Appeal No. UKEATPA/0409/20/AT
UKEATPA/0410/20/AT
UKEATPA/0467/20/AT
UKEATPA/0471/20/AT

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 26 November 2020
Judgment handed down on 4 December 2020

Before

MATHEW GULLICK, DEPUTY JUDGE OF THE HIGH COURT

(SITTING ALONE)

UKEATPA/0409/20/AT & UKEATPA/0410/20/AT & UKEATPA/0467/20/AT

MR S MIRON APPELLANT

(1) ADECCO UK LTD RESPONDENTS
(2) WHITMAN LABORATORIES LTD

UKEATPA/0471/20/AT

MR S MIRON APPELLANT

ADECCO UK LTD AND OTHERS RESPONDENTS

Transcript of Proceedings

JUDGMENT

RULE 3(10) HEARING – APPELLANT ONLY

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APPEARANCES

The Appellant	MR STELION MIRON (The Appellant in Person)

MATHEW GULLICK, DEPUTY JUDGE OF THE HIGH COURT

Introduction

1. In this judgment, I shall refer to the parties using their titles from the proceedings in the Employment Tribunal, that is as “the Claimant” and “the Respondents”.

2. I have before me applications by the Claimant under Rule 3(10) of the **Employment Appeal Tribunal Rules 1993** following the rejection of four Appeals under Rule 3(7) at the sift stage by His Honour Judge Auerbach, which in his opinion disclosed no reasonable grounds for appeal.

3. The Appeals relate to case management decisions taken by Employment Judge Dawson, sitting in the Employment Tribunal at Southampton, and by the Regional Employment Judge for the South West Region, Judge Pirani. These decisions were made in relation to an ongoing Claim made by the Claimant against both Respondents which is presently listed for a seven-day Full Hearing in the Employment Tribunal, starting on 16 December 2020. The Claimant also appeals against Judge Dawson’s refusal to recuse himself from dealing with the case, on the ground of alleged apparent bias.

4. Prior the Rule 3(10) hearing, I ensured that the parties were made aware that Employment Judge Dawson and I both practised from the same set of Barristers’ Chambers for a period of approximately 10 years until his appointment as a salaried Employment Judge in April 2019. I did this to ensure that the parties were aware of my historic professional connection with the Employment Judge against whom the allegation of bias was being made. The Claimant responded

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to that notification by email, stating that he did not wish to make an application for my recusal. No application for my recusal was made by any of the parties to the Appeals.

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5. The hearing of the Rule 3(10) applications proceeded before me on 26 November 2020 by way of a remote video conference hearing using the Skype platform. Observers (including representatives of the Respondents) were admitted to the video conference, which was also relayed to a Hearing Room in the Rolls Building to which the public had access. The hearing had been given an extended listing of four hours; the Claimant, who is Romanian, required an interpreter. The Claimant's written English is very good, as demonstrated by the detailed written arguments which he has submitted. He was also able to understand me over the video link without the need for interpretation (so long as I spoke slowly and clearly) and was content to proceed without my words being interpreted into Romanian for him. However, he made his submissions in Romanian, which were then interpreted into English. I am satisfied that the Claimant was able to participate fully in the hearing and that he was not disadvantaged by the use of video conferencing or any issues with interpretation. During the hearing, I ensured that short breaks were taken every hour or so. There was also a break of just under one hour between 1:05 pm and 2:00 pm.

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6. It became apparent to me during the course of the hearing that it would not be possible, despite the generous four-hour listing, for the Claimant to make his submissions and for me to consider them and then deliver an *ex tempore* judgment in English (whatever the outcome) at a speed which would enable the Claimant fully to understand it, whether with or without the assistance of the interpreter. I therefore indicated that I would reserve my judgment and give it in

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writing. This also enabled the Claimant to have far longer to make his oral submissions than would otherwise have been the case. In the event, the Claimant's oral submissions (excluding the time taken for breaks) lasted approximately four hours.

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7. In his Skeleton Argument and in his oral submissions, the Claimant stated that he wished to withdraw one of the four Appeals listed before me, UKEATPA/0410/20/AT. Accordingly, I dismiss that appeal on its withdrawal by the Claimant.

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8. There are therefore three Appeals in relation to which I have to decide whether there is a reasonable basis for the appeal to proceed to a Full Hearing before this Appeal Tribunal, i.e.

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whether the Notices of Appeal contain any arguments which have a realistic prospect of success. In doing so I make clear that I decide this issue afresh, and that I am not bound in any way by the conclusions reached by Judge Auerbach. I have had regard to the all the material to which my

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attention has been drawn and to the submissions made to me by the Claimant both in writing and orally; however, setting out every detail of the lengthy written and oral submissions made by the Claimant to this Tribunal would result in this judgment becoming disproportionately long. I shall confine myself to setting out, where necessary, the salient points of the arguments that he

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advanced.

9. I should also refer to the documentation provided to me for use at the hearing. Although the four bundles provided by the Claimant were properly indexed and paginated, their content

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was far from satisfactory. The Claimant filed a Core Bundle of 185 pages (including Grounds of Appeal running to 60 pages of closely typed text) and an Authorities Bundle of 241 pages. He also filed a Supplemental Bundle of 48 pages and a Bundle of "Proposed Documents" running to

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a further 127 pages. This volume of material was both unnecessary and not conducive to effective judicial preparation for, or the effective conduct of, the hearing. In the event, I permitted the Claimant to refer to documents in all of these bundles primarily to ensure that the hearing was not derailed by procedural issues. Despite this indulgence, on occasion the Claimant sought to make reference to documents which were not even contained in any of these bundles and he also supplied further documents by email after the hearing. In addition, four days after the hearing he submitted five pages of unsolicited further written submissions. I have considered all this further material *de bene esse*. I should add, however, having criticised the Claimant in relation to the preparation of the various bundles, that his Skeleton Argument for the Rule 3(10) hearing put the points on which he relied both clearly and concisely, and was of considerable assistance in enabling me to understand the focus of his complaints about the decisions made in the Employment Tribunal.

The Appeals

10. The first of the three Appeals with which I am concerned is UKEATPA/0409/20/AT, which is the Claimant's Appeal against the Employment Tribunal's Order which was sent to the parties on 16 March 2020. By that Order, Judge Dawson refused the Claimant's application that he should be recused on the ground of bias and also made a number of case management directions. As set out in his Skeleton Argument for the Rule 3(10) hearing, the Claimant challenges, on this Appeal, seven of the paragraphs of Judge Dawson's Order, i.e. both the Judge's refusal to recuse himself (paragraph 1 of the Order) and several of the case management directions made (paragraphs 4, 5, 6, 7, 8 and 11 of the Order).

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11. The second Appeal is UKEAT/0467/20/AT, which is the Claimant's Appeal against the decision made by Judge Pirani on 22 April 2020 to refuse the Claimant's request to transfer the Claim to a different Region.

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12. The third Appeal is UKEATPA/0471/20/AT, which is the Claimant's appeal against the decision made by Judge Pirani on 29 May 2020 to refuse the Claimant's application for a stay of proceedings.

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13. I note that I have seen correspondence between the Registrar and the Claimant, dated 19 November 2020, which indicates that Claimant also has three other Appeals pending before this

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Tribunal against other decisions made by the Employment Tribunal in relation to his Claim. Those Appeals are not before me and the papers relating to those Appeals were not provided to me.

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14. This Appeal Tribunal has jurisdiction to deal with errors of law made by the Employment Tribunal. I will set out the law in relation to apparent bias later in this Judgment when dealing with the Claimant's arguments on that issue. In relation to challenges on appeal to the

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Employment Tribunal's case management decisions, in **Noorani v Merseyside TEC Ltd** [1999] IRLR 184, the Court of Appeal stated the approach as follows:

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> **"Such decisions are essentially challengeable only on what loosely may be called Wednesbury grounds, when the court at first instance exercised the discretion under a mistake of law, or disregard of principle, or under a misapprehension as to the facts, where they took into account irrelevant matters or failed to take into account relevant matters, or where the conclusion reached was "outside the generous ambit within which a reasonable disagreement is possible", see G v G [1985] 1 WLR at 647."**

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15. The Claimant also contended that his right to a fair trial under Article 6 of the ECHR had been compromised by the decisions made by the Employment Tribunal. He referred me to a number of authorities from the European Court of Human Rights in which the right to a fair trial is discussed; it is not necessary to refer to all of them but, in connection with the Claimant's argument relating to the authenticity of the evidence relied on by the Respondents, I note that in **Krčmář & Others v The Czech Republic** (Application 35376/97, Judgment 3 March 2000) at paragraph 42, the Court stated when considering the requirements of Article 6(1) of the ECHR that a party must be able to familiarise itself with the evidence before the court, as well as being able to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time.

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The Claim Before the Employment Tribunal

16. I shall now summarise the background to the Appeals which are before me, as it appears from the Claim Form filed by the Claimant and the Responses filed by the Respondents before the Employment Tribunal and the decisions of the Employment Tribunal to which I have been referred.

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17. The Claimant is male and is of Romanian nationality. On 27 July 2018, the Claimant filed a Claim Form in the Employment Tribunals' South West Regional Office at Bristol making a number of claims against the Respondents, including unfair dismissal and unlawful sex and race discrimination. Following an amendment made at a Preliminary Hearing before Judge Dawson in May 2019, the Claimant also makes claims of unlawful sexual harassment and victimisation.

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18. These claims arise from the Claimant's work at the Second Respondent's premises in Petersfield, Hampshire, for a period of just over one year between 10 April 2017 and 24 April 2018. At the material time, the Claimant was employed by the First Respondent, which is an employment business. The First Respondent supplied the Claimant's services to the Second Respondent on a temporary basis, as an agency worker. The Claimant's wife also worked at the Second Respondent's premises, under a similar arrangement with the First Respondent.

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19. The Claimant was employed to work on a production line. His manager was a female team leader of British nationality. She was a permanent employee of the Second Respondent. The Claimant alleges that his manager attempted to seduce him following the breakdown of her relationship with her boyfriend. He alleges that he resisted her advances over a period of several months, and that in December 2017 he told her in no uncertain terms that they must stop. His case is that after this rejection his manager became hostile to him, and that this hostility resulted in his suspension and the termination of his assignment.

