III

II. EXPOSÉ DES FAITS
STATEMENT OF THE FACTS

(Voir § 19 (b) de la notice)
(See § 19 (b) of the Notes)

14. I have been involved in litigation relating to the determination of my civil rights. These rights related to the Employment Rights Act 1996, the Sex Discrimination Act 1975 and the Race Relations Act 1976. I felt that my complaints were not being dealt with fairly. Among other things, I complained in my appeals to the Employment Appeal Tribunal and the Court of Appeal (Civil Division) that the Respondent's legal institutions violated the Convention of Human Rights.

14. 1. **Background**

I started working for Kingston University in February 1994. When I applied for the post, I was assured I would be given resources for research and that my career path would be through research. These promises were not honoured[1]. I brought my concerns to the attention of my management but I was ignored. I then submitted a grievance in 1999 about this matter. The reaction of my management was instant harassment and victimisation.

I submitted a further grievance for this mistreatment which led to yet more harassment by my management. This included, on 24.09.99, a bogus disciplinary hearing designed to intimidate me into dropping my grievance and a trap for my dismissal through the offer of a sabbatical. Documents acquired through a subject access request under the Data Protection Act revealed the details of this plan.

14. 2. The mistreatment I suffered in the hands of my line management involved persistent, excessive and unjustified criticism, false allegations, undermining, insulting me before colleagues, refusal of holiday and overall treatment consistent with harassment and victimisation.

Before my 1999 grievance I had been employed by Kingston University for over 5 years and there had never been the slightest criticism against me. After my 1999 grievance I was constantly invited to disciplinary hearings for no good reason. This mistreatment involved discriminatory treatment.

14. 3. I submitted a further grievance in July 2001 against my immediate line manager Prof J Morris and the Dean of the Faculty Prof R Davis. I wrote ".. *Over the past three years, I have been living with a constant apprehension that any day I will receive yet another aggressive telephone call, or a rude email, or a false accusation, or an invitation to a disciplinary hearing. My plans this year to do some research after the examinations have been ruined...* "

14. 4. I asked to be transferred to another Faculty. I was not transferred to another Faculty. The Personnel Director, Mrs Lancberry, simply offered me a temporary secondment for 6 months on condition that I withdrew my grievance. I refused the secondment since it did not represent a permanent solution to what had proved to be a permanent problem. In accordance with the University procedures, I proceeded to appeal against Mrs Lancberry's findings to the University Governors. In retaliation Mrs Lanchberry proposed that I be dismissed and she proceeded along with my line managers and the Vice Chancellor, Prof P Scott, to engineer my dismissal. See [page 187].

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[1] I later became aware, that Kingston University used false promises such as those made to me, in order to secure the recruitment of gifted researchers.

14. 5. Their plan was to dismiss me right after the hearing of my 2001 grievance by the Governors, on 14.06.02. However they did not dismiss me as they had planned because the Governors expressed privately to the Vice Chancellor severe criticisms about the way I was being treated by my line management. Because of these criticisms the Vice Chancellor hesitated to proceed with my dismissal and proposed to the rest to wait for 6 months and then take action. This is documented in an email from the Vice Chancellor on [page 188].

14. 6. My line managers then met on 12.07.02 to consolidate their action plan for my '*management'*. The action points in the minutes of the 12.07.02 meeting show that the purpose and outcome of that meeting was to set the background against which criticisms and disciplinary action against me were to be based and to consolidate the plans for my dismissal. One of this action points was the introduction of new home-working restrictions according to which my practice of working from home would be against the rules.

14. 7. My practice of working from home was in accordance with the existing rules and was common practice among academic staff. There had never been any problems or complaints with my home-working. The new restrictions on home-working were enforced only on me, despite the fact that other members of academic staff worked at home as I did.

14. 8. The harassment I was subjected to took a lot of my time and caused me a lot of stress. I was treated for depression. I had sought for another position elsewhere, but I did not succeed. My inability to do research since I joined Kingston University had undermined my professional profile. I had no other option but to take legal action against Kingston University. This legal action in 2003 involved a complaint for Discrimination and Victimisation (under the Sex Discrimination and Race Relations Acts) to the Employment Tribunal (ET) and a complaint for Breach of Contract to the County Court. These complaints were based, to a large extent, on the same facts as my 2001 grievance.

I had to withdraw my ET claim because my insurers withdrew their funding. The University applied for costs but the ET dismissed that application because (as the ET said) my complaint was not without merit. The University also applied for a strike out of my Court claim and that was struck out without a hearing because I had asked for a declaration and, according to the Judge, it was not worth the cost of litigation.

14. 9. Following the withdrawal of my ET claim the process to get me dismissed gained momentum. I kept asking for an explanation why the new home working restrictions had been introduced and why they were enforced only on me. I was given no explanation. I asked the Governors to intervene but they refused, which was a breach of the Articles of Government for Kingston University and of the ACAS code of Practice. I was dismissed on 13.08.04.

14. 10. **<u>17.09.04 Submission of Claim to the Employment Tribunal</u>**

I subsequently submitted a claim to the ET [page 1] on 17.09.04. I complained about

a) unfair dismissal,
b) victimisation in the context of the Race Relations Act and the Sex Discrimination Act
c) breach of the express term of contract relating to Notice
d) unlawful deduction from wages.

14. 11. I had extensive and very substantial evidence against the University. Having also familiarised myself with the relevant law, I felt confident my case was strong. I decided to represent myself because I could not afford the expense of extensive litigation.

14. 12. Before my claim was heard it underwent what is known as case management. There is one case management matter that is particularly relevant to this appeal. It has to do with the specification of the ***protected acts*** that are supposed to be **the reasons why** I said I was victimised.

14. 13. The relevant law for my victimisation claim is s4(1) of he Sex Discrimination Act (SDA) and s2(1) of the Race Relations Act (RRA). Section 2(1) of the RRA states:
'*(1) A person ("the discriminator") discriminates against another person ("the person victimised") in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised*

less favourably than in those circumstances he treats or would treat other persons, and does so ***by reason*** *that the person victimised has—*
(a) ***brought proceedings against the discriminator*** *or any other person under this Act;*
or
(b) ...
(c) ...
(d) ***alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act,***
or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them.

