. By 5 July 2023, no hard copy bundle had been received and there was still no digital bundle. By email sent at 10:28 5 July 2023, the EAT again chased the claimant for the bundle, explaining that it was necessary to provide an electronic copy of the bundle for the Judge. The claimant was also asked whether he was intending to provide a skeleton

argument or bundle of authorities. At 10:57 that day, the claimant responded, saying he would be scanning his documents into a PDF bundle that afternoon. As for the hard copy bundles (these had still not been posted), he expressed the concern that these might not reach the EAT before the scheduled hearing. At 11:04, the EAT responded, welcoming the assurance that the electronic bundle would be sent that afternoon, explaining the importance of being able to provide that to any SEALAS representative that might have been assigned. It was also clarified that the claimant needed to provide two hard copies of the bundle (one for the court and one for the Judge) but that (providing the electronic bundle had been received) these could be brought on the day of the hearing.

13. No electronic bundle was sent through to the EAT during the course of 5 July 2023 but at 23:55 on 6 July 2023 the claimant emailed what was said to be a link to an electronic bundle. He further stated that he would not be providing a skeleton argument but would rely on "*additional grounds of appeal that I am preparing*".

14. At 9:01 am on 7 July 2023, EAT staff emailed the claimant to confirm that security policy meant that they were unable to download a file from an external link. It was explained that a secure link could be provided so that the claimant could instead use the document upload centre. At 11:02 that day, the claimant responded, explaining that his bundle was too large for him to use his CE file account, and requesting a secure link. At 11:22, the EAT confirmed that the link would be sent separately and the claimant was asked to confirm when he had received this and uploaded his bundle.

15. At 1:14 pm on 7 July 2023, nothing had been received from the claimant and the EAT emailed him again, observing that his failure to file a bundle may result in the Judge considering his case solely on the basis of the documents lodged with the notices of appeal. During the course of the afternoon, the EAT staff duly compiled a core bundle from the

documents filed with the notices of appeal so that I would at least have this to refer to when reading-in for this hearing.

16. At 16:12 on 7 July 2023, the claimant responded to the EAT, explaining that the email providing the secure link had gone into his spam folder and he had deleted it in error. He asked for a link to be re-sent. At 16:36 on 7 July 2023, the claimant successfully lodged a digital bundle. As this was received after 16:00, it was treated as lodged on 10 July 2023.

17. The claimant's further request for the hearing time to be changed remained outstanding and I considered this and refused it for the reasons provided in my order of 10 July 2023.

18. During the course of 10 July 2023, the claimant raised various queries with the EAT staff regarding the location of the hearing; something that was set out in the Notice of Hearing and had also been expressly referenced in my order of the same day.

19. By email sent at 7:28 on 11 July 2023, the claimant sent a 14-page skeleton argument to the EAT, asking that it be provided "*to the judge and to my legal representative*".

20. I set out these aspects of the procedural history as an indication of the claimant's conduct of his appeals. He has repeatedly failed to comply with the EAT's directions and orders, apparently seeing these as entirely optional. This leads to the EAT staff having to spend considerable time chasing the claimant in respect of his non-compliance, which inevitably impacts upon their ability to deal with other appeals. Given the claimant's familiarity with the appellate process in this jurisdiction, I can only conclude that his disregard for the EAT's directions and orders is entirely wilful. Furthermore, the claimant's failure to properly engage with correspondence relating to his appeals further adversely impacts upon the resources of the EAT; this is evidenced by his late request to move the time of

the hearing (a request that could have been raised when responding to the invitation to provide his dates to avoid or immediately upon receipt of the Notice of Hearing) and by his late enquiries as to the venue for the hearing (something which would have been apparent to him from the Notice of Hearing). The claimant's behaviour can only be described as the very antithesis of the obligation imposed by rule 2A(3) **EAT Rules 1993**, to assist the EAT in the furtherance of the overriding objective.

21. Although it is rare that the conduct of an appellant before the EAT falls to be described as vexatious, I am satisfied that is the correct description of the claimant's conduct in these proceedings. Recognising that the threshold for a finding of vexatious conduct is extremely high, given the claimant's wilful disregard for the directions and orders of the EAT, and what I find to be his complete indifference to his obligations pursuant to rule 2A(3) **EAT Rules**, I am clear that this is the appropriate way to describe the claimant's conduct of these appeals.

The relevant background and the ET's decisions and analysis

22. Turning then to the underlying proceedings and the decisions under challenge in these appeals, the claimant's claim before the ET was brought under the **Equality Act 2010** ("EqA") and complained of unlawful sex discrimination relating to an advertisement placed on the website Gumtree.com. This had been placed on behalf of the respondent and stated "*Takeaway female staff needed*"; the advertisement related to a Chinese restaurant owned by the respondent at 2 Murano Street, Glasgow. The claimant has provided me with a copy of the advertisement that he saw (as he did the ET) and I note that it goes on to state:

> "Description
> A takeaway female staff who can speak English fluently is need to join us at Shamila's cafe near the beautiful area of Ruchill park.

> The candidate needs to help in customer service and helping in the kitchen. The selected candidate also needs to work during the weekend full time but he/she will have 2 days off during the week."

23. The claimant did not in fact make an application for the position advertised; it was his case that he was deterred from doing so because of the discriminatory content of the advertisement. He claimed compensation for injury to feelings and loss of earnings.