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20. The Claimant contends that he was removed from his production line by his manager for no reason on several occasions and that on 30 March 2018 and 3 April 2018 he sent her private messages on social media, their purpose being to query why she was being so hostile towards him and to ask that she should behave professionally. He admits that he did so from a social media account which was not in his own name, i.e. to that extent a 'fake' account.

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21. On 3 April 2018, the Claimant was suspended from his work at the Second Respondent's premises following a complaint made by his manager that he had engaged in inappropriate behaviour towards her by sending her the messages on social media, the content of which (including references by the Claimant to a potential meeting with her outside the workplace) she considered was inappropriate. The Claimant contends that this complaint was without foundation and was made maliciously. The manager's complaint was investigated and the Second Respondent upheld it, deciding that the Claimant should no longer be permitted to work at its premises. It communicated its decision to the First Respondent, which cancelled the Claimant's assignment.

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22. The Claimant disputes that the Respondents conducted any sort of proper investigation into the situation. He contends that the Respondents did not interview relevant witnesses or consider relevant evidence, including video evidence. He alleges that he was discriminated against by the Respondents either because of his sex or his nationality, or both. He contends that his manager's allegation against him was upheld because she was female and/or British, and that he was disbelieved because he was male and/or Romanian. He alleges before the Employment Tribunal that his manager committed acts of sexual harassment towards him and also that he was victimised by the Respondents, having raised protected acts.

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23. The Respondents dispute the Claimant's allegations. Their case is that the Claimant made inappropriate advances to his manager and that the situation was properly investigated in April 2018 resulting in a legitimate decision by the Second Respondent that the Claimant should no longer work at its premises. Their case is that their treatment of the Claimant had nothing to do with his sex, his nationality or any protected acts.

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24. I should emphasise that neither side's case has yet been established before the Employment Tribunal. The Claim has not yet been heard; as I have already noted, the Full Hearing before the Employment Tribunal is due to commence later this month. Whether the Claimant succeeds or the Respondents succeed on the merits of their respective cases will be a matter for the Employment Tribunal when the Claim is finally heard. The Appeals before me are concerned with matters of case management and whether Judge Dawson ought to have recused himself from dealing with the case.

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The Employment Tribunal's Decisions

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25. There was a Case Management Preliminary Hearing before Employment Judge Dawson on 9 May 2019. I was not provided with the Order or the Judge's Reasons issued following that hearing, but what happened is sufficiently apparent from references elsewhere in the documentation. At that hearing, the Claim was listed for a Full Hearing of seven days' duration, to commence on 6 April 2020, in Southampton. Judge Dawson made a number of case management orders, including in relation to the amendment of the Claim to add the allegations of victimisation. He ordered the mutual disclosure of relevant documents by 4 July 2019. A further Preliminary Hearing, by way of pre-trial review, was listed for 16 January 2020.

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26. The Preliminary Hearing on 16 January 2020 also took place before Judge Dawson. The Judge completed a six-page Case Management Summary on 18 January 2020 (sent to the parties on 27 January), which records that the hearing had been listed to ensure that the previous directions had been complied with. However, the content of the final hearing bundle had not been

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agreed. The Judge therefore dealt with issues arising from that disagreement. The Second Respondent had applied to include four documents in the hearing bundle and to exclude from the bundle a 62-page document prepared by the Claimant, which it argued was commentary rather than documentary evidence. The judge acceded to both elements of that application. He also dealt with a number of other case management issues. The expectation was that the Full Hearing would proceed on 6 April 2020.

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27. On 10 February 2020, the Claimant sent a 31-page document to the Employment Tribunal which contained ten applications, including that Employment Judge Dawson should recuse himself from dealing with the Claim on the ground of apparent bias and that the Second Respondent's Response should be struck out because of its alleged misconduct. The Second Respondent, in turn, subsequently applied to strike out the Claim on the ground of alleged vexatious conduct by the Claimant. Judge Dawson dealt with those applications on the basis of the parties' written submissions in an Order with Reasons which was sent to the parties on 16 March 2020. The Claimant's Appeal against that Order is the subject of one of the Rule 3(10) applications before me. Judge Dawson refused to recuse himself, giving detailed reasons for doing so which ran to some 50 paragraphs on that issue alone. He made a number of other case management directions as a result of the Claimant's applications, including an application for specific disclosure of certain classes of documents by the Respondents. He also refused both sides' strike-out applications. Judge Dawson referred the Claimant's application to transfer the Claim to another Region to the Regional Employment Judge.

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28. The hearing that had been listed to start on 6 April 2020 was subsequently postponed because of the COVID-19 pandemic. The Claimant then complained that the Employment Tribunal had not dealt with his application to transfer the claim outside the South West Region, on the basis that he could not receive a fair trial anywhere within that Region. The application was dealt with by Regional Employment Judge Pirani. His decision to refuse the application for transfer was communicated to the parties on 22 April and the Appeal against that decision is the subject of the second Rule 3(10) application with which I am concerned.

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29. The Claimant subsequently applied to stay the proceedings because of his concerns about the alleged failure of the Respondents (in particular the Second Respondent) to comply with their disclosure obligations. That application was refused by Judge Pirani on 29 May 2020 and the Appeal against it is the subject of the third Rule 3(10) application; the Claimant, although not formally withdrawing this Appeal, suggested that it had become academic as a result of subsequent developments in the Employment Tribunal. Although the Claimant made reference at the hearing before me to what had occurred more recently, I do not have a full picture of how things have developed since the last decision with which I am concerned, and I will deal with the Rule 3(10) application in respect of this Appeal on its merits in any event.

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<u>The First Appeal</u>

30. Before dealing with the various challenges to parts of the Order made by Judge Dawson on 16 March 2020, I should set out by way of further background the basis upon which the Claimant alleges that some of the documents disclosed by the Second Respondent have been falsified in order to bolster its case. The Second Respondent has disclosed its social media policy.

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The Second Respondent admits this was not shown to the Claimant because it applies to its own employees but it contends (to rebut the claim of unlawful discrimination against the Claimant) that its terms would have guided its approach to the investigation into the Claimant. The policy contains the following text:

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> **"Be yourself and be transparent**
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> **What's Smart: Be upfront and always disclose that you are working for the Company or a Brand when discussing the industry, the Company, its brand or its products. Let people know you are sharing your personal opinions, not those of the Company.**
>
> **What's Not: Pretending to be someone you aren't and violating the trust of your community, e.g. using a fake name to post."**

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31. The version of this policy as disclosed apparently contains two dates of printing, one printed over the other (something which the Claimant says is suspicious in and of itself); those

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dates are in June and October 2018, i.e. both after the time at which the Claimant sent the social media messages about which his manager complained. The Claimant contends that the text after the heading "*What's Not*" in relation to using 'fake' social media postings was inserted into the

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disclosed policy after the time at which he sent the social media messages to his manager from a 'fake' social media account, as a direct result of the events which give rise to his Claim. He contends that the Second Respondent has inserted this text into the policy as disclosed to bolster

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its allegedly false case that the Claimant had acted in a manner contrary to the terms of the policy as it existed at the material time. He also raises an argument over the authenticity of the document based on the text appearing in different colours in different versions of the document. For its part, the Second Respondent has disclosed further documentation suggesting that the last amendment

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made to its social media policy was in December 2015.

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32. The Claimant contends that the version of the agency worker induction booklet which the Second Respondent has disclosed (and which it contends the Claimant ought to have received), and which contains further guidelines on social media use, has also been falsified. The Claimant points in this regard to what he claims is an obvious and (he contends) inexplicable mismatch between the serial numbers shown on different versions of the induction booklet.

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33. The Claimant also makes a general allegation that the Second Respondent has acted, and continues to act, in "*bad faith*" both in relation to the events which form the basis of the Claim and in its conduct of the litigation, including disclosure.

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Paragraph 1 of the Order of 16 March 2020: Bias

34. The Claimant challenges a number of the elements of the decision made by Employment Judge Dawson on 16 March 2020. It is convenient first of all to deal with the challenge to the Judge's refusal to recuse himself on the ground of alleged apparent bias.

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35. The Claimant's application of 10 February 2020 dealt with the issue of Judge Dawson's alleged bias under the heading "Application One", between pages 4 and 26 of the 31-page document. It would be disproportionate to set out every detail of the recusal application in this judgment; I will summarise the material points.

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36. The essential basis of the recusal application was that Judge Dawson had failed to properly case manage the Claim, to the extent that a fair trial could no longer take place, and that his alleged failures, together with the way in which Judge Dawson had conducted himself during the

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Preliminary Hearings (including observations made by the Claimant and his wife during the Preliminary Hearings of Judge Dawson's interactions with the Second Respondent's representative) gave rise to the appearance of bias on the part of the Judge. The central aspect of the allegation relating to Judge Dawson's alleged mismanagement of the proceedings related to the documents supplied on disclosure by the Second Respondent, in particular the guidance on the use of social media. The Claimant complained that the Judge had permitted the Second Respondent to add this document to the bundle for the Full Hearing when it had not been provided to the Claimant whilst he had been working for the Second Respondent. The Claimant also complained that the Judge had failed to require the Respondents to prove the authenticity of various disclosed documents, including the social media guidelines, and that the Judge had improperly relied on the ability of the Claimant to pursue issues of concern to him, including as to certain documents' authenticity, at the Full Hearing, including by cross-examining the Respondents' witnesses

37. Given the arguments advanced by the Claimant on this Appeal, it is necessary to set out in full Judge Dawson's detailed reasons for refusing the recusal application, which contain the central issues raised by the Claimant and the Judge's own assessment of, and response to, them. The paragraph numbering is that which appears in the Reasons appended to the Judge's Order of 16 March 2020:

> **"6. The first application which the claimant makes is that all judges who have taken decisions in this case should recuse themselves on grounds of bias. He asks that the local Employment Tribunal's Bristol office should also recuse itself on the grounds of bias.**
>
> **7. Applications for a judge to recuse him or herself must be made to the judge in question will stop the claimant has not specified, by name, which judges he seeks recusal of. My reading of the file suggest that for judges, apart from me, have been involved in making decisions on this case. In addition, at page 25 of his application the claimant asked for recusal of a judge who heard the case of the claimant against Fairhome Care Group (WL) Ltd in 2015.**

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8. I can only deal with the application for recusal insofar as it relates to me. If the claimant seeks that any other judge should recuse him or herself then he must apply to those judges.

