Case Numbers: 2302607/2015

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE ELLIOTT**

MEMBERS: **MS R MACER**

MS M FOSTER-NORMAN

BETWEEN:

Ms A Irish

Claimant

AND

Lambeth Elfrida Rathbone Society Ltd

Respondent

ON: **2 February 2017**

IN CHAMBERS: **4 April 2017**

Appearances:

For the Claimant: **Mr S Parkes, solicitor**

For the Respondent: **Ms J Bann, solicitor**

RESERVED JUDGMENT ON RECONSIDERATION

The judgment of the tribunal is that the original decision is confirmed.

REASONS

1. By a judgment sent to the parties on 3 August 2016 the claims brought by Ms Alaura (Laura) Irish failed and were dismissed.
2. By an email sent to the tribunal on 15 August 2016 the claimant, then acting in

person, made an application under Rule 70 of the Employment Tribunal Rules of Procedure 2013 for a Reconsideration.

Documents

3. The claimant produced a bundle of documents for this hearing of 166 pages. Many of the documents were replicated from the original trial bundle and where possible we cross referenced to the documents before us at the liability hearing. Unfortunately Mr Parkes for the claimant did not have with him a copy of the original trial bundle.

4. A witness statement was produced for the claimant for this hearing. We considered that the application for Reconsideration should be heard first and subject to this, if our decision was to vary or revoke the original decision, the question of hearing further evidence from the claimant would be considered at that point.

5. We had a written submission from the claimant. We heard orally from both parties. There was no written submission from the respondent. All submissions were fully considered, even if not expressly referred to below.

The deposit

6. There was also an issue regarding the refund of a deposit paid by the claimant under Rule 39 of the Employment Tribunal Rules of Procedure. The respondent sought payment of the deposit towards its costs. The claimant relied on the decision of the EAT in ***HCA International Ltd v May EAT/0477/10***.

7. The claimant's position was that the tribunal found that she made protected disclosures and therefore it was not unreasonable for her to continue with her claim.

8. The respondent's position was that it would not pursue an application for its full costs but it wished to claim the deposit of £300 as a contribution towards their legal fees as it is a charitable body.

9. The parties agreed at the end of submissions on the reconsideration application that this application could be dealt with on the papers, depending upon the outcome of the reconsideration application and subject to the claimant being given an opportunity to respond to the respondent's application. We do not therefore deal with the matter of the deposit in this judgment.

The claimant's application for reconsideration – 15 August 2016

10. The claimant said that the respondent changed their case and said that there were four complaints from support workers and that under the Employment Rights Act and "Human Rights Law" she had a right to know the case against her and these allegations were not put to her.

11. The claimant complained that we made a finding that she appealed the grievance decision and said she did not because she was not given the opportunity.

12. The claimant put her position that the respondent fabricated documents in an attempt to "mislead the tribunal and pervert the course of justice". She said she was not on an equal footing with the respondent. She said she was suspended and "4 minutes later the trainer emailed a complaint about her to the Chief Executive Mr Preston". The claimant said Mr Preston lied about working from home.

13. The claimant said that there was no evidence to support Mr Jones' contention as to working on the minutes of the grievance hearing as set out in our findings at paragraph 86 of our Reasons.

14. The claimant said that the respondent "took advantage" of her as a litigant in person. She said that the list of issues and the hearing date was fixed without her input. This was at a hearing before Employment Judge Spencer on 3 February 2016. The claimant also complained that the issue of time limits was not raised with her in advance by the respondent.

15. The claimant said that as she is dyslexic she found the bundle confusing and did not get a reasonable opportunity to read and comprehend the documents and she did not get help to understand how the proceedings would progress.

16. The claimant said that for the above reasons the judgment warranted reconsideration.

17. The claimant acted in person at the liability hearing and in making her application for reconsideration. On 23 December 2016 solicitors went on record for the claimant.