14. 14. **The Reasons for the Victimisation in the 17.09.04 Originating Application to the ET**

I specified these reasons as follows: *'The treatment I was subjected prior to my dismissal and the dismissal itself were acts of victimisation. I also believe that in particular the fact that I had taken legal action against my employers in 2003 contributed to this adverse treatment. I believe that my continued objection to the victimisation and my statement that I would assert my rights also contributed to this treatment.* ' [page 5, paragraph 3C].

In the subsequent Additional Information about the Claim I gave details about this *continued objection to the victimisation* showing that this involved protests both before the 2003 legal action and afterwards till the end of 2004 when I got dismissed.

14. 15. **17.12.04 Case Management, Employment Tribunal (chair: Ms Hyde)**

During the first case management hearing, on 17.12.04, there was no discussion about the protected acts for my Victimisation complaint. The Chairman, Ms Hyde, specified in her order that the 2003 ET proceedings were the protected act [page 23, paragraph 8]. It is conceivable that the failure to mention any other protected acts was a mere oversight. I immediately informed the ET about this error.

14. 16. The date for the merits hearing of this case had been set for 16-20 and 23 May 2005. About a month before that date, the barrister of Kingston University asked for a pre-hearing review to strike out parts of my case. Nearer to the hearing date the University asked for the adjournment of the merits' hearing. A pre-hearing review was set for 4.05.05.

14. 17. **4.05.05 Pre-Hearing Review, Employment Tribunal (chair: Ms Spencer)**

The chairman, Ms Spencer, told the two parties that both she and the Regional Chairman Mr Warren wanted to avoid an adjournment and wished that the hearing would take place as planned on 16.05.05.

14. 18. The 4.05.05 hearing was conducted in a manner that was not equitable. I was given little time to speak, I was cut short, Ms Spencer paid no attention to what I said and did not read what I wrote. In contrast she allowed the barrister representing Kingston University to present his arguments and even repeat them taking up most of the time of that hearing. Most of the requests of the University's barrister were granted.

14. 19. Among other issues, Ms Spencer reviewed the protected acts for my victimisation complaint. By that time we were pressed for time. The University's barrister opposed the addition of protected acts and Ms Spencer ruled that no protected acts would be added. She came up with an idea that the pre-2003 protests could not be used as protected acts because I had not mentioned race or sex in those protests. She concluded that the 2003 ET proceedings remained the only protected act. She said that was consistent with what appeared in my originating application [page 5].

14. 20. At the end of the 4.05.05 hearing Kingston University's barrister indicated that, in view of the decisions taken by Ms Spencer during that hearing, he withdrew his request for an adjournment. However at that stage I wished to appeal to the Employment Appeal Tribunal against Ms Spencer's decisions, so the hearing was adjourned.

14. 21. The written order for the 4.05.05 hearing was issued on 12.05.05 [page 26]. In that order Ms Spencer came up with a new justification for her decision to block the inclusion of more protected acts as I had asked. More specifically she wrote that I had *'specified 26 protected acts and it would be wholly disproportionate to the Tribunal to examine them.* She also alleged that '*.. these protected acts went as far back as 1995 so there would be difficulty in establishing the causal link between the protected act and the detriment'.*

14. 22. Ms Spencer's allegation that I had proposed 26 protected acts was false. More specifically, during the 4.05.05 hearing I had suggested that we use my 1999 and 2001 formal grievances in place of several contemporaneous related protests. I made that suggestion in response to Ms Spencer's expressed wish to keep the total number of protected acts small.

14. 23. As for the argument that these 26 protests were too old making it difficult to establish the necessary causal link between these protests and the detriments in 2003 and 2004, it defied both reality and reason. It should be noted that several (six) of the above protests took place as recently as 2003 and 2004, shortly before my dismissal.

14. 24. I reported the irregularities of the 4.05.05 pre-hearing review and Ms Spencer's misrepresentations, to the Regional Chairman of the ET, London South, Mr J Warren (see letters dating 13.07.05 [page 34] and 18.05.06 [page 53]). In my 18.05.06 letter I wrote:
" *I remain deeply concerned with the manner in which Ms Spencer handled the pre hearing review of 4/5/05. I have already described these concerns in my letters to you dated 25/5/05 and 13/7/05. I therefore ask that Ms Spencer has no further involvement in my case."*

14. 25. **21.12.05 appeal to the EAT (chair: HH J Richardson)**

In a subsequent appeal to the EAT I complained about the unfairness of the 4.05.05 ET pre-hearing review.

Among other things I appealed against the specification of the protected acts. I reiterated I had not proposed 26 protected acts, as had been falsely claimed by Ms Spencer. What I had proposed during 4.05.05 hearing, was that my 1999 and 2001 grievances ought to have been added to the 2003 ET proceedings as protected acts.

HH J Richardson refused to include the two grievances made in 1999 and 2001 as protected acts on the basis of Ms Spencer's argument that I had not explicitly mentioned before 2003 the words sex and race in my protests. This argument is wrong in law[2].

14. 26. Both through the 16.12.05 written communications to and from the EAT [pages 36 and 37] and through oral representations during the 21.12.05 hearing, I alerted the EAT that there were further protected acts that post dated the 2003 proceedings that had not been discussed during the 4.05.05 hearing as we had ran out of time.

During the 21.12.05 EAT hearing of my appeal it was agreed that the post-2003 protected acts would be further discussed in a subsequent pre-hearing review at the ET. The specification of the post-2003 protected acts was the only matter raised, during the 21.12.05 EAT hearing, in connection with this further pre-hearing review. However when, on 17.03.06, HH J Richardson issued the appropriated order, he did not mention the post-2003 protected acts [page 38]. He also failed to mention anything about the post-2003 protected acts in his judgment [page 40].

14. 27. **29.06.06 Pre-Hearing Review Employment Tribunal (chair: Mr Milton)**

The pre-hearing review directed by HH J Richardson took place on 29.06.06 under the chairmanship of

[2] The relevant law s2(1.d) of the RRA and s4(1.d) of the SDA does not require that the person victimised to have made explicit reference to victimisation due to race or sex.

In any case the 2003 ET proceedings (where I claimed discrimination and victimisation under the RRA and SDA) were based on the same facts as my 2001 grievance. That satisfies the requirements stated in the above law.

Mr Milton. The failure of HH J Richardson to mention explicitly the need to specify post-2003 protected acts offered the opportunity to the University's barrister to argue, during the 29.06.06 pre-hearing review, that the matter of the protected acts had been closed and my 2003 ET proceedings should be the only protected act.