9. The application for me to recuse myself is based on bias. The legal tests in such case [sic] are helpfully summarised by the court of appeal in the decision of *Ansar v Lloyd's TSB Bank Plc* [2007] IRLR 211. The Court of Appeal cited with approval the decision of Burton J who summarise the authorities relating to bias. At paragraph 14 of its judgement, the Court of Appeal stated as follows:

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"Burton J on that issue considered the authorities relating to bias. He also considered the decisions of the Employment Appeal Tribunal, which could have been said to support Mr Ansar's argument, and he summarised the law with some care in his judgment. Indeed his summary of the law and the points that arise from the various cases in this area has been accepted by Mr Ansar as an accurate summary, being a summary it should be said prepared by Mr Gidney. He obviously himself accepts that summary. Burton J sets out that summary in paragraph 13 of his judgment as he puts it, slightly reordering the propositions, and they run from 1 to 11:

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'1. The test to be applied as stated by Lord Hope in *Porter v Magill* [2002] 2 AC 357, at paragraph 103 and recited by Pill LJ in *Lodwick v London Borough of Southwark* at paragraph 18 in determining bias is: whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

2. If an objection of bias is then made, it will be the duty of the chairman to consider the objection and exercise his judgment upon it. He would be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance: *Locabail* at paragraph 21.

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3. Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour: *Re JRL ex parte CJL* (1986) 161 CLR 342 at 352, per Mason J, High Court of Australia recited in *Locabail* at paragraph 22.

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4. It is the duty of a judicial officer to hear and determine the cases allocated to him or her by their head of jurisdiction. Subject to certain limited exceptions, a judge should not accede to an unfounded disqualification application: *Clenae Pty Ltd v Australia & New Zealand Banking Group Ltd* [1991] VSCA 35 recited in *Locabail* at paragraph 24.

5. The EAT should test the employment tribunal's decision as to recusal and also consider the proceedings before the tribunal as a whole and decide whether a perception of bias had arisen: Pill LJ in *Lodwick*, at paragraph 18.

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6. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without something more found a sustainable objection: *Locabail* at paragraph 25.

7. Parties cannot assume or expect that findings adverse to a party in one case entitle that party to a different judge or tribunal in a later case. Something more must be shown: Pill LJ in *Lodwick* above, at paragraph 21, recited by Cox J in *Breeze Benton Solicitors (A Partnership) v Weddell* [2004] All ER (D) 225 (Jul) at paragraph 41.

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8. Courts and tribunals need to have broad backs, especially in a time when some litigants and their representatives are well aware that to provoke actual or ostensible bias against themselves can achieve what an application for adjournment (or stay) cannot: Sedley LJ in *Bennett* at paragraph 19.

9. There should be no underestimation of the value, both in the formal English judicial system as well as in the more informal employment tribunal hearings, of the dialogue which frequently takes place between the judge or tribunal and a party or representative. No doubt should be cast on the right of the tribunal, as master of its own procedure, to seek to control prolixity and

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irrelevancies: Peter Gibson J in *Peter Simper & Co Ltd v Cooke* [1986] IRLR 19 EAT at paragraph 17.

10. In any case where there is real ground for doubt, that doubt should be resolved in favour of recusal: *Locabail* at paragraph 25.

11. Whilst recognising that each case must be carefully considered on its own facts, a real danger of bias might well be thought to arise (*Locabail* at paragraph 25) if:

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(a) there were personal friendship or animosity between the judge and any member of the public involved in the case; or

(b) the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or,

(c) in a case where the credibility of any individual were an issue to be decided by the judge, the judge had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or,

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(d) on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on their ability to try the issue with an objective judicial mind; or,

(e) for any other reason, there were real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues."

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14. [sic] Beyond taking exception to the decisions which I have made in the course of this case and the way in which he says I have conducted the proceedings, the claimant does not set out any basis for asserting that there might be actual bias. He does not suggest that I am acquainted with any of the parties in the case or any likely witnesses.

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15. The claimant does suggest in various places (and in particular page 12 of his application) that I had an unusual attitude towards the legal representative of the 2nd respondent and that whilst my manner with the claimant and the 1st respondent was professional, with a representative of the 2nd respondent my attitude was much friendlier. I do not accept that characterisation and for the purposes of clarity I confirm that, as far as I am aware, I have never met the 2nd respondent's representative before this case and I have had no contact with her during this case, except in the two case management preliminary hearings which I've conducted and the correspondence which has been sent to the tribunal. I do not know the representative and had not heard of her prior to this hearing.

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16. Most of the matters which the claimant complained of in his application for me to recuse myself are either matters which show that the claimant misunderstands the tribunal process and the purpose of the preliminary hearings which have taken place or matters about which the claimant must appeal if he dislikes my decision.

17. In particular a recurring theme through the claimant's application is that I failed to accept his assertion that documents which the respondent [sic] wanted to place in the bundle were false or irrelevant and had not been shown to the claimant at the time of the alleged misconduct. The claimant has failed to take on board, notwithstanding that it was explained to him at the last hearing and repeated in paragraph 5 of the Case Management Summary dated 18 January 2020, that questions of when and if documents were given to the claimant will only be determined at the final hearing. The claimant is correct that I've made no determination as to whether or not those documents are genuine (in the sense that they existed at the time of the alleged misconduct) or whether they were sent to the claimant at the time all I have done is determine that those documents can be placed into a bundle which will be put before the tribunal hearing the case.

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18. Having made those preliminary observations, I will now endeavour to deal with the points raised throughout the claimant's application.

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19. At page 5 of the application the claimant asserts that I had not read, before the preliminary hearing of 9 May 2019, all the documents sent on 7 November 2018 to the tribunal; or, if I had read them, I refuse to analyse and synthesise them and draw the conclusions that result from the states a fact proven by them. As I have indicated above, the claimant is right I have not drawn any conclusions as to the veracity or date of any documents in this case. That does not mean that I did not read or analyse the claimant's document. The hearing on 9th May 2019 was to identify the issues and give directions for the case to proceed. That is the exercise which was carried out at that hearing.

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20. The claimant complains that at the preliminary hearing on 9 May 2019 I did not ask the respondents if they communicated to him the Social Media Policy. There was no reason that I would do so. My function that hearing was not to determine the merits of the claim. Moreover, it is not the function of a judge in an employment tribunal to undertake an inquisitorial function on behalf of either of the parties.

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21. The claimant then sets out certain facts which he says are relevant to the disclosure given by the respondents and states "all of the above should have raised in the conscience of the case judge the need to reject the respondent's response to my accusations as unfounded to save everyone's money and time." (Page 6). I presume that the claimant maintained that I should have so acted at the hearing of 9 May 2019. In fact, at no time before the claimant's most recent application, has any application had [sic] been made to strike at the response by the respondent. Where there is a dispute as to the veracity of documents it is most unusual for a claim or response to be struck out prior to a final hearing. The failure to do so does not indicate bias.

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22. Page 6 of the application goes on to state "the judge preferred to lead the case unnecessarily to the making of a Bundle and to a Hearing, in which my testimony, about not receiving in any way information about Social Media Policy before the disciplinary investigations, was to be combated with the subjective evidence of some witnesses…" That point is then amplified. The claimant has, in fact, correctly summarised the process. The respondent [sic] is entitled to call witnesses to dispute what the claimant says and, in order to enable a fair trial to take place, directions are given for a Bundle and for witness statements to be exchanged. Giving those directions does not indicate pre-judgement nor does it indicate bias.

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23. The claimant goes on state [sic], at the top of page 7, that a "fair trial cannot take place when this subjective evidence (witness testimony) is favoured at the expense of objective evidence… The evidence with witnesses should be admitted only when the state of fact is not proven or is insufficiently proved by the documents." Again that statement misunderstands the trial process. The tribunal receives all of the evidence, both witness evidence and documentary evidence. It will then give such weight as it thinks fit to that evidence. It may, at that time, consider that documentary evidence suggests that what a witnesses saying is wrong. However, the time for the decision to be taken is the final hearing. Thus, the criticism that I refused "to allow the creation of an objective and complete bundle that would allow to minimise the role of witnesses" is ill founded. I directed the creation of a bundle containing those documents which the parties wanted to refer to at trial, although limiting the length of the bundle. Thus the parties would be required to ensure that only those documents which were going to be referred to would be within the bundle (rather, than say, entire policies when only a small part would be referred to).

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24. For the same reasons, I reject the statement, "Apparently, forcing all parties to prove the procedural position through witness statements would respect the principle of procedural equality of the parties. False!". I also reject the assertion by the claimant that "if this is not a bias, then the word should be deleted from dictionaries."

25. A discrete complaint is made at the bottom of page 6 arising out of a document which the claimant sent to the court [sic] on 7 November 2018. On page 18 of that document (paragraph 55) the claimant asked the tribunal to "check" whether the 2nd respondent had filed the grounds of resistance on time and apply the UK legal provisions if considered appropriate.

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26. It is a matter of some surprise that the claimant raises the failure to answer that point for the first time in this application, given that it was raised on 7 November 2018. The claimant complains that the issue was never raised by the judge (me) in either of the 2 preliminary hearings

27. The answer to the point is as follows. The tribunal always checks that the grounds of resistance have been received in time and takes appropriate action if they have not. The grounds of resistance had been filed on time. In the light of the way in which the claimant put the point in his letter of 7 November 2018 it was not necessary for me to raise the point in the preliminary hearings. To the best of my recollection the claimant did not raise this point in either of the hearings. Failure to deal with that point is, at best, a most minor point and does not suggest bias.

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28. At page 8 the claimant states that I refused his application for disclosure because it was premature. At the 9 May 2019 hearing, the application was premature. No disclosure had been ordered at that time and an application for specific disclosure was not warranted until disclosure had been undertaken.

29. In the remainder of page 8 and page 9, the claimant complains that in respect of correspondence sent to the tribunal, a judge chose to ignore the state of facts objectively proven. The decision being referred to there (being the direction of the tribunal of 21 September 2019 that, in the light of the respondent's response the tribunal believed there was no need to progress at the claimant's application) was not one the taken by me. It is therefore not appropriate for me to comment further.