18. A written submission for the claimant was submitted to the tribunal on 27 January 2017 with a witness statement.

The written submission from the claimant's solicitors – 27 January 2017

19. In the written submission prepared by solicitors, the claimant submits that the protected disclosures were causative of dismissal. The claimant relies on the fact that performance concerns were not raised with her in advance and that she passed a probationary meeting on 1 April 2015 and was not told that improvement was required and was not given a warning.

20. The claimant submits that the respondent's "whole attitude" towards her changed after her protected disclosures. The claimant also complains about the timing of the complaint made by the trainer Ms Dillon-White which arose after her disclosure and within seconds of her suspension.

21. It was submitted that the respondent failed to investigate specific allegations against the claimant. The claimant relied on the minority decision that the respondent wished to "build a picture" of the claimant's conduct.

22. The claimant disputes Mr Preston's evidence that he did not become aware of the allegations made by the claimant against other support workers until after he heard her appeal. The claimant complains about the amendments made to the minutes of the appeal hearing.

The oral submission from the claimant

The first new document

23. The claimant sought to admit new documentary evidence. The first document was at pages 72-74 of the Reconsideration bundle. It was an email dated 12 January 2017 sent by Rhiannon Gayle, who we were told is the claimant's daughter, to the claimant. It comprised unredacted notes relating to and containing personal data concerning Service User P, in respect of whom we found that the claimant made her first protected disclosure on 13 February 2015.

24. The email between the claimant and her daughter did not show the date upon which this information was originally typed or generated. It said on page 74 "Sent from my iPad" which normally relates to the iPad of the sender. The claimant indicated that it was her iPad.

25. The claimant relied on this to support her case that, contrary to the majority finding, she was subjected to a detriment in being asked to re-read files in her third week of employment, on 18 and 19 February 2015.

26. The claimant submitted that the reason she did not adduce this evidence at the original hearing was because she had been asked to destroy it. It was submitted that "*obviously she didn't forget that they [the notes] were there".* It was submitted that this document was evidence of the claimant's competence and that she did not need to re-read the files, so that it was a detriment for her to be asked to re-read them.

27. The claimant submitted that this evidence was in her mind at the time of the original hearing but she "*did not have the confidence*" to produce them for the tribunal hearing. She thought she had destroyed them but her daughter found them and emailed them to the claimant's hotmail account. We were not told why or how these notes had found their way on to the daughter's device.

28. The claimant relied on the overriding objective and submitted that being she was not on an equal footing with the respondent and she had been instructed by the respondent to destroy the notes. She said she did not know what she could produce and what she could not.

The second new document

29. The second document was at page 68 of the Reconsideration bundle. It was a handwritten document which the claimant said was from Service User K's father. We made findings in relation to Service User K at paragraph 49. The document is written in large lettering filling the page – the service user's name is unredacted; we redact it here below. There is no name or address of the person who has given this information. Some words were cut off from the side of the page when photocopied. We cut the word short below where it cannot be read. There were two or three words at the bottom of the document that we also could not read.

> *"I K's father state: habitua… K goes in the road when he is upset and Rathbone know this 14-4-15 was not Lauras doing. 5-9-2016."*

30. The claimant submitted that because she was "banned" from contacting the respondent's service users she could not have contacted K's father before her

dismissal. It was also submitted that at the time of the hearing the claimant did not have K's father's address. The claimant submits that it goes to the question of the causation of her dismissal.

The probation was otherwise "successful"

31. The claimant submitted that she passed a probationary review on 1 April 2015 "without incident" and relied upon paragraph 46 of our findings. We were taken to page 115b of the trial bundle which was a risk assessment for the claimant dated 2 March 2015 in relation to lone working. This said "*Under no circumstances is Laura to have any unsupervised contact with any service user".*

32. It was submitted that anything that happened when the claimant was unsupervised with a service user should not have happened and therefore there is mitigation for anything that took place.

33. The claimant took us to the provisions of the Staff Handbook (page 92 trial bundle) and the terms of the probationary period and said that the claimant had not been told about any concerns about her performance.