The ET Chairman, Mr Milton, did not accept the University's submission and permitted me to rely on the post-2003 protests for my victimisation claim, especially since these protests were part of the evidence that the tribunal would be looking at anyway when assessing the issue of unfair dismissal [page 58, paragraphs 11-15].

14. 28. **6.12.06 Hearing Employment Tribunal (chair: Mr Zuke)**

On 6.12.06 the two parties attended as it was the first day of the merits' hearing. However the hearing was postponed due to the illness of a witness for Kingston University. The Chairman, Mr Zuke, proceeded to hold a meeting during which he ordered several changes in the issues for the proceedings that were requested by the University's barrister. Mr Zuke paid no attention to what I said and ignored my objections.

14. 29. One of the changes by Mr Zuke was, in accordance with the University's request, to reverse the decision taken by Mr Milton on 29.06.06 in relation to the post-2003 protected acts. Mr Zuke told me that I could not rely on those protests as protected acts but I could rely on them as evidence.

14. 30. **28.03.07 appeal to the EAT (chair: HH J Underhill)**

I submitted an appeal to the EAT. In this appeal I complained that I did not get a fair hearing and that a violation of article 6 of the Human Rights Convention had occurred. I complained that the Chairmen who dealt with case management meetings did not read what I had written and did not listen to what I said. I said I was being paid only 'token attention' in contrast to the proper attention paid to the University's barrister. I said I felt that that could possibly be because I was a lay litigant. (See paragraphs 1-7 of the Grounds for Appeal [page 61].)

14. 31. I also made an application to the EAT asking that the merits' hearing of my case be conducted by a differently constituted tribunal that did not include Ms F Spencer or Mr M Zuke [page 74]. HH J Underhill refused to address this application because, he said, he did not have the authority to do that and it was up to the Employment Tribunal to appoint the Chairman for the merits' hearing.

14. 32. One of the matters I appealed against, in that appeal, was the decision to block the use of post-2003 protected acts. (See paragraphs 8-24 of the Grounds for Appeal [page 61].) The EAT had both documented and oral evidence confirming my request to HH J Richardson to specify the post-2003 protected acts and the decision to do so during a subsequent pre-hearing review.

Despite this evidence the EAT dismissed the part of my appeal relating to the post-2003 protected acts by using the following justification that I felt was vague and contradictory:

14. 33. To start with, the EAT reached the speculative conclusion that "*HH J Richardson was entitled to form the impression that he plainly did and to proceed on the basis that all that was live before him in relation to any of the 26 acts referred to in the Additional Information was the pre-2003 acts and, in particular, the 1999 and 2001 grievances.*" (See paragraph 8 [page 78].)

However there was a fall back position to that, namely : "*But even if he was not entitled to draw that conclusion, all that that means is that he misunderstood the Appellant's submissions before him. That would be regrettable, but it is not something about which we can do anything. It could only be put right, if at all, by the Court of Appeal.*"
No explanation was given why HH J Underhill did not refer this matter to the Court of Appeal.

14. 34. The nearest HH J Underhill came to an explanation for the above, was : "*We do not in fact believe that this conclusion will prejudice the Appellant as much as she apparently fears.*"

I felt that this statement was both vague and not particularly meaningful. HH J Underhill admitted having no knowledge of the evidence, which was also true of the previous chairmen that he had referred to. Consequently the above speculation was un-informed and could not be relied on. I assured the EAT that I knew the evidence and that preventing me from using the post-2003 protected acts would undermine my victimisation complaint[3], but the EAT disregarded my objections.

14. 35. **<u>3.07.07 application to appeal to the Court of Appeal (chair: LJ Pill)</u>**
I sought permission from the Court of Appeal to appeal against the decision of the 23.03.07 EAT. I claimed that article 6 of the Human Rights Convention had been breached. A hearing was held on 3.07.07 before LJ Pill. He refused me permission to appeal. (My statement for the permission hearing can be found on [page 86]. The decision of the Court of Appeal is on [page 95].)

14. 36. LJ Pill explained during the hearing that appeal tribunals were very reluctant to reverse case management decisions. He said it was almost unthinkable that a case management appeal would go as far as the Court of Appeal (or words to that effect). Other than that, he simply stated that he concurred with HH J Underhill's analysis [page 97, paragraphs 6-8].

14. 37. There is an additional argument that LJ Pill presented in paragraph 9 of his judgment [page 98] that reads: "*It needs to be stated, though it is not explicitly stated by Underhill J, that no application was made for permission to appeal against the decision of HH J Richardson.*"

My submissions to the Court of Appeal showed that the next step after the 21.12.05 EAT hearing by HH J Richardson was to discuss the post-2003 protected acts at the subsequent pre-hearing review (that took place on 29.06.06). There was therefore no scope for an appeal about the post-2003 protected acts, at the time. Consequently the above comment in paragraph 9 of LJ Pill's judgment is misguided and inexplicable.

14. 38. **<u>Application to the ET to exclude Ms Spencer and Mr Zuke from chairing the merits' hearing.</u>**

Following HH J Underhill's comments in response to my application to exclude Mr Zuke and Ms Spencer from the merits' hearing, I wrote on 12.05.07 to the Regional Chairman of the Tribunals, Mr Warren. I explained that the way Ms Spencer and Mr Zuke dealt with the case management hearings was unfair, it was in breach of the overriding objective and indicated possible bias. I asked that these two chairmen are not appointed to chair the merits' hearing of my case and if possible to transfer my case out of Croydon [page 83].

14. 39. In a letter dated 17.05.07, Mr Warren, refused to transfer the case out of the region. He said it was up to him to decide who to appoint to chair the merits' hearing [page 85]. He subsequently appointed Mr Zuke to chair the merits' hearing of my case. When the hearing was postponed he appointed Ms Spencer as the chairman of the merits' hearing that started on 7.11.07. (That hearing went on till the 16th of November 2007 and then got extended to the 7-8 January 2008.)

14. 40. **<u>7.11.07 Merit's hearing (chair: Ms Spencer)</u>**

I found out that Ms Spencer had been appointed as the Chairman, on the 2nd day of the merits' hearing. On the first day the parties did not attend as the tribunal used that day to read the documents. Ms Spencer's appointment as Chairman, made despite my 12.05.07 application expressly objecting to her appointment, was a de facto rejection of my application.