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30. In the 4th and 5th paragraphs of page 9 of the application, complaint is made about a judge not having any reaction to the claimant's warnings of the bad faith of the respondents. It is unclear which judge the claimant is referring to - within the context of the document, it appears to be the judge who gave the direction of the tribunal on 21 September 2019. However, even if it is not that judge who is complained about, the complaint is once again about the content of the bundle. I have dealt with that above. If the claimant was not content with the orders in respect of the bundle his remedy was to appeal. He made no complaint at the time and the matters he complains of are not evidence of bias.

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31. In page 10 of the application, the claimant refers to an email he sent to the tribunal on 21 October 2019. That document did not contain any application to the tribunal but was a series of complaints about the 2nd respondent. Although it started by addressing the tribunal it quickly reverts to being a letter addressed to the respondents. For instance in the 3rd page it states "you exceeded with bad faith the mandate given by the judge… If I will receive in the future any communications from you in which are not used the names given by me in the document "*the hard copy of bundle of evidence 25.01.2019"…* The only answer you will have for me will be an application for a judge order to force you to respect the limits of the mandate given by the judge order from 09.05.2019".I note in passing that, at least in that letter, the claimant implicitly endorses what he regards as the mandate set out in the case management orders given on 9 May 2019.

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32. Thus it was entirely proper that there was no reaction from the tribunal when, on the face of it, the claimant was simply including the tribunal in correspondence between the parties.

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33. The chronology set out by the claimant in page 10 misses out correspondence from the 1st respondent dated 20.11.19 in which it sets out its position on difficulties which the parties were having in agreeing a bundle of documents. The claimant's application also misses out an email on 21.11.19 in which the 2nd respondent makes an application for the inclusion of 4 documents into the hearing bundle and the exclusion of the 62 page letter sent to the respondent on 7 November 2018. It also applied to postpone the date for exchange of witness statements. Those are the documents which, ultimately, became the subject of the hearing on 16 January 2020.

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34. The claimant then wrote a further email on 22 November 2019 in which he answered the 1st respondent's email of 20 November 2019. He also states "with respect, I ask the Honourable Employment Judge to accept the date of 04.12.2019 as the date when I will provide a reasoned response for the Application for the inclusion of documents and Application for the exclusion of a document made by Second Respondent on 21.11.2019"

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35. On 26 November 2019, the claimant wrote an email to the employment tribunal in which he made a number of allegations against the 2nd respondent. The email has to be seen within the series of correspondence to which I have referred.

36. The 2nd respondent wrote to the tribunal, also, on 26 November 2019 stating "we have had a large amount of communication with the Claimant over the content of the bundle, some of which has resulted in our application of 21 November 2019. It is right that we have asked the claimant to resend particular documents due to difficulties in opening some of the attachments he sent 2 emails. We have now received all documents we requested and, we believe, we will be in a position to finalise the bundle subject to receiving a response from the tribunal to our application."

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37. At that stage whilst the emails had been received by the Bristol administration office, no referrals had been made to a judge since the tribunal had written to the parties on 21 September 2019.

38. On 4 December 2019 the claimant wrote to the tribunal stating that he could not give an answer on the date promised (04.12.2019) because his mother had passed away. He asked the tribunal to accept the date of 16 December 2019 as a date when he could provide an informed answer to the applications made by the 2nd respondent on 21 November 2019.

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39. That application was dealt with by me and I passed the condolences of the tribunal to Mr Miron and directed the respondents to comment on the application for more time. In the same letter I directed "In respect of the correspondence to the tribunal from 20th November, the approach taken by the parties is not acceptable. They are required to work together to achieve the overriding objective as per rule 2 of the Rules of Procedure which requires "The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal." The parties must work together to resolve procedural matters in accordance with the directions already given by the ET and, if necessary, submit a revised agreed timetable for directions".

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40. The direction that I gave does not indicate any bias. It was a direction that was given to all of the parties because, reading the correspondence, I perceived a lack of cooperation between them. It is inaccurate for the claimant to describe that as a discriminatory attitude or one which favoured the respondents. The claimant is also incorrect insofar as he casts himself as being the party who was entirely in the right. Insofar as there was a dispute between the claimant and the respondents about the inclusion of 4 documents in the bundle and the exclusion of the claimant's 62 page document, my determination at the hearing of 16 January 2020 was that the respondents were correct in their stance.

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41. Further, and again contrary to what the claimant says, I did not, at that stage, determine who was right in relation to the dispute about the bundle, I acknowledged that the claimant had not yet said all that he wished to and, therefore, directed the respondent to comment on his application for more time to set out his position.

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42. The claimant did then set out his position on 16 December 2019 and a different judge directed that the matters would be resolved at the hearing on 16 January 2020 which had already been listed as a "catch-up" hearing.

43. As I set out above in the introduction to these reasons, at page 12 of his application, the claimant states that at both the preliminary hearing of 9 May 2019 and 16 January 2020 I had an unusual attitude towards the legal representative of the 2nd respondent in that I was only professional with the claimant but more friendly with representative. It is a little surprising that, if the claimant was concerned about my attitude on 9 May 2019 he did not raise that point at the time. Moreover, despite sending a series of emails to the tribunal after that date he raised no concerns about my conduct.

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44. The claimant also states that this was not the first time when he had encountered that kind of attitude. He states that for 10 years he had represented different companies "in my country in Courts". He states that he has observed the general biasing attitude of judges and has seen this kind of attitude too many times not to recognise it. Given that is the case, it is all the more surprising that the claimant did not raise matters earlier.

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45. In the 5th paragraph of page 12 of the application, the claimant makes reference to the fact that he showed me a 5 page document and states that having smiled ironically and looking amusingly at the 2nd respondent's representative I stated "I don't know anything about it". The exchange, having taken place during the hearing, is not one about which I have any clear recollection. I would not have looked amused in those circumstances. If I said something to the effect of not knowing about a matter, that would have been because I did not know about it. It is a requirement of being open-minded as a judge that if a party is addressing the judge on something which he does not understand, he makes that clear to the party. It's not a sign of bias. Again, it is a matter of regret that the claimant did not raise in point at the time, which is not be an unrealistic expectation given, as he says, he has 10 years of experience representing companies in courts within the Romanian State.

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46. In the next paragraph the claimant accepts that I addressed him professionally in the hearing but asserts that I stated judges do not walk freely inside the court building with nothing to do waiting for him to make an application. The exchange to which the claimant is referring is an exchange whereby I attempted to explain to the claimant that the application before the tribunal had been listed for determination on that day. The tribunal had provided a listing slot and resources for the resolution of the issues on that day. It was not appropriate to leave, to the future, things which could be resolved at that hearing. The tribunal does not have a dedicated application's judge who resolves applications sent in on paper. If the matter was not resolved at the hearing then it may take a considerable period of time to resolve any future application. That is exemplified by the fact that in this case, notwithstanding the parties had started corresponding with the tribunal about problems with the bundle in November 2019, the issues raised in that correspondence were not resolved until a hearing on 16 January 2019.

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47. At page 13 the claimant makes a criticism for allowing "inclusion in the bundle of documents without allowing the verification of their existence at the relevant moments of the case and based on false reasons…". Whilst I acknowledge that the claimant disagrees with my conclusions, his remedy is to appeal against my decision. That decision was not an indication of bias. I reached no view as to the existence of the documents at any particular time.

48. Whilst It is not appropriate, in this decision, to enter into a debate with the claimant as to the extent to which remarks I made to the parties at the outset of the hearing on 16 January 2020, as to which documents I have read, were true or not, I would have had no need to make untrue remarks. It is not uncommon for a judge to start a hearing by telling parties that he or she has not had time to read particular documents.

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49. Between the 2nd half of page 13 and page 24 of his application the claimant rehearses a series of arguments as to why my decision on 16 January 2020 was wrong. Those matters are for the claimant to submit to an appellate tribunal if he wishes to do so. They are not evidence of bias.

50. The complaints made by the claimant as to the restrictions of length of the bundle are not evidence of bias. Restrictions on the length of the bundle (and the similar restrictions on the length of witness statements) are imposed for sound case management reasons. The restrictions in this case adequately reflect the issues as identified in the Case Management Summary dated 9 May 2019. The restrictions limit both parties, they do not indicate bias by a judge. Moreover, at the most recent case preliminary hearing, I doubled the word count of the claimant's witness statement, without allowing the respondents' word count to increase. I also allowed the claimant to create his own bundle for the tribunal given his concerns about the joint bundle. Having regard to the issues in the case of those limits were appropriate.

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51. The claimant also raises concerns about the restrictions on the supplemental bundle. It seems to me that he has not properly understood the direction in that respect. I have not refused to allow the claimant to place documents in the bundle which are dated after the disciplinary process, I required that they relate to the period leading up to the conclusion of the disciplinary hearing (which was when, as I understood the claimant's case, he alleges that the decisions were made about his assignment to the 2nd respondent and his ongoing non-assignment by the 1st respondent). For the purposes of clarity, if the claimant's assignment to the 2nd respondent ended after the disciplinary hearing/ process or the refusal to reassign the claimant by the 1st

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respondent was after the end of the disciplinary process, then the supplemental bundle can include documents which relate to the period up to and including those 2 events.

52. In the second paragraph of page 24, the claimant has failed to properly set out the exchange between us on his suggestion that the parties should compile an agreed list of communications between them. My reason for not giving that direction was that, in the light of what I had seen, I considered there to be no real chance of the parties being able to agree such a list. Moreover, one was not necessary.

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53. Insofar as the claimant refers to the interpreter and his statement that I did not let the interpreter finish, that is not my recollection of events. It is a matter of regret that, if that was the case in respect of both preliminary hearings, the claimant did not raise it after the first preliminary hearing or at the start of the second one. No issue was raised by the claimant or the interpreter in either hearing. The claimant's written application of 29th February 2020 suggests a full awareness of what happened at the hearing.

54. At the end of pages 24 to 25 of his application, the claimant raises complaints about a different judge in a different case of his. I cannot find the documents which the claimant refers to as being attached to his application, but it is not for me to comment on that part of the application. Any application for recusal must be made to the judge in question.

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55. There is no basis for me to recuse myself from further involvement in this case. The claimant's allegations of bias are inaccurate and unfounded and to the extent that the Regional Employment Judge decides to allocate the hearing of any part of this case to me in the future I will hear it."