24. The respondent resisted the claim, observing that the claimant never applied for the advertised position and had provided a post office box number in Hounslow as his contact address (some 400 miles from Glasgow), which suggested that he had had no interest in the position and was making his application to the ET "*solely with the intention of seeking financial gain*".

25. The full merits hearing of the claimant's claim was set down for a remote hearing. Initially it was proposed that the respondent might call evidence, to be given from China. The claimant objected to that course. In the event, the respondent decided not to lead any witness evidence, the sole issue in the case being whether the claimant had a genuine desire to apply for the advertised position. The respondent was, however, represented at the remote hearing by its director, Ms Yeo, who was located in China.

26. Having received oral evidence from the claimant, the ET did not find him to be a credible witness and considered he lacked candour. Having regard to the evidence before it, the ET made the following findings of fact:

> "8. The claimant was born in 1964 and stayed in Hounslow London. He came from France in the 1990s. He had been a legal adviser, worked in a factory and restaurant and had been a self employed interpreter and market researcher. He had a masters degree in international trade law and accountancy and had an AAT Certificate in accounting. He had worked in market research and IT. He received an income from part time translation work and market research.

9. The claimant had last worked in hospitality in the 1990s. He had no connection with Scotland nor genuine interest in moving his life to Scotland. He was settled in Hounslow, London.

10. The respondent was a Chinese restaurant based in Ruchill, Glasgow.

11. The claimant searched online and saw the advert for the position in Ruchill, Glasgow. The advert said: "Takeaway female staff who can speak English fluently needed to join Shamila's café near the beautiful area of Ruchill park. The candidate needs to help in customer service and helping in the kitchen. The selected candidate also needs to work the weekend full time but he/she will have 2 days off during the week. The salary is negotiable and depends on your experience". A mobile number then followed for contact details, with the location being given.

12. The role was based in Ruchill, an area of high deprivation with social challenges in Glasgow.

13. The claimant did not contact the respondent to enquire about the role nor take any steps to seek information about the position. He did not apply for the role nor contact the respondent to discuss it.

14. The claimant had not applied for other roles in Scotland. He had applied for a number of roles in England and Wales (usually where there was a similar advertisement).

15. The claimant had raised a number of claims against employers who had placed similar advertisements seeking compensation arguing the advertisements were unlawful sex discrimination. Judgments were issued and the applicable law was clear. See (for example) 2601315/2021, 3302095/2020, 1402393/2020, 3331562/2018, 2303987/2018, 3318989/2019, 1805271/2019, 3313977/2019, 2206048/2019, 30 3327155/2019, 2204604/2020 and 3318988/2019. There are others. Some of those judgments set out the legal position, including that jurisdiction for unlawful adverts rests with the Equality and Human Rights Commission (see paragraph 33 of 2204604/2020) and around costs, including vexatious conduct (see paragraph 31 to 32 of 2204604/2020).

16. In relation to the current role, the claimant had no genuine intention of applying for the position with the respondent. His sole aim was to seek money from the respondent (which he would seek to do by raising an Employment Tribunal claim against the respondent and thereafter seek compensation from the respondent during the process and then withdraw his claim).

17. The claimant received an income from being a self employed interpreter and from some market research work he did. He was an articulate and intelligent person who was capable."

27. The ET rejected the claimant's contention that he was genuinely interested in the advertised role and had wished to move to Scotland because the cost of living was less. It found the claimant's evidence was "*wholly unconvincing*" and that he had contrived an explanation following the raising of his ET claim; the ET was satisfied that the claimant in fact had no intention of applying for the advertised role. It further concluded that, if a man was genuinely interested in the advertised role he would have taken some steps to pursue an application.

28. The ET further noted that the claimant was "*evasive*" when asked about other roles for which he had applied, refusing to answer the question as he considered he might be at risk of "*victimisation*" if he disclosed that he had applied for similarly advertised (i.e. including potentially discriminatory requirements) roles. The ET observed that the potential relevance of this line of questioning had been raised at an earlier preliminary hearing; it was a point that went to the respondent's case that the claimant's approach was to raise claims in similar situations where he had no intention of applying for the role in issue. As the ET recorded:

> "31. The claimant was warned that his refusal to answer the question would be taken into account in assessing matters. The claimant continued to refuse to confirm that the claims the respondent had identified (as set out above) were claims the claimant had raised, which were public judgments issued on the Employment Tribunal website, despite the details of such claimants being identical to that of the claimant."

29. The ET concluded that:

> "32. … from the evidence presented … the claimant had no genuine desire of applying for the role the respondent had 15 advertised. He was solely using the Tribunal process to seek money from the respondent."

30. The ET noted that the definition of direct discrimination required that the complainant had been less favourably treated (see section 13 **EqA**). In **Keane v Investigo** UKEAT/389/09

(Underhill P presiding), it had been held that, albeit that a claim could be brought by job applicants, the protection did not apply to those who in fact had no intention of taking a job if offered it; they would have suffered no less favourable treatment. In reaching that decision, the EAT had regard to the decision of the European Court of Justice in **Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v Firma Feryn NV** [2008] IRLR 732, but concluded that it did not bear on the facts of the case before it, which involved a claim brought by an individual complainant who did not actually want the job in question. Similarly, in **Berry v Recruitment Revolution** UKEAT/0190/10 and other appeals, the EAT confirmed that the ECJ's judgment in the **Firma Feryn** case:

> "15. … lends no support to any contention that an individual who has not applied for a job which is advertised in discriminatory terms has any right to claim compensation"

going on to make clear that:

> "29. … the purpose of the [legislation] is not to provide a source of income for persons who complain of arguably discriminatory advertisements for job vacancies which they have in fact no wish or intention to fill, … those who try to exploit the [legislation] for financial gain in such circumstances are liable, as happened to the claimant in the **Investigo** case, to find themselves facing a liability for costs."