It seemed that the only course of action open to me was to bring this up as an issue for appeal to the EAT. As the hearing had already started, I thought it would not be sensible to walk out of the hearing because I could be charged with costs or contempt of court.

[3] There was documented evidence that showed conclusively that my post-2003 protests were reasons for my dismissal (the dismissal allegedly being an act of victimisation). Being prevented from using the post-2003 protests as protected acts denied me the opportunity to rely on this evidence in order to prove that victimisation took place.

14. 41. Shortly before that hearing I got to know of Ms Lori Fredrics. She was a former employee of Kingston University and could testify about the victimisation she had been subjected to in retaliation to her grievance and complaint to the ET by the same manager of Kingston University who victimised me for similar reasons. In that respect Ms Fredics testimony was relevant as it showed a policy by Kingston University to victimise those who submitted internal grievances and / or complaints to the ET. I applied to have this witness accepted and submitted her brief witness statement. The Tribunal refused to allow Ms Fredrics to testify.

Kingston University had 4 witnesses and I had only myself as a witness.

14. 42. During the hearing both parties cross-examined the witnesses of the other party. There was also opportunity for re-examination. During this cross-examination I was able to show that the witnesses of Kingston University contradicted themselves, the documented evidence and each other. It was shown that Prof R Davis and Prof J Morris had committed perjury and the latter was also guilty of document falsification.

The University spent a lot of effort to try to convince the ET that the home working restrictions had not been introduced for me, but for some other '*business reasons'* (see paragraph 13(i), (ii), (iii) of the University's response [page 9]). The documented evidence however showed otherwise. During cross examination the University's witnesses were asked to point to any evidence that there had been any problems, or complaints about my home-working and if so when and how these had been brought to my attention. The University's witnesses had to admit that there had never been any problem with my home-working.

14. 43. Both parties submitted their summing up of the case and their arguments in writing. They also had the opportunity to submit further written comments that could include clarification of facts. These submissions form a record of what the parties argued and of the key evidence, including the main points of the oral evidence that was heard in the course of cross examination.

14. 44. One of the points I raised in my written submissions was the discrepancy between the reasons for the victimisation I had specified in my originating application and the protected act that had been specified by the ET through case management. I indicated that in the event the ET did not use the reasons I had specified, I intended to use that as a basis for appeal, in the event I lost my victimisation claim.

14. 45. The judgment was reserved and was finally issued on 11.02.08. It was signed by Ms Spencer. All my complaints were rejected by the ET.

14. 46. **Misrepresentations in the 11.02.08 ET judgment.**

What I was struck with when I first read the judgment was the conspicuous conflict between the evidence presented at the hearing and the findings of fact in that judgment.

Most of the documented evidence presented to the ET had been introduced by me. My final submissions were supported by extensive references to documented evidence, law and case law. A lot of this evidence was left out or, if it was not, it had been distorted. Several of my arguments had been ignored or trivialised.

14. 47. The judgment was dotted with numbers that were references to the page numbers of documents in the bundle of the documented evidence. However what was written in the judgment about the content of these documents was not necessarily consistent with their actual content.

14. 48. In addition the ET had made up facts that were not supported by the evidence or were contradicted by the evidence. They also invented practices that had nothing to do with the evidence or argument put forward by the parties.

For example, what was written in paragraphs 34 and 37 of the ET judgment about the offer of the sabbatical, was not only in conflict with the evidence, it introduced a view that management ought to dictate to university lecturers what research they should do. This view is inconsistent with the evidence

by the two parties, and with the widely known practice in universities with respect to academic freedom, made a legal right by the Education Reform Act of 1988, s202. Academics decide on their own research, they are not told by management what to research.

14. 49. It was not only key evidence and argument that got distorted, concealed, or fabricated, the misrepresentation was comprehensive, affecting even minor details that set the background to the case.

14. 50. There were also significant errors in the interpretation and application of the relevant law; however, in my view, the misrepresentation of the evidence was overwhelming and impacted the validity of the ET decisions.

14. 51. **20.03.08 and 19.05.08 - Application for permission to appeal to the EAT.**

I applied for permission to appeal against the ET decisions relating to all the complaints (unfair dismissal, victimisation, breach of contract regarding Notice, unlawful deduction of wages). This appeal was based on several errors in law and irregularities in the proceedings. The adverse outcome of the victimisation claim made the unfair specification of the protected acts, during case management, very relevant.

I also submitted a complaint that throughout the litigation of my claim I had been denied fair hearings as I was entitled under the Human Rights Act and specifically under article 6 of the Human Rights Convention.

14. 52. The document describing the Grounds of Appeal was accompanied by an Appendix that presented the evidence that had been misrepresented, or concealed along with comments that put this evidence in context. I supplied the information in the Appendix in compliance with the rules of the Practice Direction (EAT -Procedure) 2008 that required that full particulars ought to be given. See [page 240, section 2.6 and 11].

14. 53. My application for leave to appeal to the EAT was dealt with according to Practice Direction rule 9.6.

My submission was seen by HH J Elias who gave permission for Ground 4 (breach of contract regarding Notice) to proceed to a full appeal hearing. Other than that, he said that most of my appeal had no prospects of success. The rejected part involved the complaints of unfair dismissal, victimisation under s2 of the RRA and s4 of the SDA, unlawful deduction of wages under s13 of the ERA 1996, and the breach of the Human Rights Act.

14. 54. The reasons why HH J Elias rejected most of my appeal, appear in a letter dated 24.04.08 [page 125]. He said that my appeal was detailed and long. He added 6 paragraphs of specific comments supporting that the ET judgment did not seem to be wrong in law.

14. 55. In my document titled *'Response to the 24.04.08 Comments'* [page 127] I answered HH J Elias' criticisms. I pointed that the main reason why my appeal documentation was extensive and detailed was because I had adhered to Rules 2.6 and 11 of the EAT Practice Direction that required me to give full particulars of the complaints made. I also explained why according to the law, my appeal was entirely within the jurisdiction of the EAT.