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38. I am satisfied, for the reasons which I will now set out, that there is no reasonably arguable case of apparent bias here and that Judge Dawson's conclusion that he should not recuse himself from further involvement in the Claimant's case on the ground of bias was clearly correct. In reaching this conclusion, I make clear that I do not treat the question of whether the Judge should have recused himself for bias as an exercise of case management discretion (unlike other matters about which the Claimant makes complaint in these Appeals); rather, the issue is whether there is a realistic prospect of this Tribunal concluding at a Full Hearing that the Judge was wrong not to recuse himself because the test for apparent bias was indeed satisfied.

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39. The Claimant has a right to a fair hearing before an impartial tribunal both at common law and under the ECHR. Further, justice must not only be done, it must also be seen to be done: see **R v Sussex Justices, ex parte McCarthy** [1924] 1 KB 256. In *In re Medicaments and Related*

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Classes of Goods (No.2) [2001] 1 WLR 700, [2001] ICR 564, the Court of Appeal stated at paragraph 37:

> **"Bias is an attitude of mind which prevents the judge from making an objective determination of the issues that he has to resolve."**

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At paragraph 85 of its judgment, the Court of Appeal stated the test, subsequently endorsed by the House of Lords in **Porter v Magill** [2002] 2 AC 357 at paragraphs 102-103, to be applied on an application for recusal on the ground of apparent bias:

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> **"The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased."**

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40. In **Helow v Secretary of State for the Home Department** [2008] 1 WLR 2416, Lord Hope set out the approach of the fair-minded and informed observer in this context:

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> **"2. The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in *Johnson v Johnson* (2000) 201 CLR 488, 509, para 53. Her approach must not be confused with that of the person who has brought the complaint. The "real possibility" test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.**

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> **3. Then there is the attribute that the observer is "informed". It makes the point that, before she takes a balanced approach to any information she is given she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment."**

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I also take into account, as the Judge did, what the Court of Appeal said in **Ansar v Lloyds's TSB Bank Plc** [2007] IRLR 211 at paragraph 14, where it restated and amplified the principles set out above.

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41. The Claimant has raised before this Tribunal on the Appeal, in writing and orally, a number of issues which he contends demonstrate that he has a realistic prospect of demonstrating apparent bias on the part of Employment Judge Dawson. The Claimant's allegations, as I understood them from his Skeleton Argument and his oral submissions at the hearing were, in summary, as follows:

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a. The Claimant alleged that prior to the Preliminary Hearing on 16 January 2020, Judge Dawson had read the Second Respondent's application but had not read the Claimant's email of 16 December 2019 which responded to it. During the oral submissions on the applications regarding the content of the bundles, the Claimant stated that his position had already been set out in that email. Judge Dawson then demonstrated some irritation and had trouble locating the email. He read it briefly. He then stated that he would reject the Claimant's arguments. He did not give reasons during the hearing. The Judge then engaged in an *ex post facto* attempt to justify his decision when writing the Reasons which were appended to the Case Management Order. In any event, the Reasons given were not adequate and ignored the arguments made by the Claimant.

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b. During the hearing on 16 January 2020, the Claimant sought to raise the issue of the Second Respondent acting in "*bad faith*". He informed the Judge that he had a five-page document (which had not been previously shown to the Judge) from which we wanted to read to set out the alleged "*bad faith*" of the Second Respondent. The Judge looked at the Second Respondent's representative, as if amused, and then at the Claimant, saying "*I don't know anything about this,*" demonstrating his alleged disinterest in even hearing argument from the Claimant. This was indicative of his general attitude to the Claimant.

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c. Whilst the Claimant was making submissions to the Judge about the Second Respondent's alleged "*bad faith*", he asked if he would be able to send in applications arising from it. Judge Dawson allegedly answered that Judges of the Employment Tribunal were not waiting around in the Tribunal doing nothing and waiting for applications to be made by the parties. The allegation that the Second Respondent was acting in bad faith was very serious and the Judge was evidently biased because he did not want to listen to such allegations.

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d. None of the Judges of the Employment Tribunal, including in particular Judge Dawson, took any measures to address the "*bad faith*" of the Second Respondent or to investigate the reality of what the Claimant was saying in this respect. Judge Dawson had failed properly to address the Claimant's arguments regarding the authenticity of some of the Respondents' documents. His actions had wrongly transferred the burden of proof to the Claimant. Only once the Claimant had made the

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application for the recusal of Judge Dawson was any action taken in this respect – and it was the application for recusal which had prompted it.

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e. Judge Dawson failed to take an active role in the management of the case and to protect the interests of the Claimant as an unrepresented party. In particular, Judge Dawson ought of his own motion to have made the order for specific disclosure in paragraph 5 of his Order of 16 March 2020 an 'unless' order. He also ought to have taken a more active role in examining the basis upon which the Claimant contended that the documents supplied by the Second Respondent (in particular) were not authentic.

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f. The limits on the size of the bundle and on the length of witness statements imposed by Judge Dawson's case management orders were unfair to the Claimant and indicative of bias.

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g. Judge Dawson's conduct of the hearings in May 2019 and January 2020 did not enable effective interpretation of the proceedings into Romanian, disadvantaging the Claimant, because Judge Dawson spoke whilst the interpreter was translating for the Claimant.

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h. Judge Dawson and the Second Respondent's representative "*exchanged complicit looks*" during the hearings in May 2019 and January 2020; there was no doubt that they knew each other and had an "*understanding*". This was apparent throughout both hearings. It is indicative of bias.

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i. Following the hearing on 16 January 2020, Judge Dawson had been made aware of an email conversation between the Claimant and the Second Respondent's legal team, the content of which had been transposed into the Reasons sent to the parties. The only way that this could have happened is if the Second Respondent's legal team had private communications with the Judge, to which the Claimant was not a party, which would be indicative of bias. This was because Judge Dawson's written case management summary (prepared by the Judge on 18 January) included reference to the proposed title of the column. The Claimant contended that there had been no such reference at the hearing to the title. The Claimant accepted that he had not raised this issue in the recusal application which he made on 10 February 2020 and was raising it for the first time on appeal, although for present purposes I do not regard that as preventing him from pursuing the point.

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42. The Claimant submitted before me that these matters raised a case which demonstrated a realistic prospect of Judge Dawson's refusal to recuse himself being overturned on appeal. He submitted that taken together, they showed that Judge Dawson had unduly favoured the Second Respondent, had failed to take an active role and had ignored the Claimant's arguments. The fair-minded and informed observer could only, in the Claimant's submission, conclude that there was real possibility that Judge Dawson was biased because they were too many aspects of his conduct which showed a clear intention to be favourable to the Second Respondent.

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43. In my judgement, the arguments raised by the Claimant in relation to this ground are, whether individually or cumulatively, insufficient to give rise to any reasonably arguable case of apparent bias on the part of Employment Judge Dawson, applying the test that I have set out above. In my judgment, the Claimant comes nowhere close to demonstrating anything that would indicate to a fair-minded and informed observer that there was a real possibility that that the Judge was biased against the Claimant and/or in favour of either of the Respondents. I shall deal with the points made by the Claimant in the order that I have set them out in paragraph 41, above:

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a. Judge Dawson stated in paragraph 1 of his Case Management Summary following the hearing on 16 January 2020 that he had read the Claimant's email of 16 December 2019 both before and during the hearing. Even on the Claimant's own case as now advanced, the Judge read it during the hearing. It is clear from the reasons given in the Case Management Summary that he took it into account, albeit he rejected the Claimant's arguments. The reasons given by the Judge in his Case Management Summary were clearly sufficient to dispose of the issues before him; he was not required to give detailed reasons at the hearing and was entitled to set his reasoning out in more detail in the written Case Management Summary. Doing so is not indicative of bias. The Claimant may disagree with the Judge's decision, but that is nothing to the point here. The fair-minded and informed observer would not regard the issues raised as indicative of any lack of objectivity or of partiality.

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b. The Judge's comment to the Claimant at that hearing that he did "*not know anything about this*", even if made, would not be regarded by the fair-minded and informed observer as suggestive of a lack of objectivity or of partiality. The Claimant was

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seeking to raise points contained in a five-page document which the Judge had never seen. For the Judge to comment that he did "*not know anything about this*" (if such a comment was made) is, in these circumstances, unremarkable.

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c. The Judge's comment regarding the Judges of the Employment Tribunal not waiting around in the building for applications to be made, even if made as alleged by the Claimant, would not be regarded by the fair-minded and informed observer as indicative of any lack of objectivity or partiality, either. The Judge was apparently explaining to the Claimant that he ought to have been in a position to make, at the pre-trial Case Management Preliminary Hearing on 16 January 2020, certain applications relating to the alleged "*bad faith*" of the Second Respondent which the Claimant was suggesting might instead be made at some future time. The Judge was doing no more than explaining to the Claimant, in everyday rather than technical language, that such applications, if contemplated, ought to be made at the Preliminary Hearing he was conducting and that if they were made at a future time then there might be difficulty in dealing with them expeditiously due to the pressure of other judicial business. In my judgment, it was perfectly legitimate for the Judge to make this point to the Claimant, in the context in which it was made. The fair-minded and informed observer would not regard it as indicative of bias on his part.

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d. I do not accept that Judge Dawson's refusal to order the removal of the disputed documents from the bundle has improperly transferred the burden of proof to the Claimant, or that references to the Claimant being able to cross-examine the

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Defendant's witnesses regarding the disputed documents were in any way inappropriate, or that Judge Dawson failed to explore this issue sufficiently. It will, as Judge Dawson correctly stated, be a matter for the panel at the Full Hearing to determine whether or not it accepts that these documents are genuine or whether they have been falsified. The applicable legal and evidential burdens, and the incidence of the burden of proof in relation to the disputed documents (including whether the burden has shifted from one party to another) will be a matter for the panel to consider in due course. The inclusion of the disputed documents in the bundle for the hearing (the matter about which the Claimant now complains on appeal) does not, in and of itself, shift the burden of proof to the Claimant. Insofar as the Claimant contends (as he spent some time setting out in his oral argument before me) that the authenticity of the disputed documents is only capable of being proved by expert (rather than lay witness) evidence and that the burden is on the Respondents in this respect given the issues he has raised, then that is a submission which he can make to the panel at the Full Hearing (I say nothing about its correctness one way or the other). Insofar as the Respondents contend, via their lay witnesses, that the documents are genuine then the Claimant will be able to challenge that evidence in cross-examination, including by reference to the arguments set out at paragraphs 30 to 32 above. The fair-minded and informed observer would be aware of these matters in considering whether Judge Dawson's decision not to order the removal of the documents from the bundle gave rise to a real possibility of bias. Nor would the fair-minded and informed observer consider that Judge Dawson had failed to properly address the Claimant's arguments regarding the Respondent's alleged "*bad faith*" towards the Claimant; the allegations

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made were largely matters for the final hearing, see paragraphs 21-24 of the Judge's Reasons. The suggestion that decisions favourable to the Claimant were only made by Judge Dawson after, and as a direct consequence of, the application for recusal being made is obviously incorrect for the reasons given at paragraph 45, below.