31. The **Investigo** and **Berry** cases had been determined under the predecessor legislation, but the point had subsequently been considered in relation to the **Equality Act 2010**, in **Garcia v The Leadership Factor** 2022 EAT 22 (Williams J presiding), where the same approach was adopted (see paragraph 48), the EAT observing:

> "48. In terms of the relevant circumstances that will give rise to unlawful direct or indirect discrimination, section 39(1)(a) Equality Act provides that an employer must not discriminate in the arrangements he makes for deciding to whom to offer employment. In contrast to some of the other forms of conduct by employers that are included in section 39, there is no explicit requirement that the person in question (B) must have been subjected to a detriment. However, the EAT has determined that the claimant must have been genuinely interested in the advertised job to be able to rely upon section 39. In ***Keane v Investigo & Ors*** UKEAT/0389/09 ("Keane") the claimant unsuccessfully

> argued that it was unnecessary for her to show that she was genuinely interested in the roles advertised and it was sufficient if the terms of the advertisement indicated age discrimination. Underhill P observed that the definition of direct discrimination, requiring "less favourable treatment" and the concept of indirect discrimination requiring the claimant to have been put at his or her "disadvantage" both connoted the need to show a comparative detriment on the part of the claimant and if she was not interested in the positions she could not be said in the ordinary sense of the word to have suffered a detriment (paragraphs 20 and 21). In ***Berry v Recruitment Revolution*** UKEAT/0190/10/LA, paragraph 15 Underhill P endorsed his earlier approach in ***Keane***. …."

As the claimant has confirmed to me today, the EAT's decision in **Garcia** related to one of his appeals. Judgment in that case was handed down on 1 February 2022, and it is thus reasonable to think that the claimant would have been familiar with the principle confirmed in that case when he was presenting his arguments before the ET on 14 September 2022, in the current proceedings.

32. In the present case, the ET concluded that:

> "39. … the claimant's motivation was solely for financial gain … [he] had no desire to fill the vacancy in question and … was not subjected to less favourable treatment. …"

It duly dismissed the claimant's claim.

33. The ET having provided its oral reasons for rejecting the claimant's claim at the hearing on 14 September 2022, the respondent made an application for a PTO. The parties were given time to consider the position and the application was then considered by the ET at a hearing on 15 September 2022. The claimant provided written submissions and responded to the respondent's arguments. The ET noted that rule 75 schedule 1 of the **Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013** ("the ET Rules") explained that a PTO was an order where the paying party pays the receiving party in respect of preparation time when they are not legally represented. By rule 76, it was provided that a PTO can be made if (a) the party acted vexatiously, abusively or otherwise

unreasonably in the bringing of the proceedings or (b) where the claim had no reasonable prospects of success. Rule 77 required that the paying party must have a reasonable opportunity to make representations before a PTO was made. By rule 79 provision was made for the calculation of the sum that might be claimed under a PTO (in the present case, the ET found the applicable rate to be £41 per hour), and by rule 84 it was provided that the ET might have regard to the paying party's ability to pay. The ET also reminded itself, by reference to the relevant case law, that any sum awarded should be proportionate and not punitive: the amount awarded should be no more than proportionate to the loss caused by the unreasonable conduct in question.

34. Having regard to the guidance provided in **Hossaini v EDS** [2020] ICR 491, the ET noted that there was a three-stage process: (1) had the threshold been met for considering the making of the PTO? (2) if so, was it appropriate to make the order? (3) how much should be awarded? As to whether a party had acted "otherwise unreasonably", it was not a question of whether the ET would have acted different by whether the decision taken by the litigant was reasonable in all the circumstances (see **Brooks v Nottingham** UKET/0246/18); as such, a party litigant should be given greater latitude and the position assessed from their perspective. More specifically, the fact that a party has lied may mean that they have acted unreasonably but that was not necessarily the case (see **Daleside Nursing v Matthew** [2009] All ER (D) 99). Vexatious conduct was rare and the threshold was extremely high; whilst to be unreasonable the claimant need not be aware of the nature of the conduct (since an objective assessment of the conduct and its effect should be considered within the full context), vexation required a degree of knowledge. A claimant who pursues a claim knowing it is false or that it has no reasonable prospects or who acts with malice may be vexatious, but not necessarily so. A careful assessment of the full factual matrix should be carried out.

35. In considering the first question, the ET concluded that it was satisfied that the high bar of establishing vexatious conduct had been met in this case. The claimant had no genuine desire to apply for the role and was aware that his claim was false, since he had no intention of moving his life to Scotland to work in Ruchill. He had pursued a claim knowing it had no prospects of success and was solely seeking money from the respondent. The ET was also satisfied that the claimant had acted unreasonably in bringing this claim. Looking at matters from his position and perspective, the ET found that he knew the law and how the ET process worked, and had known that a claim is only stateable where there was a genuine desire to apply for the role (indeed, the law had been set out in a number of the other claims in which the claimant was a party); the claimant had no such desire or intention. He also knew how costly and inconvenient the ET process was and how that would impact upon a potential employer; armed with that knowledge, the claimant made the claim in an attempt to seek money from the respondent. Finally, the ET was also clear that the claimant's claim had had no reasonable prospects of success and he had been aware of that at the time he raised it.