34. The claimant said that she had one supervision meeting on 1 April 2015 and that she was due to have a second meeting on 15 April 2015 but that was cancelled as everyone was required to go on safeguarding training with Ms Dillon-White on that date. The claimant asserted that at the second meeting she would have been approved to work without supervision. We heard no evidence at the liability hearing that this was the case.

35. The claimant relied on an email at page 125 of the liability bundle dated 14 April 2015 asking her and another support worker, also named Laura, to attend to a service user on 21 April. The claimant said this was indicative of the respondent being satisfied with her work.

No prior concerns

36. The claimant said she was not advised prior to the dismissal hearing that there were any requirements to improve or that there were any concerns prior to making her disclosures. It was submitted that this was a "witch-hunt" against the claimant. It was submitted that the respondent took no steps to investigate complaints made by the claimant about other support workers, namely Ms Douglas or Puetanist. The claimant contrasts this with the position of complaints made by other about herself.

37. The claimant complains that the dismissal letter (trial bundle page 201) refers to the relationship between the claimant and the respondent as being "irreparably damaged" and that this had not been put to her previously.

Mr Preston's evidence

38. Mr Preston the Chief Executive heard the claimant's appeal against dismissal on 15 June 2015. The claimant submitted that he said at paragraph 22 of his witness statement that if he had known at the appeal hearing about the claimant's allegation that support worker Ms Hanningan had allowed a service user to rub her groin, he would have stopped the hearing and contacted the

local authority safeguarding team. The claimant's case is that Mr Preston "knew very well" about this prior to her appeal.

39. The claimant said she had heard Mr Preston and Mr Jones through the wall, discussing it in the next room when she met with Mr Jones on 16 April 2015 in the Old Library. The claimant submitted that Mr Preston had to arrange for the minutes of the 8 May 2015 dismissal meeting to be altered because he did not want it to be documented that he was in the same building at the same time with Mr Jones on 16 April 2015 and was thus aware of the claimant's disclosures. The claimant's submission is that Mr Preston was aware of the claimant's disclosures because he and Mr Jones were speaking directly on 16 April.

Ms Dillon-White's evidence

40. The claimant questioned whether this witness went to a funeral when she said she was going to go to the respondent's offices to give a statement. The claimant says that Ms Dillon-White was dishonest when stating that she had to attend a funeral and this was part of a witch-hunt against the claimant. It is not denied that Ms Dillon-White provided a statement to the respondent about her concerns about the claimant's behaviour at training on 15 April 2015 as this statement was before us at page 142 of the trial bundle.

The time point

41. It was submitted for the claimant that she felt "ambushed" at having to deal with a time point at the liability hearing as it had not been raised in advance by the respondent. We pointed out that this is a jurisdictional matter which we have to consider in any event.

42. Mr Parkes for the claimant submitted that the claimant "*did not do herself justice and wants a second bite of the cherry*" as she was only "challenged" on this at the hearing. Mr Parkes said for the claimant that she was advised by "*more than one firm of solicitors*" and by ACAS that she could not commence proceedings until she had exhausted the respondent's internal procedure. She said she pursued it at the earliest opportunity once that process had been exhausted.

43. The claimant also sought for the first time at this hearing to argue that there had been some ongoing detriment.

The claimant as a litigant in person with dyslexia

44. It was also submitted by the claimant herself that as she is dyslexic, she found the bundle confusing and did not get a reasonable opportunity to read and comprehend the documents and she did not get help to understand how the proceedings would progress.

45. By the date of the full merits hearing in June 2016 the claimant had already attended two preliminary hearings and had given evidence at the second such hearing.

The oral submission from the respondent

New documentary evidence

46. The respondent submitted that the iPad note at page 74 of the Reconsideration bundle was undated and that by the claimant's own admission it was in her mind during the course of the proceedings. The respondent said that there was no reason why she could not have produced it for the liability hearing. Even if she felt she could not produce it, the claimant did not refer to it in her witness statement. The respondent submitted that there was an issue as to the credibility of this evidence.

47. The respondent submitted that the document had no influence on the outcome and that it was "irrelevant". It related to the detriment case which was in any event out of time.