I also addressed each one of HH J Elias' criticisms concluding that his comments seemed "*to be based solely on what is written in the judgment. I can see nothing in these comments that addresses or even acknowledges the errors I have described in my appeal. It seems unfair to reject an appeal without considering what it is about, especially since one of the complaints in this appeal is that what is written in the judgment is a far from adequate record of the facts and argument put to the Tribunal."*

14. 56. I resubmitted a notice and grounds of appeal with respect to the complaints that HH J Elias had refused permission to proceed to an appeal. See [page 131]. These grounds were:

a) Breach of the Human Rights Act 1998 due to violations of Article 6 of the Human Rights Convention.

b) Errors of law in the findings of fact due to : (1) the failure to consider or even mention material evidence that was significant and relevant to the specific findings of fact and subsequent decisions, or

(2) were not supported by the evidence before them, or (3) relied on matters that were irrelevant, or (4) were inconsistent with the evidence, or (5) were perverse.

c) Irregularities in the proceedings and the ET judgment : (1) It was unfair and inequitable to refuse to allow the witness Ms Fredrics to testify on my behalf (2) The omission of evidence supporting my case and undermining the ET decisions was so extensive and the evidence so significant that its omission and / or misrepresentation amounted to an irregularity in the proceedings.

d) Errors of law in the decision for unfair dismissal.

e) Errors of law in the decision for victimisation.

f) Errors of law in the decision for unlawful deduction of wages.

14. 57. On 19.06.08 the EAT rejected my 2nd submission because, as HH J Elias put it, '*The substance of the complaints are still considered to be complaining about the findings of the Tribunal.'* [page 189].

14. 58. In accordance with rule 3(10), I requested a hearing that was held on **22.07.08**. This was chaired by HH J McMullen sitting alone.

At the start of that hearing I handed to the judge the document on [page 192] where I pointed to the contradictions between the law on the jurisdiction of the EAT, the rules in the EAT Practice Direction and HH J Elias' findings. HH J McMullen was evasive when I asked him to comment on the matters I had raised.

14. 59. My overall impression from that hearing was that HH J McMullen was not familiar with my submissions. A record of what transpired during that hearing with examples of why I formed this view appears in the '*NOTES from the 22.07.08 EAT hearing*' [page 194].

I tried to present the issues but HH J McMullen kept interrupting me. It seemed as if he had made up his mind to refuse me permission to appeal before he came to the hearing and he did not want to know anything about it.

14. 60. HH J McMullen read out his decision and the justification for that decision at the end of the 22.07.08 hearing. He also refused me permission to appeal against his decision to the Court of Appeal. (See orders on [pages 196 and 197].)

HH J McMullen's written judgment was issued on 11.08.08 [page 198].

Details of my objections and criticisms of HH J McMullen's judgment appear in my Skeleton Argument for the appeal to the Court of Appeal [page 219].

14. 61. **Application for permission to appeal to the Court of Appeal.**

I submitted to the Court of Appeal an application for permission to appeal against the decision of the EAT to refuse leave to appeal against the 11.02.08 ET decisions that related to my complaints of unfair dismissal, victimisation under s2 of the RRA and s4 of the SDA, unlawful deduction of wages under s13 of the ERA 1996, and the breach of the Human Rights Act. The notice was stamped on 14.08.08 [page 210]. It was followed up by a skeleton argument [pages 219]. The grounds for the appeal were as follows:

14. 62. Ground 1: The matters I raised in my appeal to the EAT were entirely within the EAT's Jurisdiction. The reasons given for the refusal of the EAT are wrong in law.

14. 63. Ground 2: The way the EAT went about dealing with my appeal involved significant irregularities in the proceedings insofar as the EAT failed to acknowledge let alone consider the issues I raised.

14. 64. Ground 3: The EAT breached the Human Rights Act which enforces the articles of the Human Rights Convention
(a) by not offering me a fair and public hearing with respect to the parts of the Notice of my EAT appeal that were rejected
(b) by refusing to address or even acknowledge breaches of the Human Rights Act that have occurred throughout the litigation of this case.

14. 65. Ground 4: The part of my appeal relating to the victimisation complaint raised several errors in law due to misdirection to the applicable law and the related EEC directives. If left unresolved, this error could establish an undesirable precedent.

14. 66. I subsequently submitted an application to introduce as new evidence the recently published results of a survey conducted by the Union of Colleges and Universities (UCU) on the issue of bullying and harassment [page 230]. This survey showed that Kingston University was the second worst university in the UK in terms of harassment and bullying of staff by management. I explained that this evidence corroborated independently my claim about the tactics of harassment and bullying by Kingston University. I wrote:
"*Harassment and bullying formed a key part of my complaint against the Respondent… I claimed that my dismissal was an act of harassment and victimisation. I submitted substantial evidence in support of my allegation but the Employment Tribunal failed to consider or even mention this evidence. The EAT has subsequently refused to address this serious error in law, which is one of the grounds for my appeal to the Court of Appeal."*

14. 67. The Court of Appeal refused me permission to appeal. In an order dated 10.11.08 [page 234], L J Smith stated that the EAT had refused to hear my appeal because it had no jurisdiction to do so and that this was the position of the Court of Appeal. These comments related to Ground 1 of my appeal to the Court of Appeal. There is nothing in that order that addresses Grounds 2, 3 or 4.

III. EXPOSÉ DE LA OU DES VIOLATION(S) DE LA CONVENTION ET/OU DES PROTOCOLES ALLÉGUÉE(S), AINSI QUE DES ARGUMENTS À L'APPUI *STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS*

(Voir § 19 (c) de la notice)
(See § 19 (c) of the Notes)

15. I claim that in dealing with my claim to the Employment Tribunal (ET case # 2305328/2004/U) the United Kingdom authorities violated articles 6.1 and 13 of the Human Rights Convention..

15. 1. The articles violated read as follows:

Article 6.1 (Right to a fair trial)
"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly .. .. "

Article 13
"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The bases for these claims are explained below:

15. 2. **Victimisation / Discrimination - Specification of Protected Acts**

My Victimisation complaint (under s4 of the SDA and s2 of the RRA) did not get a fair hearing because (among other reasons) of the wrong specification of the protected acts.

15. 3. Contrary to what I specified as the reasons for the victimisation in my complaint (ET1, [page 5]), the ET restricted my reasons to only one protected act, the 2003 ET legal proceedings against Kingston University. I was prevented from using any other protected acts either pre-dating or post-dating the 2003 ET proceedings.

As explained earlier, this restriction was imposed despite my objections, for no good reason, it was arbitrary, the direct result of deliberate misrepresentation of the 4.05.05 case management proceedings and of the subsequent refusal to correct the errors ([page 134] paragraphs 5-16).