36. Having found that its jurisdiction to make a PTO was thus engaged, the ET considered whether it was appropriate to make such an order in this case; concluding that it was satisfied that it was:

> "21. … The claimant was articulate and intelligent. The claimant knew the process, the rules and the law. He knew what the impact upon the respondent would be. This was a case where it was just to consider making the order. The claimant had acted vexatiously and otherwise unreasonably in bringing this claim. He knew it had no reasonable prospects and used the Tribunal process to seek to obtain money from the respondent. Exercising our discretion judicially and considering all the circumstances given the facts in this case the Tribunal decided that it was in the interests of justice to make a preparation time order."

37. As for the amount, the ET had regard to the nature of the claim and its complexity, considering the position at the time when the respondent was not legally represented. The

ET took account of the respondent's own failures to fully comply with orders and determined that it would be fair and just to make a PTO in respect of 17 hours. In reaching this decision, the ET had regard to what the claimant said regarding his savings and earnings but was satisfied that the sum awarded was reasonable and was something the claimant could pay from his income. It therefore made a PTO in favour of the respondent in the sum of £697.

38. The ET also treated part of the claimant's written submissions, provided on 14-15 September 2022, as an application for reconsideration. That was duly considered by the ET but rejected by a further judgment sent to the parties on 20 September 2022.

39. On 10 November 2022, the claimant sent a further email to the ET with attachments, one of which made a second application for reconsideration. That was considered by Employment Judge Hoey on 23 November 2022, but refused for the reasons set out in the further judgment sent to the parties on 25 November 2022. Within the same correspondence, the claimant also made an application for a preparation time order against the respondent. That was also considered by Employment Judge Hoey on 23 November 2022 but rejected for the reasons provided in the judgment on that application sent out on 25 November 2022.

40. The claimant sought to appeal against the judgment refusing his application for a PTO (EA-2022- SCO-000120-JP) and that proposed appeal was considered (alongside the two appeals now before me) by HHJ Barklem, who concluded that it was totally without merit and that rule 3(7ZA) of the **EAT Rules** applied, such as to mean that the claimant would have no right to seek an oral hearing under rule 3(10). The claimant applied for a review of HHJ Barklem's rule 3(7ZA) decision in EA-2022-000120-JP, but his application was

made out of time and the Registrar refused to extend time for reasons provided in her order of 7 March 2023.

41. For completeness, I should add that the claimant made a number of further applications for reconsideration to the ET. It would be disproportionate to detail these in this judgment, but the record is apparent from the relevant section of the claimant's index to the hearing bundle ("*Part 4: Reconsideration applications and decisions*") which he compiled for the rule 3(10) hearings, as follows:

> "11. Covering email of my application for a Preparation Time Order in my submission of the 15 September 2022 p 84
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> 12. Submission dated 15 September 2022 concerning my objections to the Respondent being awarded a Preparation Time Order and request that Judge Hoey changes his mind and not strike out my claim and award to me a Preparation Time Order and not to the Respondent p 85
>
> 13. Judgment with Written Reasons dated 14 October 2022 sent to the parties on the 19 October 2022 concerning my first application dated 14 and 15 September 2022 which was considered by judge Hoey to amount to an application for reconsideration of the oral judgment issued to the parties on 14/09/ 2021 p 93
>
> 14. Covering email of my application for review and of my renewed application of the 10 November 2022 for a Preparation Time Order in my favour (I had to make this renewed application because I received no reply to my initial application of the 15 September 2022) p 100
>
> 15. Application for review and renewed application of the 10 November 2022 for a Preparation Time Order in my favour. p 102
>
> 16. Judgment dated 24 November 2022 and sent to the parties on the 25 November 2022 rejecting my second application for reconsideration of the 10 November 2022 of the judgment issued to the parties on 21 September 2022 p 121
>
> 17. Judgement dated 24 November 2022 and sent to the parties on the 25 November 2022 rejecting my application of the 10 November 2022 for a Preparation Time Order of £287 in my favour p 132

18. Application dated 30 November 2022 so that the tribunal revokes its decision of the 24 November 2022 to reject my application for review and my request of the 10 November 2022 for a Preparation Time Order of £287 in my favour. p 136

19. Judgment of the 01 December 2022 sent to the parties on the 05 December 2022 accepting my application of the 30 November 2022 for reconsideration of the judgments of the 24 November 2022 rejecting my application for a Preparation Time Order of £287. p 139

20. Application of the 09 December 2022 for reconsideration of the decision of the 24 November 2022 to reject my application against a Preparation Time Order of £697 against me. . p 144

21. Further information sent on the 30 December 2022 about my application of the 09 December 2022. p 152

22. Correspondence dated 04 January 2023 from the Employment Tribunal informing the parties that the hearing about my application for a Preparation Time Order of £287 with take place in Chambers without the presence of the parties p 156

23. Email dated 09 January 2023 objecting to the hearing about the Preparation Time Order being heard in Chambers without the presence of the parties. p 158

24. Correspondence dated 17 January 2023 from the Employment Tribunal rejecting my request that next hearing does not take place in Chambers without the presence of the parties. p 159

25. Renewal of the 25 January 2023 of my request for an oral hearing for next hearing with the presence of the parties p 161

26. Correspondence dated 06 February 2023 from the Employment Tribunal rejecting again my request for an oral hearing which does not take place in Chambers without the presence of the parties. p 162