48. It was submitted that there was no reason why the note from the service user's father at page 68 of the Reconsideration bundle could not have been obtained for the liability hearing. The claimant "flouted" the ban on contacting service users but did not do so until after the tribunal had made its decision. The respondent submitted that it was not a credible note.

49. The respondent said that the tribunal was not asked to make findings about what happened with service user K. The issue for the tribunal was whether the claimant was dismissed for making protected disclosures. The document therefore had no impact on the outcome and as such the interests of justice did not require the "reopening" of the case.

The probation was otherwise "successful"

50. The respondent disputed the claimant's contention that her probation was otherwise successful until she made her disclosures. It was denied that the supervision meeting on 1 April 2015 said that it was a "success". It was no more than an assumption on the claimant's part that she was going to be approved as competent to work alone with service users at a supervision meeting on 15 April 2015.

No prior concerns

51. In relation to the dismissal letter stating relationship between the claimant and the respondent as being "irreparably damaged" the respondent said that this was a consequence of the claimant's conduct and not a charge in its own right.

Mr Preston's evidence

52. The respondent relied upon our findings at paragraph 130 of the liability judgment. It was submitted that the version of the evidence accepted by the tribunal was the respondent's version.

Ms Dillon-White's evidence

53. The respondent submitted that Ms Dillon-White was a credible witness and that the claimant had the opportunity to cross examine her. The claimant was kept to the issues by the tribunal.

Time limits

54. The respondent said that the submission made at the hearing today was an entirely new submission that the claimant had been advised that she could not present a claim until she had exhausted the respondent's internal procedure. The respondent said that if this were the case it would have been on the tip of the claimant's tongue, but was not mentioned at all. It is the reasonable practicability test and if the wrong advice was given the recourse is via the lawyers and not the tribunal.

55. The respondent said in any event this went to the detriment claim and the finding was that the claimant suffered no detriment.

<u>The claimant as a litigant in person with dyslexia</u>

56. The respondent submitted that litigation is difficult for all litigants in person and the claimant had all the documents prior to the hearing. The tribunal explained the process to the claimant and guided her. The respondent said that there was no reason for the claimant not to understand and she is articulate and intelligent. The respondent pointed to page 150 of the Reconsideration bundle which showed the claimant as having mild dyslexia. Only one page of this report had been submitted in the original trial bundle. The full version was in the Reconsideration bundle.

57. The respondent concluded by submitting that the claimant's application was an attempt by the claimant to resubmit her case with a different emphasis with the benefit of legal representation. On the respondent's submission it is not in the interests of justice after a three day hearing and one day of tribunal deliberation for a further hearing to take place.

The law

58. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides that a tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

59. Rule 70 gives the tribunal a wider discretion than under Rule 34(3) of the Employment Tribunal Rules of Procedure 2004, but the case law under the old Rule 34 is still considered relevant. Whilst the discretion is wide, it has been held not to be boundless; it must be exercised judicially and with regard, not just to the interests of the party seeking the review, but also to the interests of the other party and to the public interest requirement that there should, as far as possible, be finality of litigation - ***Flint v Eastern Electricity Board 1975 ICR 395 at 401***, per Phillips J. As with the exercise of any other power, tribunals must seek to give effect to the overriding objective in Rule 2 of the 2013 Rules.

60. Rule 34(3)(e) of the 2004 Rules included as one of its grounds, the interests of justice requiring a review. The interests of justice have to be seen from both sides. In ***Redding v EMI Leisure Ltd EAT 262/81*** the claimant appealed against the tribunal's rejection of her application for a review (as reconsideration was then called) of its judgment. She argued that it was in the

interests of justice because she had not understood the case against her and had failed to do herself justice when presenting her claim. The EAT observed that what this came down to was the claimant saying that she had not done herself justice at the hearing, so justice required that there should be a second hearing so that she may. The EAT said that justice meant justice to both parties. The EAT considered that it was down to the claimant's inexperience in the situation and her application failed.

61. The old Rule 34(3)(d) included as a ground for review that new evidence had become available since the conclusion of the hearing to which the decision related, provided that its existence could not have been reasonably known of or foreseen at the time.