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e. The fair-minded and informed observer would not consider that Judge Dawson's failure to make his order for specific disclosure as an 'unless' order against the Second Respondent was indicative of bias. The Judge was never asked to make an 'unless' order. It is wholly unrealistic to suggest that the Judge might have been biased against the Claimant for failing to make an order which he was never even asked to make. See further paragraphs 55 and 56, below. The fair-minded and informed observer would also not, in my judgment, consider that there was any possibility of bias on the part of the Judge as a result of his case management decisions, which demonstrate that he applied an even-handed approach and pro-active management of the case in order to enable it to proceed to a Final Hearing. That adverse decisions were made against the Claimant on some issues is not indicative of bias. Nor do I accept another premise of the Claimant's argument which is that the Judge failed to apply the overriding objective in the **Employment Tribunal Rules of Procedure 2013** or that his decisions result in a breach of the Claimant's right to a fair trial. The management of this case was consistent with both those important requirements.

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f. If Judge Dawson did speak over the interpreter during the Preliminary Hearings in May 2019 and January 2020 then that is not in and of itself indicative of any lack of

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objectivity or of partiality on the part of the Judge, and nor would the fair-minded and informed observer regard it as such. Neither the Claimant nor the interpreter present raised any issue at the time; no complaint can therefore be made that the Judge persisted after the matter was drawn to his attention, because it was not raised with him.

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g. The limits set by the Judge on the size of the bundle (350 pages) and on the length of witness statements (5,000 words, increased in the case of the Claimant to 10,000 words) are not indicative of bias, as alleged by the Claimant. Such limitations are not infrequently imposed by way of case management order. The fair-minded and informed observer would regard these as entirely legitimate case management decisions, in the context in which they were made. See further paragraphs 62 to 65, below.

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h. As to Judge Dawson's alleged prior relationship with the Second Respondent's representative, this was dealt with by the Judge at paragraph 15 of his Reasons. In any event, I note that the alleged apparent "*complicity*" between the Judge and the Second Respondent's representative was not raised at the time in either of the hearings and is based solely upon allegations made by the Claimant and his wife, made some time later, about their observations of the Judge's behaviour during the hearings and is based on how the Judge is alleged to have looked at the Second Respondent's representative. The fair-minded and informed observer would take all these matters into account and would conclude that there was no real possibility of bias here.

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i. The suggestion that the Judge and the Second Respondent's representatives communicated with each other (without the Claimant's knowledge) between the conclusion of the Hearing on 16 January and the promulgation of the Order and Reasons is, in my judgment, fanciful. Paragraph 11 of the Reasons that accompanied the Order of 16 January 2020 does not even arguably support that proposition; even if the precise title of the further index column was not discussed at the Hearing, the nature of the material to be included in the further column would have had to be discussed in order for the Judge to come to a decision on whether it should be included or not. The Judge's reference in paragraph 11 of the Reasons is to the purpose of the further column ("*At my suggestion, the respondents agreed that the index could contain a further column in which the claimant would put the date he received the document (but no more)…*") and is not, in my judgment, remotely demonstrative (still less, as the Claimant contends, wholly conclusive) of any secret post-hearing discussion between him and the Respondents taking place regarding the dispute over the precise title of the column, as now alleged. Nor do the emails between the parties on this topic before and after the hearing, which were shown to me by the Claimant, even arguably demonstrate that the Judge must (as the Claimant contended) have been made aware, after the hearing, of the dispute within them about the precise title of the new column; the title proposed for the column by the Claimant was "*Date of Communication*" and the title proposed by the Respondents was "*Date alleged by Claimant as sent or received*" (my emphasis), which differs markedly from the wording used in paragraph 11 of the Judge's Reasons. Again, the fair-minded and

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informed observer – who is not unduly suspicious – would clearly conclude, based on the arguments advanced by the Claimant, that there was no real possibility of bias here.

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44. In his further written submissions, made after the Rule 3(10) hearing, the Claimant contended that as he had not put the allegation in relation to the alleged secret communications with the Respondents to Judge Dawson in the recusal application, then this Tribunal should now require Judge Dawson to provide his comments on it. I decline to do so. The premise for the Claimant's request is that the email correspondence, when taken together with the terms of the Reasons, clearly demonstrates that such secret communication occurred. For the reasons I have endeavoured to explain, that is not the case and the basis of the Claimant's argument that there must have been such secret communication between the Respondents and the Judge is misconceived. The alleged secret communication is not, in my judgment, even arguably demonstrated on the material before me.

45. It is also important to remember that, as Lord Hope set out in passage from the **Helow** case to which I have referred above, the fair-minded and informed observer would also have knowledge not only of the matters positively relied on by the Claimant, but of the wider context including the various orders made by Employment Judge Dawson which were favourable to the Claimant, including prior to the application for recusal being made. The Judge had permitted the Claimant to advance new claims by way of amendment at the Preliminary Hearing on 9 May 2019. At the hearing on 16 January 2020, he had given the Claimant permission to create a supplementary bundle of documents. At that hearing he also permitted the Claimant to rely at the

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Full Hearing on a witness statement of up to 10,000 words, double the previous limit – without a corresponding increase for the Respondents. The Judge also suggested a solution by which the main bundle index would include the fourth column requested by the Claimant. These matters alone – all of which precede the Claimant making the recusal application (and which cannot, therefore, even be argued to have been prompted by it, as the Claimant submitted some of the orders favourable to him made on 16 March had been) – provide a cogent counterpoint to the Claimant's various complaints about Judge Dawson's alleged partiality in terms of the management of the case. In my judgment, the Claimant's suggestion that some or all of these things must have been done by Judge Dawson simply in order to create the false impression of impartiality is without foundation and in effect presumes actual bias on the part of the Employment Judge, something for which there is no evidence. A further counterpoint is provided by Judge Dawson's Order of 16 March 2020 whereby he refused the application to strike out the claim and decided to order the Respondents to provide specific disclosure; whilst the Claimant argues that these decisions were only made by the Judge as a direct response to the recusal application, I do not consider that there is any prospect of the fair-minded and informed observer – who, as Lord Hope said, is not unduly suspicious – accepting that is be the case having regard to the context and the history of the proceedings.

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46. In my judgment, it is clear that the fair-minded and informed observer would, taking everything into account, conclude that there was no real possibility of bias on the part of the Employment Judge here. Rather, such an observer would conclude that the Employment Judge was doing his best to manage the case in circumstances where the relationship between those conducting the litigation had substantially broken down. Nor do the decisions taken by the

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Employment Judge demonstrate any reasonably arguable unfairness towards the Claimant as a litigant in person, or a failure to take a sufficiently active role in the management of the case. The Judge was sympathetic to some of the arguments advanced by the Claimant but did not accept others. That is a commonplace in litigation of this sort and in no way indicative of judicial bias. The Claimant's efforts to demonstrate apparent bias on the part of the Judge also require, in my judgment, the fair-minded and informed observer to act with an undue degree of suspicion particularly with regard to the comments made by the Judge during the Hearings and in relation to the alleged "*complicity*" or secret relationship between the Judge and the representatives of the Second Respondent.

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47. In my judgment, the Claimant has attempted to elevate his dissatisfaction with certain of the case management decisions taken by Employment Judge Dawson into what is an unsustainable allegation of apparent bias. Decisions made by the Judge which went in the Claimant's favour are dismissed as being mere pretence on the part of the Judge: a submission which I regard as fanciful. The Claimant has augmented his dissatisfaction with allegations about the conduct of the Judge which cannot in my judgment found any realistically arguable case of apparent bias. The suggestion that the Employment Judge must have conducted a secret correspondence with the Second Respondent's representatives following the hearing on 16 January 2020 is fanciful and would be regarded as such by the fair-minded and informed observer. So too is any suggestion, in the light of paragraph 15 of the Judge's Reasons of 16 March 2020, that the Judge had any undisclosed relationship with the representative of the Second Respondent. The suggestion that the way in which the Claimant alleges the Judge interacted with her during the Hearings demonstrates that this is untrue or that he might be biased towards the Second

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Respondent is, in my judgment, also fanciful and would also be regarded as such by the fair-minded and informed observer in possession of all the material facts.

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48. There is no realistic prospect, if this part of the Appeal were to proceed to a Full Hearing, of this Tribunal overturning Judge Dawson's decision not to recuse himself.

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Paragraph 4 of the Order of 16 March 2020: Refusal of Reconsideration

49. The Claimant challenges paragraph 4 of Judge Dawson's Order of 16 March 2020, whereby the Judge refused the Appellant's application for reconsideration of his case

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management directions of 16 January 2020. The Judge's Reasons for refusing the application for reconsideration were as follows:

> **"57. I have treated application 3 as an application for me to reconsider my decisions of 16 January 2020 insofar as they relate to the 2nd respondent's application of 21 November 2019.**

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> **58. I have considered the principle set out in *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated "*An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see Rule 70 of the Employment Tribunal Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in Newcastle upon Tyne City Council v Marsden [2010] ICR 743, para 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Iron sides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here.*"**

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> **59. The arguments made by the claimant in the present application (apart, perhaps, from bias) are ones which were or could have been made at the hearing. The arguments are centred around a conviction by the claimant that he can prove the documents that are to go into the hearing bundle were either not in existence at the time of the relevant Facebook entries or had not been communicated to him. That may, or may not, be the case but that does not determine the question of whether the documents can go into the hearing bundle and be placed before a tribunal. The documents, to the extent that they were in existence at the time are relevant and admissible for the reasons which I gave the earlier hearing. The question of whether they were or were not in existence at the relevant time, and the question of whether they were**

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communicated to the claimant at that time, is a question for the tribunal hearing the case. The claimant's submissions do not persuade me that the decisions I made were wrong.