27. Comments from Respondent of the 11 February 2023 p 164

28. Correspondence dated 14 February 2023 from the Employment Tribunal rejecting again my request for an oral hearing which does not take place in Chambers without the presence of the parties. . p 165

29. Notice of Hearing of the 23 February 2023 for the in Chambers hearing without the presence of the parties of the 01 March 2023 ..... p 167

30. Request of the 27 February 2023 so that my application of the 09 and 30 December 2022 is heard also during next hearing of the 01 March 2023 because I had not yet received a reply to it. ..... p 169

31. Judgment of the 01 March 2023 rejecting my application for review of the 09 and 30 December 2023 against the rejection of my claim. ..... p 170

32. Judgment of the 01 March 2023 rejecting my application for a £287 Preparation Time Order in my favour of the 15 September 2022 and of the 10 November 2022. ..... p 178

33. Judgement of the 01 March 2023 rejecting my application for review of the 09 and 30 December 2022 against the Preparation Time Order of £697 imposed on me. ..... p 186

34. Application of the 17 March 2023 for reconsideration of the decision of the 01 March 2023. ..... p 193

35. Judgment of the 20 March 2023 rejecting my application for reconsideration of the 17 March 2023. ..... p 196

36. Application of the 04 April 2023 for reconsideration of the decision of the 20 March 2023. ..... p 205

37. Judgment of the 13 April 2023 rejecting my application for reconsideration of the 04 April 2023. ..... p 208"

42. The persistent making of applications in the ET proceedings bears the hallmark of a vexatious approach to litigation. This is a point I return to at the end of this judgment.

The proposed appeal and the claimant's submissions in support; analysis and conclusions

43. By a 22 page document, the claimant has made composite appeals against the ET decisions in this matter (separated out into two appeals, as I have stated in my introductory remarks). Notwithstanding the EAT's direction that he provide a skeleton argument in support of his appeals 7 days in advance of the hearing, the claimant did not do so until the morning of the hearing; in any event, I ensured that I had read that document before the hearing started. At no stage (either in his skeleton argument, his oral submissions, or in other correspondence) has the claimant sought to engage with the careful reasoning provided in relation to these appeals by HHJ Barklem under rule 3(7) of the **EAT Rules 1993**.

44. By his first proposed ground of appeal, the claimant contends that the ET was wrong to permit the respondent to conduct its case from China. He complains that "*China is not a democracy and there is not the same rule of law as in the UK*"; he says that he did not consent to have "*images and sounds of me … sent to China*" and says that there was no absolute necessity to allow the respondent to attend from China given (i) it was not calling evidence; (ii) it could have appointed a representative to conduct the hearing from the UK.

45. I have already referenced the initial request made by the respondent to call evidence from a witness based in China. In the event, that course was not pursued and the claimant's stated concerns in that regard fell away: the only witness testimony considered by the ET was that of the claimant. The respondent company was, however, represented by its director, who was located in China. It was, of course, for the respondent to determine how it wished to be represented and it was entitled to appear by a director. It was not for the ET to dictate *how* the respondent was to be represented, albeit that the ET did have a case management discretion as to whether or not to permit the respondent to attend the hearing

remotely by a director who was located outside the jurisdiction; although it was not thereby required to apply a test of absolute necessity (as the claimant suggests).

46. The claimant says that he had raised this issue in emails to the ET on 8 and 9 September 2022, requesting that the respondent make a formal application (supported with documentary evidence) to be allowed to conduct the hearing from outside the United Kingdom. He complains that the ET failed to address that request.

47. I have not seen the correspondence referenced by the claimant but, whatever the concerns he raised in advance of the hearing, he has not identified any prejudice that in fact arose as a result of the ET allowing the respondent's representative to attend from outside the jurisdiction. While the claimant correctly points out the difficulties that might arise in such circumstances should any contempt occur in the face of the court – although, it would have been open to the ET to simply terminate the respondent's connection to the hearing should any such difficulties have arisen – that was a matter for the ET; this was something that fell firmly within its case management discretion. Moreover, as I have already observed, it is not suggested that any issue in fact arose in this case.

48. As for the suggestion that this procedure in some way required the claimant's consent, that is misconceived. The control of a public hearing vests in the Judge; it is not for a party to dictate who can, or cannot, be present. That principle applies to remote hearings as much as in-person hearings. As the **Remote Observation and Recording (Courts and Tribunals) Regulations 2022** envisage, attendance at a hearing may include those who are situated outside the United Kingdom (albeit the **2022 Regulations** apply to observers rather than, as here, to parties to the proceedings). It was a matter for the ET to determine whether it was in the interests of justice to permit the respondent's representative to attend

the hearing remotely from a location in China; this proposed ground of appeal raises no arguable question of law.

49. By the second proposed ground, the claimant objects to the ET's finding that he lied. He says that it was wrong for the ET to thus find him guilty of perjury when his evidence ought to have counted in the same way as any other witness. More specifically, the claimant objects to the ET's reliance on various other ET claims, when he says the ET could not be "*entirely sure that some of them or all of them are mine*". The claimant also suggests that the Employment Judge might have had a "*feeling of resentment*" against him, due to an earlier objection to the publication of a deposit order on the on-line public register. The claimant then complains of the matters relied on by the ET as demonstrating that his case lacked credibility.