62. One of the leading cases on the introduction of new evidence is ***Ladd v Marshall 1954 3 All ER 745, CA.*** The test in that case has three limbs which are: (a) that the evidence could not have been obtained with reasonable diligence for use at the original hearing; (b) that it is relevant and would probably have had an important influence on the hearing; and (c) that it is apparently credible.

63. The authorities, including ***Ladd v Marshall,*** were reviewed by Eady J in the EAT in ***Outasight VB Ltd v Brown UKEAT/0253/14*** in which she held that the case law under the 2004 Rules remained relevant. In ***Outasight*** the employment tribunal revoked its decision on a reconsideration and allowed the claimant to introduce new evidence of the fact that the respondent's director and sole witness had previous convictions for dishonesty. The EAT set aside the revocation and restored the tribunal's original decision holding that not only had the tribunal been wrong to admit the new evidence when the test for admissibility had not been met, but also that the claimant had sufficient knowledge of the matters which were relevant to the issue of the director's credibility. Even though the claimant was unrepresented at the original hearing, there were no grounds for the tribunal bypassing the ***Ladd v Marshall*** test and interfering with the original decision.

Conclusions

64. The claimant seeks a reconsideration of the decision of the majority on the issue of the dismissal and of the full tribunal in relation to the detriment decision. The minority decision on automatically unfair dismissal is in her favour.

<u>The time point</u>

65. Mr Parkes for the claimant submitted that the claimant "*did not do herself justice and wants a second bite of the cherry*" as she was only "challenged" on this at the hearing. Mr Parkes said that the claimant was told by more than one firm of solicitors and by ACAS that she could not commence proceedings until she had exhausted the respondent's internal procedure. The claimant said none of these things at the liability hearing when asked about it.

66. The submission made at the Reconsideration hearing contradicted the oral evidence given by the claimant at the liability hearing. She was asked in cross-examination whether she took advice about the time limit and she said

she did not. This is not consistent with her latest position that she took advice from more than one firm of solicitors and ACAS. She said at the liability hearing that she had gone on line and looked things up for herself.

67. The submission that the claimant did not do herself justice and wants a second bite of the cherry falls squarely within the scope of the case of ***Redding v EMI Leisure*** (above). We are bound by this decision and we reject this submission for the reasons given by the EAT.

68. The claimant argued for the first time at this hearing that there had been an "ongoing detriment". This was new and had not been argued before. The detriment case was discrete. It related to re-reading files in the first week of her employment and to an allegation that she had been excluded from conversations on 18 and 19 February. We found unanimously that the second detriment did not take place. By a majority we found that the first detriment relied upon was not a detriment.

69. The claimant made no submission in relation to the second detriment. Even if this claim were within time, it fails on its facts in any event.

70. On the first detriment, the majority found against the claimant on the facts. It related specifically to re-reading files on 18 and 19 February.

71. We unanimously accept the evidence which the claimant gave at the original liability hearing rather than the assertion which she now makes. If the claimant is right on the time issue, that she took advice from more than one firm of solicitors on this issue, then her recourse lies with them.

<u>New documentary evidence</u>

72. The claimant submitted that she had the iPad note relating to Service User P in mind at the last hearing but did not produce it firstly because she thought she had destroyed it and secondly because she did not know what she could produce and what she could not.

73. She made no reference to the existence of this note at the liability hearing, even though she submits she had it in mind. There was no application for specific disclosure of this note from the respondent if she thought she had destroyed her own copy. We had no explanation as to why or when this highly confidential information had been shared with the claimant's daughter or the date of its original creation.

74. The majority of the tribunal decided that rereading the files was not a detriment in week 3 of employment. The claimant said in her meeting with Mr Jones on 13 February 2015 that she was not prepared for the state of the property and did not realise that people lived this way (liability judgment finding paragraph 26).

