EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Miss Deborah Westgate	AND	The Commissioners for HMRC

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth **ON** 4 June 2018

EMPLOYMENT JUDGE N J Roper

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant has applied for a reconsideration of the judgment with reserved reasons dated 5 May 2018 which was sent to the parties on 11 May 2018 ("the Judgment"). The grounds are set out in her letter dated 25 May 2018. That letter was received at the tribunal office on 25 May 2018.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the

parties. The application was therefore received within the relevant time limit.

3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
4. The grounds relied upon by the claimant are (in simplified terms) these: she felt unable to do justice to her case on her witness statement as prepared and exchanged and limited to 5,000 words, and as compared with the witness statements adduced by the respondent; the trial bundle was unfairly reduced in size; the respondent lacked transparency and information was only obtained by way of formal Freedom of Information Requests; there was insufficient time to "sift" the information thus received; and other evidence was omitted, which favoured the respondent. The claimant has attached numerous documents to her email by way of new evidence which she wishes to be considered. She contends that a variation or revocation of the Judgment is in the interests of justice.
5. This was a case in which the claimant was assisted by her Trade Union and also professionally represented by Counsel at the hearing. The case was prepared and heard following case management orders made by consent, which inter alia dealt with (i) the preparation and completion of an agreed trial bundle; (ii) the appropriate size of that bundle; (iii) the preparation and exchange of written statements of evidence; (iv) the length of those witness statements; and (v) the agreed issues to be determined by the Tribunal at the hearing. These case management orders were made in the interests of justice and in accordance with the overriding objective. There were made with the consent of the parties, and there was no attempt by the claimant or her advisers at any stage to seek to amend or extend the same.
6. Secondly, the further evidence which the claimant now wishes to adduce in addition was available at the time of the hearing, and there is no new evidence which has come to light since the hearing which might have been relevant, and which was not reasonably available at the time of the hearing.
7. All of the matters raised by the claimant were considered in the light of all of the evidence presented to the tribunal and the submissions made by her Counsel before it reached its unanimous decision.
8. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in <u>Trimble v Supertravel Ltd</u> [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in <u>Fforde v Black</u> EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of

review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order".

9. More recent case law suggests that the "interests of justice" ground should not be construed as restrictively as it was prior to the introduction of the "overriding objective" (which is now set out in Rule 2). This requires the tribunal to give effect to the overriding objective to deal with cases fairly and justly. As confirmed in Williams v Ferrosan Ltd [2004] IRLR 607 EAT, it is no longer the case that the "interests of justice" ground was only appropriate in exceptional circumstances. However, in Newcastle Upon Tyne City Council v Marsden [2010] IRLR 743, the EAT confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.
10. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge N J Roper
Dated 4 June 2018

Judgment sent to Parties on