60. There is no reason for me to revoke or vary the decisions I have made."

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50. The Claimant submitted that the effect of Judge Dawson's decision was to allow material to be put into the hearing bundle which had been proven to be false, both in relation to its content and the method of its communication. The Claimant submitted in his Skeleton Argument that there were "*serious clues of forgery*" in relation to the Second Respondent's social media policy that had been disclosed and that the Judge had permitted the inclusion in the hearing bundle of documents whose authenticity was disputed.

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51. Merely to state those propositions is to demonstrate the correctness of Judge Dawson's case management decisions. The forum for the Claimant to dispute the authenticity of documents disclosed by the Respondents is the Full Hearing in the Employment Tribunal, not a Case Management Preliminary Hearing. If the Claimant wishes to allege that documents have been falsified by one or more of the Respondents in order to bolster their case against him, then that matter can only be determined at the Full Hearing and Judge Dawson was entirely correct not to proceed on the basis that the Claimant's allegations regarding the documents had already been substantiated. In order for the Employment Tribunal dealing with the case at the Full Hearing to be able to rule on the authenticity of the documents, they need to be in the bundle before it. The Claimant referred me to paragraph 13 of Guidance Note 2 which is appended to the Employment Tribunal President's Guidance on General Case Management dated 22 January 2018; but, in my judgment, that Guidance does not support his argument because it states clearly that disputed documents should be put before the Tribunal:

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"The parties then co-operate to agree the documents to go in the hearing bundle. The hearing bundle should contain only the documents that are to be mentioned in witness statements or to be the subject of cross-examination at the hearing, and which are relevant to the issues in the proceedings. If there is a dispute about what documents to include, the disputed documents should be put in a separate section or folder, and this should be referred to the Tribunal at the start of the hearing."

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52. The Claimant submitted that Judge Dawson erred in permitting the inclusion in the bundle of documents whose authenticity was disputed and that such documents should only have been placed in the hearing bundle once their authenticity had been positively determined. In my judgment, there was clearly no error of law by the Employment Judge in this respect because, as he correctly stated, the appropriate forum for determination of those issues was the Full Hearing. I do not accept the Claimant's submission that it was necessary for the Employment Judge to exclude from the bundle of documents for the Full Hearing documents where authenticity was disputed. The decision to include the disputed documents within the hearing bundle, on the basis that their authenticity would be determined at the Full Hearing, was therefore one which was well within the case management discretion of the Employment Judge and not one which there is a reasonable prospect of this Tribunal overturning on appeal.

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53. The Claimant contended more generally that the Employment Tribunal had not only failed to remove demonstrably false documents from the hearing bundle but also that it had failed to proceed, both generally in relation to its case management decisions and when refusing to remove these documents from the Hearing Bundle, on the basis that the Second Respondent was acting in "*bad faith*" in defending the Claim; but that, just as with the proposition that certain of the disclosed documents are indeed false, assumes what is very much in issue and a matter for the panel at the Full Hearing.

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54. As to the Claimant's contention that he has already demonstrated that at least one of the documents disclosed by the Respondents, and relied upon by them support their case, is a forgery or fake, I have already indicated that I do not accept there is any error of law on the part of the Employment Judge in not proceeding on this basis. The question of whether one or more of the Respondents has indeed falsified a document which they rely on is clearly not appropriate for determination at a Case Management Preliminary Hearing, where no evidence is heard. It is a question of fact. In my judgment, Employment Judge Dawson was clearly correct to proceed on the basis that the correctness of the Claimant's allegations in this respect were a matter for the Full Hearing.

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Paragraph 5 of the Order of 16 March 2020: No 'Unless' Order

55. At paragraph 5 of the order of 16 March 2020, Judge Dawson made a number of orders for specific disclosure against both the Respondents, on the standard basis set out in Paragraphs 31.6 and 31.7 of the **Civil Procedure Rules 1998**. This included documents dealing with the approval of the Second Respondent's social media policy and documents showing which version of the policy was in force at the time of the sending of the Facebook messages which led to the Claimant's dismissal, and various documents and communications relating to the disciplinary investigation into the Claimant. Judge Dawson's reasons for making these orders were as follows:

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> **"61. These are applications for specific disclosure. Although the terms of the order sought are not easy to follow, given that the respondents assert that the documents which I directed should be in the bundle relevant documents, I consider that other documents which show**
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> **a. when those policies / guidelines were adopted**
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> **b. what their status was well adopted and**
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> **c. which version was in force at the date of the relevant Facebook posts**

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> **could be potentially relevant documents.**
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> **62. The respondents resist this application, firstly, on the basis that the demands made on the claimant's application overly owners disproportionate to the issues.**
>
> **63. I do not think that objection is wholly right. The request made are relatively limited and really amount to documents which would show the status of the policies etc. at the date of the Facebook posts. It is the respondents who seek to place these documents before the tribunal and, in those circumstances, other documents which show when the documents came into force and what status they had are relevant and should be disclosed.**

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> **64. However, aspects of the application are too wide as drafted. For instance if the 2nd respondent is required to disclose every document which shows which version of the Social Media Policy was in force at the date the Facebook posts, the 2nd respondent would potentially have to trawl through thousands of documents which may have nothing to do with the present case. Thus, I consider it appropriate to limit disclosure to that which would be ordered as standard disclosure in civil proceedings in the County or High Court. Such an order is limited to:**

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> **(a) the documents on which the party relies; and**
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> **(b) the documents which –**
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> **(i) adversely affect his own case;**
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> **(ii) adversely affect another party's case; or**
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> **(iii) support another party's case**
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> **the documents on which the party relies; and**

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> **65. Moreover, the search which the respondent must undertake is limited to that which is reasonable within the meaning of the Civil Procedure Rules 1998.**

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> **66. The respondents further resist disclosure because they state "Importantly, it was made clear by the writer at the preliminary hearing, and acknowledged in the subsequent Order of 27th January 2020, that the 2nd Respondent does not say that the Claimant was subject to the terms of this policy or any other policy owned [sic] by the 2nd Respondent, or that he saw these policies in advance of the disclosure process; the 2nd Respondents policies are only applicable to employees and the claimant was an agency worker. It has been provided because its ethos and guidance would have informed the 2nd Respondent's response to the messages sent by the Claimant to one of their employees via Facebook and would have governed the behaviour of [the Claimant's manager], the employee who received messages from the Claimant." Whilst that point is noted, it seems to me that [it] is still relevant to know when the 2nd respondent's policies were in force and what their status was."**

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56. The Claimant contends that Judge Dawson erred in law in failing to make the order for specific disclosure as an 'unless' order. There are a number of difficulties with that argument. The first is that the Claimant did not ask Judge Dawson to make the order for disclosure as an 'unless' order. When I raised this point with the Claimant, he contended that Judge Dawson should have made such an order of his own motion, even without the Claimant raising the matter

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himself, because the Claimant was unrepresented. I regard the prospect of this Tribunal overturning the order made by the Judge on this basis as fanciful, not least because there do not appear from the terms of the Tribunal's case management decisions, any criticisms of the Respondents (particularly in relation to compliance with earlier Orders made by the Tribunal) which would have justified or required the order for specific disclosure being made on an 'unless' basis; indeed when rejecting the Claimant's strike-out application, Judge Dawson stated at paragraph 85 of his Reasons that there was "*no objective basis*" for the Claimant's allegations of misconduct and "*no evidence that either respondent was being deliberately obstructive and both respondents seemed to me* [in January 2020] *to be operating in a constructive way*." I regard the argument that Judge Dawson erred in law in not making of his own motion order he was never asked to make, and for which there was in any event no obvious basis, as hopeless in the circumstances.

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57. In any event, insofar as the matter now comes before this Tribunal on appeal, disclosure has now taken place. It is open to the Claimant - and has been since 25 March 2020 - to raise any alleged non-compliance with paragraph 5 of Judge Dawson's order of 16 March 2020 before the Employment Tribunal. Whilst that does not determine the question of whether or not Judge Dawson should have made an 'unless' order in the first place, it is right to note that the Claimant has had since 25 March 2020 alternative means, apart from this Appeal, to pursue the consequences of any non-compliance with Judge Dawson's order in this respect.

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Paragraph 6 of the Order of 16 March 2020 – Expert Evidence

58. At paragraph 6 of his Order of 16 March 2020, Judge Dawson refused the Claimant's application that the Tribunal should itself appoint an expert witness. His reasons for doing so were as follows:

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> **"67. The tribunal is an adversarial not an inquisitorial process. It does not appoint experts in the way sought by the claimant.**
>
> **68. If the claimant wishes to call expert evidence it is for him to obtain that evidence and make any necessary applications to the tribunal. He should take into account *De Keyser Ltd v Wilson [2001] IRLR 324* which gave guidelines for general use in cases including "Careful thought needs to be given before any party embarks upon instructions for expert evidence. It by no means follows that the because a party wishes such evidence to be admitted that it will be."**

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59. On appeal, the Claimant contends that the appointment of an expert witness was necessary to objectively certify the existence and content of certain communications between the parties, and between the Claimant's manager and the Second Respondent, given the Second Respondent's alleged bad faith and reliance on false evidence. He referred me to material dealing with the verification by experts of disputed documents, in particular electronically created documents. On one level, the suggestion that it is only for an expert witness to demonstrate that evidence disclosed or given by the Respondents is false appears to be a suggestion that the Employment Tribunal should abdicate its own function of deciding whether evidence before it is false to such an expert. But, in any event, I consider that the reason given by Judge Dawson for refusing this application is unassailable on appeal. If the Claimant wishes to adduce expert evidence before the Employment Tribunal then he should obtain such evidence and made the necessary application to the Tribunal. It was clearly not for the Employment Tribunal to appoint its own expert in the circumstances, for the reasons that Judge Dawson gave. There is no realistic prospect of this Tribunal overturning Judge Dawson's order in this respect.