75. The view of the majority, who found against the claimant on the issue of whether this was a detriment, is that we saw no reason why, with reasonable diligence, this evidence could not have been produced at the original hearing. However, even if we had seen this at the liability hearing, it would not have changed the view of the majority that re-reading the files in week 3 was not a detriment. We as a majority take the view that it was a reasonable and

constructive instruction for the respondent to give in the circumstances in week 3 of the claimant's employment

76. In relation to the document said to be from Service User K's father at page 68 of the Reconsideration bundle, Mr Parkes for the claimant submitted that she contacted K's father after she was dismissed. We noted that the date of the document was 5 September 2016 just over a month after our decision on liability was sent to the parties.

77. This is not a contemporaneous document. It is a document which has been created after the outcome of the liability hearing. It is in the nature of a witness statement, purportedly from Service User K's father. There is nothing to state his name or address. There is nothing to confirm this evidence and the respondent has had no opportunity to test it.

78. The issue for the tribunal in any event was whether the claimant was dismissed for making protected disclosures. The majority finds that even if this statement had been properly produced and introduced at the liability hearing, it would have made no difference to our finding that the claimant was not dismissed for making protected disclosures.

<u>The probation was otherwise "successful"</u>

79. The claimant's case is that she passed a probationary review on 1 April 2015 without incident. Reliance is placed on our findings at paragraph 46. This does not say that the claimant passed the review without incident. It mentions that Mr Sawyer stressed to the claimant that she needed to have a varied interaction style as not everyone responded well to a bouncy and proactive style and others needed a more patient and listening approach. Mr Sawyer thought it important enough to raise with the claimant that she needed to be more reflective depending upon the service user.

80. We made no finding of fact that the claimant passed her probation "without incident" or that she "otherwise sailed through her probation" as submitted. She was only three months in to a six-month probationary period when her dismissal took place. She had not completed her probationary period.

81. We find as a majority that the claimant did not pass the probationary review of 1 April without incident, as Mr Sawyer specifically flagged up a concern. She did otherwise not sail through her probation. There were concerns which led to the probation being unsuccessful. Two complaints had already been raised with Mr Sawyer about the claimant on 19 March 2015 (liability judgment paragraph 45).

<u>No prior concerns</u>

82. The claimant said she was not advised prior to the dismissal hearing that there were any requirements to improve or that there were any concerns prior to making her disclosures. We remind ourselves as a majority that this is and was not an ordinary unfair dismissal claim, because the claimant had less than 2 years' service and the disciplinary procedure did not apply to her during her probationary period (our findings on liability paragraphs 17 and 83).

83. There was no requirement upon the respondent to carry out the sort of

investigation that might be required had the claimant acquired the right not to be unfairly dismissed and/or had the terms of the disciplinary policy applied to her. The same applies to the statement in the dismissal letter that the relationship between the parties had been "irreparably damaged".

84. The majority also relies on the findings above in relation to the probationary period.

Mr Preston and Ms Dillon-White's evidence

85. Neither of these individuals was the dismissing officer. That was Mr Sawyer. Our decision was as to what was in the mind of the dismissing officer when he made that decision to dismiss.

86. In relation to Ms Dillon-White, we had her statement and her live evidence about the claimant's behaviour at a training session and we find unanimously that whether or not Ms Dillon-White went to a funeral on a particular date is not material to our findings in any respect.

87. At the liability hearing there was a conflict of evidence as to whether Mr Preston was in the same building as the claimant and Mr Jones when they met on 16 April 2015. Mr Jones was adamant that Mr Preston was not in the building. The claimant pointed to the notes of the minutes of the 8 May 2015 meeting at page 192 which said "both people were leaving the Old Library". The claimant said this referred to Mr Jones and Mr Preston. Mr Jones said it referred to the claimant and himself.

88. Ultimately for the purposes of our decision, this is not about whether Mr Preston and Mr Jones left the building together but whether they put pressure on Mr Sawyer to make a decision to dismiss or whether Mr Jones put pressure on Mr Preston to make a decision not to overturn the decision to dismiss. The majority finds no reason to depart from our original finding.