15. 4. The restriction of the protected acts offered scope for the manipulation of arguments used to undermine[4] my victimisation complaint. The University's barrister took full advantage of this

[4] I will give examples of the impact of the arbitrary restriction of the protected acts:

Pre-2003 protected acts: Following the appeal hearing of my 2001 grievance, on 14.06.02, my line managers decided to wait and take action against me in 6 months. As part of that plan they introduced the home-working restrictions, and enforced them just on me. I proceeded to take legal proceedings in 2003 on the basis of this matter and the facts in my 2001 grievance. I was dismissed on 13.08.04.
I claimed that the harassment, the enforcement of the home working restrictions just on me and the subsequent dismissal were acts of victimisation. I specified the 2001 grievance and the 2003 ET proceedings as protected acts.
The ET restricted the protected acts only to the 2003 ET proceedings. They then argued that my dismissal was because I allegedly did not adhere to the home-working restrictions, those restrictions were introduced before the protected act (2003 ET proceedings). The ET thus concluded that there had not been victimisation (see paragraph 101 of the ET judgment [page 96]). If the ET had not blocked the use of the 2001 grievance as a protected act, this argument could not be possible.

Post-2003 protected acts: Examples relating to the arbitrary restriction of the post-2003 protected acts can be seen in paragraph 66 of the Grounds of Appeal [page 120].

opportunity and the ET allowed them to do so. The 11.02.08 ET judgment produced proof of the adverse impact of this manipulation on my victimisation complaint. I brought that up in my 2008 appeal ([page 146] paragraphs 66-73). The Courts refused to look at the unfairness involved.

15. 5. Overall the arbitrary restriction of the protected acts before the ET hearing and the refusal to address the resulting unfairness afterwards amounted to a breach of **Article 6.1.** The extra hearings that became necessary in my attempts to have these anomalies corrected, caused me a lot of stress.

15. 6. **The appointment of Ms Spencer as the Chairman for the merits' hearing.**

Ms Spencer was appointed as Chairman of the merits' hearing of my ET case despite my explicit requests that she has no further involvement in my case and that she is not appointed to chair the merits' hearing. As I outlined in part II of this application, this request was made because of Ms Spencer's earlier misrepresentations of the 4.05.05 proceedings.

15. 7. It would have been simple and straightforward for the Regional Chairman of the Tribunals, Mr Warren, to appoint a Chairman other than Ms Spencer for the merits' hearing of my case. In the circumstances, her appointment seems to have been a deliberate act on the part of the Regional Chairman to deny me what I would have considered a fair hearing. This is not consistent with ensuring fairness and being seen to be doing so. The associated events raise questions about the impartiality of both the Regional Chairman and of Ms Spencer.

For all the above reasons the appointment of Ms Spencer as the chairman of the merits' hearing for my case was a violation of **Article 6.1.**

15. 8. **Refusal to hear my witness.**

The University had 4 witnesses. I had no witnesses other than myself as I was prevented from calling the one witness I had specified, Ms L Fredrics. Her testimony supported that Kingston University had a policy to victimise those who submitted internal grievances and / or complaints to the ET. Such testimony was relevant to my case. This refusal was a breach of the principle of equality of arms and consequently of **Article 6.1**.

15. 9. **Misrepresentation by the ET of the evidence presented to the merits' hearing**

The 11.02.08 judgment of the ET from the merits' hearing, was written by the ET Chairman, Ms Spencer. Each one of my complaints was rejected. The findings of fact in that judgment were substantially misrepresented insofar as they were unsupported and / or were contradicted by the evidence before the ET. I supplied details and proof of this misrepresentation in the Appendix [page 149].

This misrepresentation was designed to undermine my case. The extent and level of detail that was misrepresented is consistent with that aim. The misrepresentation was clearly deliberate, so it amounted to dishonesty. The fact that Ms Spencer had misrepresented the proceedings on a previous occasion (the pre-hearing review of 4.05.05), and despite my protests, had been put in a position where she misrepresented and undermined my case again made these anomalies even more serious.

15. 10. Such misrepresentation could be symptomatic of the hostility Ms Spencer might have felt for my having exposed her earlier (4.05.05) misrepresentations and for having requested that she be blocked from further involvement in my case. Such an effort on the part of a judge goes beyond violating the principle of equality of arms, it shows bias, lack of impartiality.

Honesty, impartiality and lack of bias of judges are key elements of a fair hearing. Their absence in the ET merits' judgment implies a violation of the requirement of **Article 6.1** to hold a fair hearing.

15. 11. **Refusal of access to courts - Failure of the Courts to follow their own laws / rules regarding jurisdiction.**

I submitted an application for leave to appeal to the EAT alleging violation of Article 6 of the Human

Rights Convention, errors in law, misrepresentation of the evidence and irregularities in the ET proceedings.

15. 12. An application for leave to appeal to the EAT is conditional to the appeal being **within the jurisdiction of the EAT**. Whether the appeal is within the EAT's jurisdiction, or not, is normally decided by the EAT. This decision however ought to be taken in accordance with the applicable law / case law.

15. 13. The applicable law about Jurisdiction of the EAT is as follows:

S 21 of the Industrial Tribunals Act 1996 states that the jurisdiction of the Employment Appeal Tribunal is on questions of law arising from proceedings in Industrial Tribunals (Employment Tribunals). There is also well established case law clarifying the matter of jurisdiction of the EAT in the authorities *British Telecommunications v Sheridan [1990] IRLR 27, §35* [page 251] and *East Berkshire Health Authority v Matadeen [1992] IRLR 336* [page 255].

According to these authorities, the EAT can interfere with the decision of an ET and allow an appeal (a) if the decision involves a misdirection or a misapplication of the law, (b) if there is a material finding of fact relied upon by the Tribunal in the decision which was unsupported by any evidence or contrary to the evidence before the Tribunal and (c) if there is a finding that is perverse.

15. 14. The EAT used lack of jurisdiction as the reason why they denied me leave to appeal. The justification however the EAT gave in support of this argument seems very unsatisfactory indeed. To start with, the ET stated in the 24.04.08 letter "*it is not the function of the EAT to re-hear the facts of a case"*. See [page 125, 2nd paragraph]. Other than that the 24.04.08 letter did not address the grounds of my appeal.