50. This proposed ground is an attempt to go behind the findings of fact made by the ET on the evidence in this case. At the first instance tribunal at trial, it was the task of the ET to determine what to make of the evidence adduced in this matter. Specifically, given the issue at the heart of the case, it had to determine whether or not to believe the claimant, testing his evidence against the other facts as it found them. In carrying out its task, the ET concluded that the claimant lacked credibility; albeit that it did not go on to make a specific finding of perjury against him. In testing the credibility of the claimant's account, the ET was entitled to consider the likelihood of his having any real interest in the advertised position; in so doing, it permissibly took account of the claimant's present location, his lack of any connections with Scotland, and his failure to carry out any research into the area in which the position was located or to seek to find out any further information about the job. I note that the ET has already addressed this issue, not only by its findings in its judgment on the claim but also at paragraph 21 of its decision on the second reconsideration application.

51. As for taking into account the other ET claims that appeared to have been brought by the claimant, this was a matter that had been identified as a relevant issue at an earlier stage in the proceedings and the claimant was thus on notice that he would be asked questions about other claims in which he appeared to have adopted the same *modus operandi*. This was a relevant issue as it was the respondent's case that the claimant had no interest in the advertised position but had brought his claim solely on the basis that he had identified the discriminatory content of the advertisement and, as he had in a number of other cases, had then lodged ET proceedings in order to seek to obtain money from the respondent. Plainly, if there was indeed evidence of such behaviour on the part of the claimant, that would be a highly relevant consideration.

52. Decisions in the cases referenced by the ET are public documents. The respondent was entitled to rely on them and to ask the ET to draw on the inference that the Mr L Ramos who had brought those earlier claims was, indeed, the same person as the claimant in the current proceedings. The ET permissibly had regard to decisions in those other cases, in particular to that in case 2204604/2020, a claim brought by a Mr L Garcia (paragraphs of which are referenced in its decision). For completeness, I also note that the ET decision in claim 3302095/2020 in fact relates to some nine ET claims brought against various respondents by either a Mr L Ramos or a Mr L Garcia. At paragraph 18 of the decision, the claimant confirmed that his name was Lorenzo Garcia Ramos. At paragraph 60, it was recorded that, save for two of his claims, the claimant had used the birth date 28 April 1964; that is the same date of birth recorded on the ET1 in the present proceedings. At paragraph 64 it was confirmed that the claimant:

> "… had brought claims prior to 1 January 2019 using the name of Garcia. According to what he told me, the first time he brought a claim using the name Ramos was after March 2020. He did not want people to know that the person bringing the claim under the name "Ramos" was the same person who had previously brought claims as "Garcia". He says this was because he was

> concerned that he might be victimised when making claims under the name Garcia."

The ET was entitled to infer that the cases thus referenced had indeed been brought and pursued by the claimant in the present proceedings.

53. For completeness, I note that the claimant also objects to the references to his other claims in his proposed sixth and seventh grounds of appeal. He contends that questions ought to have been limited to the content of his witness statement (notwithstanding the limited used of witness statements in Scotland) and had a "*right to have refused to reply to any questions about my possible other claims because I have the right to protect myself against victimisation, persecution and breach of privacy*".

54. The fact that a party produces a witness statement in ET proceedings does not mean that cross-examination (or questions from the ET) must necessarily be limited to the content of that statement. Moreover, as has already been explained to the claimant, witness statements are not generally used in Scotland and there is no guidance that would suggest that questions in ET proceedings in that jurisdiction would be limited to such statements (and see the ET's explanation at paragraph 27 of its judgment on the second reconsideration application).

55. More substantively, however, as I have already stated, the claimant was well aware that his *bone fides* was in issue in this case and that it was the respondent's contention that this was a further example of his having brought ET proceedings in respect of an advertisement for a job in which he had no interest. If that was correct then, *per* **Investigo**, **Berry** and **Garcia**, the claimant could not have suffered any less favourable treatment and his claim would fall to be dismissed. Again, see the ET's observations at paragraphs 29-30 of its judgment on the second reconsideration application.

56. Moreover, the ET's reference to those other claims could not amount to an act of victimisation. Putting to one side (i) the fact that the respondent was specifically arguing that the claimant was a serial litigant who brought proceedings such as this in bad faith, as he never had any interest in the positions in issue, and (ii) the absence of any provable detriment, given that the ET found as a fact that the claimant was not interested in the job in question in this case, this was an issue being raised in legal proceedings, on which the ET was making a judicial determination - there could be no breach of the **EqA** in such circumstances. As for the suggestion that the claimant was seeking to protect himself against "*persecution and breach of privacy*": (i) he had chosen to pursue claims before the ET, there could be no question that the respondent had been seeking to persecute the claimant, and (ii) given the open justice principle and the fact that decisions on the claimant's claims will be publicly available (something of which the claimant is well aware, hence his objection to an earlier deposit order being available on the on-line register (a point referenced in his grounds of appeal)), there could also be no question of breach of privacy.

57. By the third proposed ground of challenge, the claimant contends that the Employment Judge was "*biased*" because he did not take account of the respondent's breaches of "*UK law*". In this regard, the claimant relies on what he says were breaches of the **Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015**. That, however, was not the issue that the ET had to determine and would not have been relevant to the question that it did have to decide, which was whether the claimant had suffered unlawful discrimination under the **Equality Act 2010**. The ET has previously addressed this point of objection at paragraph 22 of the second reconsideration judgment: it was aware of the claimant's argument but did not consider it had any material bearing on the key issue in the case.

