EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Miss Helen Pearce	AND	The Interim Executive Board St Maddern's Church of England Primary School

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth **ON** 2 November 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 24 September 2018 which was sent to the parties on 18 October 2018 ("the Judgment"). The grounds are set out in her undated letter which was received at the tribunal office by email on 23 October 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 set out in her letter which runs to three pages, and can be summarised under four headings: first, that the Employment Tribunal did not consider its power under Rule 34 to add a party by way of substitution or otherwise, and that the claimant was unaware of her ability to apply to amend her claim to do so; secondly, that effectively there were reasonable grounds from a number of other documents for the claimant to believe that Cornwall Council was correctly considered to be her employer; thirdly, that although the Judgment decided that it was not reasonably practicable to have presented her claim within three months, the claim was subsequently presented within such further period as was reasonable (contrary to the Judgment); and fourthly, that the Employment Tribunal should have permitted reliance on the original ACAS Early Conciliation Certificate.
5. However, each of these matters raised by the claimant were considered in the light of all of the evidence presented to the tribunal before it reached its decision. At the hearing the claimant was able to give evidence in person, and the claimant was represented by experienced Counsel, who was able to make detailed submissions on the evidence and the law. There is no information or evidence now presented by the claimant which has only come to light at this stage late stage, and which was not reasonably available to the claimant prior to and during the hearing which led to the Judgment.
6. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [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 Fforde v Black 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".
7. 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.

8. 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.

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Employment Judge N J Roper

Dated 2 November 2018