15. 15. I clarified this point in my document '*Response to the 24.04.08 Comments'* [page 127] where I wrote in paragraph 1:
"The letter of 24.04.08 states that the EAT has jurisdiction to hear appeals on questions of law. The letter also states that it is not the function of the EAT to re-hear the facts of a case. In relation to these comments I wish to draw attention to the fact that I have not asked the EAT to re-hear the evidence. What I have asked the EAT is to address several errors in law made by the ET in the 11.02.08 judgement. In the event the EAT decides that the facts need to be re-heard, I understand that the EAT has the power to order a re-hearing by a Tribunal.

I proceeded to explain why my appeal was based entirely on questions of law and was thus within the jurisdiction of the EAT. I wrote:
"My appeal against the 11.02.08 ET judgment falls within the jurisdiction of the EAT insofar as it is entirely based on questions of law. These errors are:
a) The ET failed to address the correct legal or statutory question, misconstruing a law or statute.
b) The ET reached a decision or conclusion that is not supported or is inconsistent with the evidence.
c) The ET failed to consider significant evidence that if considered by any reasonable tribunal would have led to a decision significantly different to what the ET reached.
d) The ET reached a perverse decision that no reasonable Tribunal would have reached on the basis of the evidence before it.
e) *The proceedings and judgement involved several irregularities that include (but are not limited to) the failure to consider most significant evidence that supported my case and misrepresentation of the evidence. "*

15. 16. I raised again the matter of jurisdiction during the Rule 3(10) hearing on 22.07.08 in the document submitted to HH J McMullen [page 192]. The latter conceded that I was correct about the jurisdiction of the EAT, however in his subsequent written judgment he evaded this matter by simply making a brief dismissive comment in paragraph 14 which fails to acknowledge, let alone address, the above allegations.

15. 17. Finally the 10.11.08 order of the Court of Appeal [page 234] stated explicitly that the EAT had refused to give me leave to appeal because it decided it had no jurisdiction to do so, that the Court of Appeal accepted this decision and on that basis rejected my application for leave to appeal to the Court of Appeal. There is nothing however in that order to explain why I was wrong in my analysis that my appeal was within the jurisdiction of the EAT.

For example *Ground 3* of my 2008 appeal to the Court of Appeal [page 218 and page 228] was about the

failure of the EAT to examine my allegation that there had been a violation of Article 6 of the Human Rights Convention [page 133]. This was clearly within the jurisdiction of the EAT, yet the EAT refused to address it and the Court of Appeal condoned the EAT's decision to do so. Overall, given the inadequacy with which the EAT had addressed the matter of lack of jurisdiction, a mere condonation by the Court of Appeal of the EAT finding was just as inadequate.

15. 18. In conclusion, the refusal to grant me leave to appeal on the basis that my appeal was not within the jurisdiction of the EAT was not in accordance with the applicable law / case law. This refusal was therefore arbitrary and as such amounted to a refusal to allow me access to a fair hearing as stipulated by **Article 6.1** and consequently of **Article 13** of the Convention.

15. 19. **Failure of the EAT to address my complaints**

My allegation that the misrepresentation of the evidence at the ET merits' hearing amounted to a **breach of the Human Rights Act 1998** (with specific reference to article 6 of the Convention) appeared in paragraph 17 of the Grounds of 2008 EAT Appeal [page 136] as part of **Ground 1**. The relevant details of the evidence that got misrepresented appeared in the Appendix [page 149].

15. 20. The response of the EAT to *Ground 1* appears in paragraph 12 of HH J McMullen's judgment [page 206]. There is an unclear dismissive comment there that might refer to the earlier appeals (chaired by HH H Richardson, HH J Underhill and LJ Pill) regarding the specification of protected acts, which I have already discussed earlier.

There is nothing however in paragraph 12 of HH J McMullen's judgment (or elsewhere in that judgment) that actually addresses my allegation that the misrepresentation of the evidence at the ET merits' hearing amounted to a **breach of the Human Rights Act 1998**. It was the obligation of the EAT to allow an appeal so as to address my allegation of a violation of **Article 6.1** and, according to Article 13 of the Convention, offer the appropriate remedy. Ignoring my complaint amounts to a breach of **Article 13.**

15. 21. This same misrepresentation by the ET was part of Grounds 2 and 3 where I alleged that the misrepresentation and anomalies in the use of the evidence at the merits' hearing resulted in **numerous errors of law in the findings of fact** of that hearing. This appeared in paragraphs 19-22 of the Grounds of the EAT Appeal as part of **Ground 2** [page 136], with specific details given in the Appendix [page 149]. I also alleged, under **Ground 3** [page 111, paragraphs 26-27], that the misrepresentation **was so extensive and substantial that it amounted to an irregularity in the proceedings.**

15. 22. No matter how one looks at it, my allegation that the ET misrepresented the evidence is very serious indeed, implying gross misconduct of the ET. Yet the EAT ignored this allegation completely. There is no finding addressing this allegation. There is no mention of this allegation anywhere in the communications from the EAT.

15. 23. As for my allegation that the appointment of Ms Spencer as Chairman of the merits' hearing was unfair and irregular, this appeared as part of **Ground 3** ([page 137], paragraph 24). HH J McMullen made, in paragraph 15 of his judgment [page 207], a brief reference to the appointment of Ms Spencer as chairman of the merits' hearing. This was simply a dismissive comment that there had "*been no appeal against that"*. This statement is obscure and misleading.

The 2008 EAT appeal for which HH J McMullen wrote the above words was the earliest occasion on which the matter of Ms Spencer's appointment and conduct as the chairman of the merits' hearing could be raised. So HH J McMullen's response makes no rational sense. Furthermore the claim that he had dealt with this matter is not true. There is nowhere in his judgment anything that addresses my concerns about Ms Spencer's appointment to chair the ET merits' hearing.

15. 24. As I explained in paragraph 17 of the Skeleton Argument for my subsequent appeal to the Court of Appeal [page 221], the EAT ought to have addressed my contentions and given reasons why they reached the decision to refuse me leave to appeal. This is required by the guidance offered by UK case law such as *English v Emery Reimbold [2003] IRLR 710* and *Meek v Birmingham [1987] IRLR 250.* This

requirement is consistent with the requirements of Article 6 of the Human Rights Convention.

15. 25. The EAT Practice Direction [page 240] specifies the procedure to be followed for an appeal such as mine. Since my allegations implied misconduct on part of the ET, the correct approach for the EAT would have been to follow the EAT Practice Direction rule 11. That would entail a thorough investigation possibly involving the request of affidavits from the parties including the members of the Tribunal. On my part I supplied in the Grounds of Appeal and the accompanying Appendix detailed particulars of my allegations and the related proof [page 131].