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Paragraph 7 of the Order of 16 March 2020 – The Creation of a New Bundle

60. At paragraph 7 of his Order, Employment Judge Dawson refused the Claimant's application to create a new bundle for the Full Hearing. His reasons for doing so were:

> **"75. This application is refused for the reasons given above and the fact that it amounts to an application for reconsideration of earlier orders. The tribunal requires a bundle to be produced. A joint bundle has been produced and the claimant has been given permission to also bring a supplemental bundle to the tribunal. To order the creation of a new bundle would increase costs to not be in accordance with the overriding objective."**

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61. The Claimant's challenge to this part of Judge Dawson's order is again based on the proposition that documents whose authenticity he disputes should be excluded from the Hearing Bundle until they are proven to be authentic. For the reasons I have already given above, that argument lacks merit and there is no realistic prospect of this Tribunal overturning Judge Dawson's refusal to order the creation of a further bundle. The Judge was clearly entitled to refuse this application for the reasons that he gave.

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Paragraph 8 of the Order of 16 March 2020 – Refusal to Amend Page Limits / Word Limits

62. By paragraph 8 of his Order of 16 March 2020, Judge Dawson refused the Claimant's application to remove the 350-page limit on the content of the Hearing Bundle and the limitation on the length of witness statements. At paragraph 76 of his Reasons, Judge Dawson stated that there was "*no basis for removing the limit on the joint bundle or the witness statements for the reason given above*". That appears to be a reference to paragraph 50 of his Reasons, which is set out in the lengthy quotation which appears at paragraph 37 of this judgment, above.

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63. Before this Tribunal, the Claimant alleges that these "*absurd and unscientific limitations*" have resulted in the unfair exclusion of documents he wishes to put into the Hearing Bundle and are contrary to justice. He contends that they do not permit a fair trial.

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64. In my judgment, there is no realistic prospect of this Tribunal overturning this case management decision on appeal. It is clearly within the power of the Employment Tribunal to regulate the volume of evidence supplied to the panel at the Full Hearing, in order to ensure that it is proportionate to the issues in the case. I reject as wholly unarguable the Claimant's proposition that limitations on the size of hearing bundles and witness statements are antithetical to the right to a fair trial. Indeed, by focusing the minds of the parties on the relevant issues and evidence, such limits may serve to ensure the fairness of a hearing. Rule 41 of the **Employment Tribunal Rules of Procedure 2013** provides *inter alia* that the Tribunal may regulate its own procedure, having regard to the requirement of a fair hearing and the principles in the overriding objective. Rule 45, to which Judge Dawson drew attention at paragraph 77 of his Reasons when refusing this application, also expressly permits an Employment Tribunal to limit the time taken by a party in presenting its evidence; as I have endeavoured to explain, there is good reason for that. I also note that Judge Dawson expressly permitted the Claimant to create his own supplementary bundle for the Full Hearing and also permitted the Claimant to rely on a witness statement twice the length of any of the witnesses for the Respondents.

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65. In my judgment, Judge Dawson's conclusion that the limits placed on the size of the hearing bundle and on the witness statements in this case (as adjusted in response to the Claimant's complaints about them) were appropriate and that they were proportionate to the

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issues raised as they stood at the time of his decisions was one that was clearly open to him on the facts. It is not one which there is any realistic prospect of this Tribunal overturning on Appeal for error of law; these issues are primarily ones of case management for the parties and the Employment Tribunal (and, ultimately, for the panel at the Full Hearing) to consider. The Claimant's Appeal amounts to an attempt to have this Tribunal substitute its own decisions about the management of the case for those made below, rather than disclosing any reasonably arguable error of law.

Paragraph 11 of the Order of 16 March 2020 - Refusal to Order the Removal of Documents from the Hearing Bundle

66. By paragraph 11 of his Order of 16 March 2020, Employment Judge Dawson refused the Claimant's application to remove from the Hearing Bundle documents that had been included as a result of the Judge's earlier decision to grant the Second Respondent's application of 21 November 2019. Judge Dawson's reasons for refusing the application were as follows:

> **"88. This is the application described as number 2 in the claimant's letter of 29th of February 2020… The claimant asks that all documents requested to be introduced in the bundle through the application submitted on 21 November 2019 be automatically removed from the bundle. This appears to be yet another attempt to persuade me to reconsider the orders which I made in January 2020 [For] the reasons which I have already given I decline to do so."**

67. The Claimant challenges this paragraph of Judge Dawson's Order on a similar basis to several of the other paragraphs. He contends that the Judge erred in law in refusing to remove from the bundle documents which had not already been positively established as being authentic. In his Skeleton Argument, the Claimant stated, "*Only documents proven to be authentic must receive the right to be in the bundle.*"

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68. The Appeal against this part of Judge Dawson's order also has no realistic prospect of success, for the reasons that I have already given in relation to the challenges to other paragraphs of the Order which raise similar arguments. It is not the case that only documents already "*proven to be authentic*" can be included in the hearing bundle. If there is a dispute as to authenticity then that is a matter to be determined at the Full Hearing. The Judge was fully entitled to refuse reconsideration for the reasons that he gave.

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The Second Appeal

69. At paragraph 3 of his Order of 16 March 2020, Employment Judge Dawson ordered that the Claimant's application to transfer the case to another Region (the Claimant had suggested that it be transferred to London) should be considered by the Regional Employment Judge. In his Reasons, Judge Dawson stated at paragraph 56:

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> **"The Claimant appears to allege that every judge who has been involved in his case from the South West Region is biased against him. He therefore seeks a transfer to another region. The question of transfers to other regions is for the Regional Employment Judge and that part of the claimant's application will be referred to him."**

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70. The Claimant's application for transfer was refused by Regional Employment Judge Pirani on 22 April 2020. The reasons given were as follows:

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> **"Numerous salaried and fee-paid Employment Judges sit within the South West Region. Cases are allocated to those judges by the Regional Employment Judge. Neither the HMCTS administration nor the Regional Employment Judge is empowered to interfere in the judgments or case management decisions of those individual judges. When allocated to individual cases each Employment Judge makes decisions autonomously and independently from other judges. Applications for a judge to recuse him or herself must be made to the judge in question.**
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> **Because the claimant made various applications the file has been referred to several different judges within the region. It appears that decisions made by those judges are entirely innocuous. For example, the correspondence came before Employment Judge Rayner who directed the tribunal to write on 21 September 2019 saying that in light of the responses to the claimant's application the Tribunal believes there is no need to progress the said application. Similarly, later correspondence was referred to Employment Judge Gray who directed the issues raised therein would be considered at the preliminary hearing on 16 January 2020.**

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Therefore, there is no legitimate reason to transfer this case to another region or to another Employment Tribunal. The claimant has already appealed decisions and orders made by Judge Dawson. These matters will be considered by the Employment Appeals Tribunal."

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71. Before me, the Claimant made a number of allegations about the conduct of an Employment Judge (not, I apprehend, either Judge Dawson or Judge Pirani) who had dealt with a previous claim which he had made against a former employer in 2015. The Claimant alleges that the Employment Judge positively attempted to prevent the Claimant from obtaining compensation to which he was entitled, including by delaying proceedings until after his former employer had become insolvent. The Claimant however provided no evidence, beyond the assertions he made, to support these allegations. He contended that together with his treatment by the Judges who had dealt with the present Claim, this demonstrated that he could not receive a fair hearing anywhere in the South West Region because all the Employment Judge within the Region had, in their different ways, demonstrated bias in favour of the respondents to his claims.

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72. In my judgment, the Claimant's challenge to Regional Employment Judge Pirani's refusal to transfer this case out of the South West Region has no merit. As the Regional Employment Judge stated, each Judge makes decisions autonomously and independently from other Judges. Even if the Claimant had demonstrated that any of the individual Judges whose conduct he has directly impugned had been biased against him (which I consider he has not), that would not be sufficient to justify a transfer of his Claim outside the South West Region (where a large number of Employment Judges sit) and nor would it indicate that there is, to use the Claimant's own term in his Skeleton Argument for the Rule 3(10) hearing, a "*synchronisation*" of the Judges in the Region against him. On the material and argument that has been provided to me, I regard that claim as being fanciful.

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The Third Appeal

73. In this Appeal, the Claimant challenges the decision of Regional Employment Judge Pirani to refuse his application for a stay of proceedings. That decision was communicated to the parties on 29 May 2020. The Regional Employment Judge stated that it was the interests of justice that the Claim should be heard in the near future and that no useful purpose would be served by a stay. He also stated that the Claimant would be able to raise issues regarding the policies disclosed by the Respondents in his own evidence and in his questions to the Respondents' witnesses.

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74. The Claimant did not press this Appeal in his written or oral submissions, recognising in his Skeleton Argument that the application for a stay of proceedings which had been refused on 29 May 2020 had been superseded by several further applications made by him, including a fresh application for a stay of proceedings which had also been rejected and appealed. However, he did contend that the decision of 29 May 2020 supported his Appeal in relation to the transfer of the case to a different Region; the reason for this, I apprehend, being his criticisms of Regional Employment Judge Pirani's decision.

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75. I do not accept that the refusal of the application for a stay is of any assistance to the Claimant in demonstrating any error of law in the earlier decision not to transfer the Claim out of the South West Region. In any event, for the avoidance of any doubt, I do not regard Judge Pirani's refusal to stay the Claim, or any other part of the decision made on 29 May 2020, to contain any reasonably arguable error of law. Judge Pirani was clearly entitled to refuse the

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application to stay the proceedings and order that the hearing proceed for the reasons that he gave. He was also entitled to point out to the Claimant that rather than stay the proceedings, the issues raised regarding the disclosed documents should be pursued at the Full Hearing. In my judgment, there is no reasonably arguable error of law in the decision reached here, either.

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Conclusion and disposal

76. I refuse the Rule 3(10) applications made by the Claimant. There is no realistic prospect of this Tribunal overturning any of the decisions made by Employment Judge Dawson and Regional Employment Judge Pirani that are now challenged in these Appeals. Accordingly, as there is no reasonable basis for appeal, I confirm the decision made by Judge Auerbach that no further action will be taken in relation to the Notices of Appeal. The Appeal which was withdrawn by the Claimant and the three other Appeals which were the subject of the applications that were pursued before me therefore stand dismissed.

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