58. As for the suggestion that the Employment Judge was biased, that is wholly without foundation.

59. By his fourth and fifth grounds of appeal, the claimant contends that the ET had no evidence to support its decision that he was not deterred from applying for the advertised position by reason of the discriminatory content of the advert and/or failed to properly consider his evidence that demonstrated that some people might be deterred from applying in such circumstances. He says that the "*burden of proof is on employment judge Hoey to prove that I was not interested in the position and not to me to prove that I was interested in it*".

60. As a matter of law, the ET (and I note that the Employment Judge was sitting with lay members when determining the claimant's case) bore no "*burden of proof*"; rather it was for the claimant to establish facts from which the ET could conclude, in the absence of any other explanation, that he had suffered direct sex discrimination contrary to section 13 **EqA** (the first stage of the burden of proof provision under section 136 of the **EqA**).

61. The claimant has taken me to a barely legible screen print of what is said to be a reply "*from a Psychology Forum*", which I understand to have been before the ET, and which the claimant says "*shows that the normal behaviour for a man is to be deterred from replying to an advert requesting a female*". That, however, takes matters no further forward: the fact that some people might be deterred from applying for a particular position because the discriminatory content of the relevant advertisement would not be sufficient to establish that the claimant had been so deterred – and thus had suffered less favourable treatment – in this case. On the evidence, the claimant was unable to discharge the preliminary burden of proof because he was unable to establish that he in fact had any genuine interest in applying for the advertised position; as such he had suffered no less

favourable treatment and could not demonstrate a *prima facie* case under section 13 of the **Equality Act 2010** (and see **Investigo**, **Berry** and **Garcia** *supra*). For completeness, I again note that the ET has already addressed a number of these points in its judgment on the second reconsideration application, at paragraphs 23-26.

62. In his skeleton argument and oral submissions today, the claimant has also sought to argue that the ET "*got the law wrong*" in stating that the law was as set down in **Investigo** and **Berry**. He made the point that these were cases decided more than 12 years ago and had not been incorporated into statute law. Accepting that the ET had also had regard to the more recent decision in **Garcia** (an authority, as I have said, that the claimant acknowledged had related to one of his appeals before the EAT), the claimant said that this was also case-law that could not take precedence over statute; he contended that this raised a fundamental and important point of principle as this is a democracy and the decisions of Judges, which are case-specific, could not compete with a law made by the democratically elected members of Parliament.

63. These points are entirely misconceived. The authorities referenced by the ET are not "*case-specific*" but lay down general guidance as to the approach to be taken to section 13 **EqA**. In so doing, the EAT in each instance was applying the law, as enacted by Parliament. The ET correctly considered that it was bound by those authorities.

64. By his proposed ground 8, the claimant objects to the fact that Employment Judge Hoey presided over the full merits hearing in this case when he had previously conducted the fifth preliminary hearing in the proceedings. This is a point that (again) has already been addressed in the judgment on the second reconsideration application (see paragraph 31). There is no reason in principle why a Judge should not preside over a full merits hearing

of a claim when they have previously conducted an earlier preliminary hearing, nor has the claimant identified any reason in this case as to why that gave rise to any difficulty.

65. By proposed grounds 9 to 12, the claimant makes various allegations against the Employment Judge (again ignoring the fact that his case was determined by a three-member panel). He contends that the ET failed to take into account that he was excluded from the recruitment process because of the discriminatory content of the advertisement and that it was wrong to conclude that the advertisement was not a fake (a conclusion that he says failed to take into account: what the respondent had said about the copy of the advertisement produced by the claimant; the respondent's failure to disclose the correct advertisement; the claimant's complaint about the respondent's breach of the law (see ground 3), and the claimant's evidence regarding the rise in fake advertisements).

66. Once again, these are all matters addressed in the ET's judgment on the second reconsideration application. In any event, the ET made a permissible finding of fact on the evidence that the claimant was not deterred from applying for the advertised job because of the content of the advert but had had no interest in the post and had brought his claim solely for the purpose of trying to extract money from the respondent. As for whether the advertisement was "fake", that was not the relevant question. The claimant was suggesting that he had been deterred from applying for a position because of the discriminatory content of the advertisement concerned; he was claiming compensation for injury to feelings and loss of earnings in this regard. The ET had to determine whether that was true or whether, as the respondent contended, the claimant had no interest in the position in any event and was simply using the ET process to try to get money from the respondent. There had been agreement before the ET as to the terms of the advertisement the claimant had said he had seen (indeed, the respondent had explained that the nature of its social media account was such that it could not obtain a copy of the advertisement; the

case therefore proceeded on the basis of the claimant's account on that point) and the ET was thus entitled to proceed to determine the claim on that basis. Although the claimant said he had not actually applied for the position because he in fact considered the advertisement to be a "*fake*" (albeit that would appear to be contradicted by his claim for loss of earnings), the ET was entitled to reject that evidence. Ultimately these grounds amount to an attempt to re-argue the case below. That is not a proper use of the appeal process and discloses no arguable question of law.

67. By his proposed thirteenth and nineteenth grounds of appeal, the claimant raises various points in respect of the ET's award of a PTO of £697 in favour of the respondent. He contends that the PTO should be revoked because: his claim should not have been rejected; the respondent failed to provide a breakdown of the work done; the ET "*does not discharge the high standard of proof for perjury*"; the ET had not discharged the high standard of proof to establish vexatious conduct; the respondent was "*responsible for having started the troubles .. because it has posted an unlawful advert*"; it was legally and morally wrong to award costs to a respondent that had broken the law; it was wrong and unfair to make a PTO against the claimant when he had stopped the respondent discriminating against men; such an order would deter other victims of discrimination; the PTO was another act of victimisation and persecution; the PTO should not have been imposed without a copy of the correct advertisement. By ground 19, the claimant further complains that the ET went on to consider a PTO in favour of the respondent, notwithstanding that the Employment Judge was aware of its earlier failure to comply with two disclosure orders.