HH J Elias was apparently reluctant to follow the procedure outlined in Practice Direction rule 11. He rejected my application because, as he put it, my submission was very detailed and longer than the ET judgment [page 125]. This response is, in my view, arbitrary and capricious. After all the length of my submissions reflected the extent of the misrepresentation by the ET.

15. 26. I have no doubt that the EAT judges who dealt with my application for leave to appeal **did not even read my submissions,** or if they did, not with sufficient attention**.** I base this opinion on the following observations:

The explanations given in the written communications by both judges (HH J Elias and McMullen) amounted to a summary of the findings in the 11.02.08 ET judgement without any reference to the issues and criticisms I had raised in my appeal against that judgment and the conduct of the tribunal. This may well show that the judges involved had read the ET judgment, but there is nothing to show that they actually read my own submissions.

15. 27. During the 22.07.08 hearing, HH J McMullen seemed oblivious of most of the issues in my appeal. (See '*NOTES from the 22.07.08 EAT hearing'* [page 194]). The orders he issued at the end of that hearing [pages 196, 197] did not touch on any of those issues.

15. 28. HH J McMullen's written judgment [page 198] contains more specific comments than his earlier orders. Even if we were to accept that this judgment shows some familiarity with the issues in my appeal, then that simply suggests that HH J McMullen might have familiarised himself with the issues in my appeal after he took the decision to reject it. Deciding on issues before one is familiar with them is not consistent with the fair hearing required by **Article 6.1.**

15. 29. However a closer look at what HH J McMullen wrote in his written judgment shows that that primarily consisted of extracts from the ET 11.02.08 judgment and HH J Elias' 24.04.08 letter, still without addressing the specific and well substantiated criticisms that I raised in my appeal against the 11.02.08 ET judgment. An examination of the criticisms in my appeal and the response in his judgment can leave no doubt about that. I will give just one example.

Under *Ground 4* of my appeal I specified 5 errors of law in connection with my complaint of unfair dismissal. None of these errors were addressed. I will demonstrate by pointing to one of these errors, *Error 5* [page 140, paragraphs 39-42], which is about the lack of procedural fairness and lack of impartiality involved in my dismissal. This is a text book example of a reason on which tribunals base a finding of unfair dismissal. What I wrote under *Error 5* alone, could serve as grounds for the EAT to reverse the decision of the ET, into a finding that my dismissal was unfair. The response of HH J McMullen to my *Ground 4* appears in paragraph 16 of his judgment [page 207]. There is nothing in that paragraph that addresses or even mentions what I described under *Error 5.*

15. 30. In view of the extent and severity of the misrepresentations I alleged existed in the 11.02.08 ET judgment, the dismissive comment in paragraph 15E of HH J McMullen's judgment [page 207] '*it is not the duty of the Employment Tribunal to cite every piece of the extensive written material in this case'* would seem at best flippant, if it came from a judge who had actually read my submissions. I am therefore convinced that HH J McMullen did not read my submissions.

15. 31. **Failure of the Court of Appeal to address my complaints**

The Court of Appeal rejected my subsequent 2008 application for leave to appeal to the Court of Appeal

because, as the judge put it, *"..the EAT said that there was no point of law in issue. The EAT refused to hear your appeal because it had no jurisdiction to do so. That remains the position, before the Court of Appeal."* [page 234].

As discussed earlier, I had clearly explained in my appeal to the Court of Appeal why my appeal to the EAT was entirely within the jurisdiction of the EAT. The Court of Appeal did not address my arguments regarding jurisdiction or regarding anything else, for that matter.

15. 32. **Implication of the failure of the Courts to address my complaints.**

Under **Article 6.1** the courts are required to give reasons for their decisions. While accepting that not all arguments in the appeal need be addressed, failing to consider the important arguments is not consistent with having a fair hearing. (See Ruiz Torija v. Spain judgment of 9 December 1994 § 29, 30, Hiro Balani v. Spain judgment of 9 December 1994 § 27, 28 and Pronina v. Ukraine judgment of 18 July 2006 § 23, 25.)

15. 33. The issues that the EAT and the Court of Appeal refused to address were specific, pertinent and important. They were the grounds of these appeals. Grounds for the appeal are indeed important. The allegation that there had been a violation of the Human Rights convention is important. The same applies to allegations about serious irregularities in the proceedings, errors in law and deliberate misrepresentation by a judge.

I argued the issues in my appeal with clarity and supported them by the relevant references (evidence, law, case law, judgments). The nature of the criticisms I raised was, for the most part, such that they could not be addressed by a mere acceptance of the findings of the court below. They required justification.

What the two appeal courts presented as answers was to a large extent evasive or irrelevant and overall insufficient. These courts have therefore failed to fulfil the requirements of **Article 6.1** of the Convention and indirectly of **Article 13.**

15. 34. **Inadequate accounts of proceedings and judgments**

The publication of written judgments ought to be consistent with the requirement of Article 6.1 for a (fair and) **public** hearing. In the UK the judgments issued at the end of hearings provide the only record of the main issues, of the findings of fact and of the decisions taken. At least this was the case in the proceedings involved in my case.

Throughout the proceedings I raised serious issues about anomalies such as the misrepresentations by the ET Chairman, Ms F Spencer. This was an important part of my EAT appeal that impacted greatly on the validity of the decisions of the ET. I also raised that with the Court of Appeal. One would expect that this allegation would appear somewhere in the judgments, yet it does not. If a member of the public were to read the judgments issued in relation to my 2008 appeals, he/she would not be aware that such an issue arose and was ignored. This matter was swept under the carpet.

The same applies to other issues that I raised in my appeal.

15. 35. Such inadequate reporting amounts to a further violation of **Article 6.1**. I explained why in paragraph 2 of the Grounds of Appeal for the 2008 EAT appeal [page 133], where I wrote:

"*..Having a fair and public hearing implies that the hearing and its outcome is fair and is seen to be fair. However the written justification for any decision is not simply supposed to create the perception that the decision is fair, what is written ought to honestly reflect the facts of the case and the legal basis of the decision.*

Inadequate or misleading reporting in the written judgments may conceal errors and unfairness in the

decisions. It can also compromise the fairness of subsequent appeals since what is reported in a previous judgment is used as the basis for further legal deliberations."