The different versions of the minutes

89. We made findings of fact in relation to the minutes of the dismissal meeting at paragraph 93 of the liability judgment. We saw no reason to depart from those findings.

The claimant's dyslexia

90. We turn to the submission that the claimant is dyslexic and found the bundle confusing and did not get a reasonable opportunity to read the documents and that she did not get help to understand how the proceedings would progress. We find as follows.

91. By the date of the full merits hearing in June 2016 the claimant had already attended two preliminary hearings before Employment Judge Spencer, the first on 11 December 2015 and the second, a substantial hearing at which she gave evidence, on 3 February 2016. She represented herself ably at both of those hearings and again before us.

92. The ET1 contains a box (number 12) that asks if the claimant has a disability and "*If Yes, it would help us if you could say what this disability is and tell us*

what assistance, if any, you will need as your claim progresses through the system including for any hearings that may be held at tribunal premises". This was at page 7 of the liability bundle. The claimant ticked "no" in answer to the first question, that she did not have a disability and she did not indicate in the box provided that she would need any adjustments made.

93. At the start of the hearing on 22 June 2016 the claimant told us that when she is stressed she needs more time to find papers and she may need more time to digest a question. We were happy to accommodate this. It was also suggested to the claimant that while the tribunal read in to the documents during the morning of day 1 she could also use this time for her own reading. We originally said we would commence the evidence at 12:00 but revised this to 2pm to allow the claimant more time with the documents.

94. We also spent time at the start of the hearing clarifying the issues with the parties and ensuring that the claimant was ready to proceed and understood what was required.

95. The claimant produced in the liability bundle one page of a dyslexia report, page 58. In the bundle for the Reconsideration hearing she supplied the full document, over 10 pages in length, starting at page 140. The report is dated 18 April 2013. It assesses the claimant as having mild dyslexia (page 150). We were not told why the full report was not produced at the liability hearing.

96. The claimant submitted at the reconsideration hearing in relation to the time point that she had taken advice from "more than one firm of solicitors and from ACAS". Based on this submission, she had access to legal advice prior to commencing her proceedings to assist her with her understanding.

97. The claimant also told the tribunal that she researches legal matters on line. We made findings as to her abilities in paragraphs 99 and 100 of the liability judgment. She is intelligent. She has worked in a legal environment. She has shown herself capable at researching the law and as a litigant in person.

98. Unanimously we find that the claimant was not disadvantaged in this respect and it does not form grounds in our unanimous view for revoking our original decision.

99. So far as the claimant's submission that she did not do herself justice and wants a second bite of the cherry is concerned, we find that this falls squarely within the scope of the case of ***Redding v EMI Leisure*** (above). We are bound by this decision and we reject this submission for the reasons given by the EAT.

100. For the above reasons the decision of the tribunal is that the original decision is confirmed.

The claimant's deposit

101. Following the Preliminary Hearing before Employment Judge Spencer on 6 February 2016 the claimant paid a deposit of £300 under Rule 39 of the Employment Tribunal Rules of Procedure 2013. The respondent as the successful party at the liability hearing seeks the payment of the deposit towards its costs, but does not otherwise make an application for costs. The

claimant resists the application.

102. The claimant applied on 23 August 2016 for the deposit to be returned to her on grounds that we found that she had made protected disclosures so in her view it was reasonable for her to continue with the claim. On 13 September 2016 the respondent applied under Rule 39(5)(b) for the deposit to be paid to them towards their costs.

103. At the close of the Reconsideration Hearing the parties consented to this matter being dealt with on the papers, provided the claimant had an opportunity to respond.

104. **IT IS ORDERED** that on or before **28 April 2017** the claimant shall send to the respondent and to the tribunal her written response to the respondent's deposit application, which will then be dealt with on the papers.

105. The tribunal regrets the length of time it has taken to issue a decision on the Reconsideration application. The original date for the tribunal's In Chambers deliberations (23 February 2017) had to be postponed for reasons of ill health and was further delayed due to the difficulty in finding availability dates for the three-person tribunal.

Employment Judge Elliott

Date: **4 April 2017**