68. I have already addressed many of these points in dealing with the earlier points of challenge, above. The ET permissibly rejected the claimant's claim on the basis of its findings of fact on the evidence before it; on its findings, the ET was entitled to hold that the claimant's evidence was not credible; the ET had permissibly proceeded on the basis

that the advertisement in issue was in the terms contended by the claimant; the ET bore no burden of proof; it correctly applied the burden of proof as laid down by section 136 **EqA**; the claimant was not subject to victimisation or persecution.

69. As for the suggestion that the respondent ought to have provided a "*breakdown*" of the work undertaken, the ET was entitled to have regard to the fact that a PTO is made in respect of an unrepresented party; it would not expect to have the kind of detailed breakdown of work as would be the case if that party was legally represented. The ET, which was best placed to carry out the necessary assessment, carefully had regard to the nature of the claims and the work undertaken when the respondent was not legally represented, and to the conduct of both parties; having done so, it reached a decision as to the amount of time that would be allowed for the purposes of the PTO. The claimant raises no substantive criticism of that assessment, which, on its face, is unassailable.

70. On the ET's conclusion that the claimant's claim had been vexatious, it expressly reminded itself of the high standard that has to be met for such a finding and explained why it had reached the decision that it had in this case. That was a conclusion open to the ET on the basis of its findings of fact. In any event, it went on to find that the claimant had conducted the proceedings unreasonably and his claim had had no reasonable prospects of success; as such its jurisdiction to make a PTO would have been engaged even without the finding of vexatious conduct.

71. As for the suggestion that it was wrong to make a PTO in favour of a respondent that had broken the law, the ET expressly had regard to the discriminatory nature of the advertisement the respondent had posted. It was also aware of the claimant's arguments in respect of the respondent's other breaches of the law. Having had regard to the respondent's conduct, the ET nevertheless considered it appropriate to make a PTO in its

favour. Similarly, the ET had regard to the respondent's failures in terms of compliance with orders in the proceedings; having taken that into account, it nevertheless considered it remained appropriate to make a PTO in this case. These were matters falling well within the ambit of the ET's discretion; no arguable question of law arises.

72. To the extent that the claimant asserts that it was unfair and wrong for the ET to make a PTO against him when it was the respondent that had posted the discriminatory advertisement and he had behaved correctly in challenging that conduct, the ET took into account the respondent's conduct and also had regard to the powers vested in the EHRC to take action in respect of discriminatory advertisements (something that had previously been drawn to the claimant's attention). As the ET found that the claimant had not acted in good faith in bringing his claim, it was entitled to go on to find that it was appropriate to make a PTO against him.

73. Proposed grounds 14 to 18 and ground 20 relate to the ET's decision refusing the claimant's application for a PTO. That decision was the subject of the appeal in EA-2022-SCO-000120-JP, which was the subject of a direction under rule 3(7ZA) **EAT Rules 1993** and is thus not before me. The claimant has said that he continues to rely on the points raised as demonstrating bias on the part of the Employment Judge in the two earlier decisions that are the subject of the present appeals. The allegation of bias is, however, without any proper basis and the grounds of appeal in issue identify nothing that could arguably cause the reasonable and informed observer to consider there was any risk of bias in this case.

Disposal

74. For the reasons I have provided, I am satisfied that the proposed grounds of appeal identify no arguable question of law. Moreover, as I have noted, most of the points raised have

been addressed in some detail either in the ET's decision on the claim and/or in its subsequent judgment on the second reconsideration application; as the claimant is aware, his appeal against that decision has been ruled to be totally without merit.

75. In my judgement, the same can be said of the claimant's two appeals before me. The grounds of appeal identify no question of law such as would engage the jurisdiction of the EAT (see section 21 **Employment Tribunals Act 1996**) and I reject the application made under rule 3(10) **EAT Rules** and dismiss these appeals. More than that, however, it is apparent that, by these appeals, the claimant has sought to go behind the permissible findings of fact of the ET, which informed its decision on the merits of his claim, and against the exercise of its discretion in making the PTO. That is properly to be described as an abuse of the appellate process. As the claimant has acknowledged, he is a serial appellant before the EAT (in the pre-hearing correspondence earlier referenced in this judgment (see, e.g. paragraph 7 above), the claimant referred to the number of appeals he is pursuing in this jurisdiction); he is therefore aware that an appeal can only be pursued on a point of law. The claimant has failed to take on board the further explanations provided by the ET in its judgment on the second reconsideration application, and has failed to engage with the reasons provided by HHJ Barklem at the rule 3(7) stage. He has sought to pursue grounds of appeal that are totally without merit and I duly so record.

76. Yet further, the claimant's conduct of these proceedings has been abusive of the process of both the ET and EAT. I have already set out my findings in relation to the claimant's conduct of these appeals but the same can also be said in relation to his making of persistent applications before the ET, demonstrating no engagement with the earlier reasoning provided to him for the decisions he asked to be reconsidered. This is rightly to be described as vexatious behaviour and I consider it appropriate to refer my ruling on

these appeals to the Registrar for consideration as to whether there might be grounds for the claimant's litigation conduct to be considered by the Lord Advocate.