THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH EMPLOYMENT TRIBUNAL**

BEFORE: **EMPLOYMENT JUDGE WEBSTER**

BETWEEN:

Ms K COULTON **Claimant**

AND

BEWBUSH COMMUNITY NURSERY

Respondent

APPLICATION FOR RECONSIDERATION

1. The claimant has applied, by letter dated 1 August 2018, for a reconsideration of the Judgment sent to the parties on 27 July 2018. This correspondence was first brought to my attention by the tribunal administration on 17 October 2018 and I am considering at the earliest opportunity available to me. I understand the concern caused by the delay in this matter being dealt with.

2. Dealing firstly with the practical points that the claimant's representative has raised. Firstly he is correct that the hearing took place between 29 January and 1 February 2018 and I apologise for that error. This will be be rectified on the Judgment.

3. Secondly Dr Coulton raises the fact that the final judgment was not reached by the tribunal until 18 June 2018 some 4.5 months after the initial hearing and this unfairly prejudiced the claimant. A day in chambers was required to give the tribunal the opportunity to properly consider the evidence and reach its conclusion. That additional day was originally listed in early March 2018 but unfortunately one member was unable to reach the hearing due to the weather. Then, due to the members' availability, the Tribunal administration was not able to list this matter for our consideration until 18 June 2018. Whilst I recognise that this is not ideal, the Tribunal is confident that it had good notes of the evidence and submissions made from which to make its decision.

4. Turning to the substance of the claimant's application for a reconsideration. I must consider, under Rule 72(1) The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (The Regulations), whether there is a reasonable prospect of the original decision being varied or revoked.

5. A reconsideration can be made where it is necessary in the interests of justice to do so (Rule 70 The Regulations).

6. The claimant's application numbers 35 pages and contends that the original judgment shows that the tribunal's conclusions were, in summary, perverse, that errors of law were made, that the relevant case law was not considered and that there are many factual conclusions which the claimant disagrees with and states are not supported by the evidence. Further the claimant makes the assertion that the tribunal displayed personal animosity to Dr Coulton and was not welcoming to the claimant and did not make adjustments to the hearing to enable her to be at ease during the proceedings.

7. There was no animosity towards the claimant's representative, Dr Coulton, from the tribunal or from me in particular. Dr Coulton ably represented his daughter and was at all times helpful and courteous to the Tribunal. However we found that there was clear animosity towards him from the respondent and we explained our reasons for reaching that conclusion based on the evidence we heard.

8. We also found that the claimant was a helpful and truthful witness and upheld several of her claims;
   (i) The tribunal found that the claimant was disabled for the purposes of the Equality Act with respect to her OCD and anxiety.
   (ii) We found that the respondent ought reasonably to have known that the claimant was disabled due to her OCD and anxiety.
   (iii) We accepted that the claimant suffered from mild to moderate learning difficulties and that this was a lifelong condition. However we found that the tribunal had not been provided with sufficient evidence to reach the conclusion that she was disabled at the relevant time because the claimant had not addressed the impact on her day to day activities as an

adult as all the evidence we were provided with related to her abilities or inabilities as a school age student.

(iv) We found that the respondent had failed to make reasonable adjustments.

(v) We found that the respondent had subjected the claimant to harassment related to her disability.

9. At the beginning of the hearing I told all the witnesses that giving evidence can be difficult and that it was not meant to be an endurance test. It was made clear that any party could request a break at any time. Dr Coulton requested that the claimant's mother could sit next to her whilst she gave evidence and this was allowed. The claimant requested a comfort break at one point and this was agreed to. Both the claimant and her representative were aware that they could ask for breaks as and when they needed them. The claimant's evidence crossed the lunch break so the claimant had at least 2 breaks during her evidence. Had she or Dr Coulton asked for more they would have been granted. Had any other adjustments been requested they would have been considered.

10. Dr Coulton has stated that he feels it would have been appropriate for the Tribunal to have met with the claimant beforehand to set her mind at ease. Firstly this was not requested by Dr Coulton or the claimant at any time and was not raised as an issue at the preliminary hearing with Mr Cheetham or at the outset of the substantive hearing. Further it is not possible for the tribunal to meet one of the parties in isolation due to potential allegations of bias. Dr Coulton may have noted that at no point was the tribunal in the room with any individual from either party during the hearing for this reason.

11. It is not clear what other adjustments Dr Coulton felt would have been appropriate to put the claimant at ease however as stated above any such request would have been considered carefully by the tribunal at any time during the proceedings.

12. I have carefully read the application for reconsideration. I consider that the basis for the majority of the claimant's application is that the claimant and her representative disagree with the factual conclusions of the tribunal. The claimant appears to want to reopen matters that were considered and decided because our conclusions are, in their view, either factually wrong or based on an incorrect understanding of the facts. Those factual conclusions were based on the evidence that was presented to the tribunal at the time. The claimant has not, as far as I can determine, raised any new evidence in the review that would change those conclusions. The evidence referred to in the application was considered during the decision making process.

13. I note the claimant's representations that there were errors of law particularly regarding the application of the Equality Act 2010 to our assessment of whether the claimant was disabled due to her learning difficulties. It should be noted

that we did find that the claimant's learning difficulties were a lifelong condition and that this was not doubted. Further we understand that the assessment should be on what the claimant can do, not what she cannot do and that the assessment must be made without the effect of medication. This does not detract from the fact that the evidence we were provided by the claimant and her representative did not address the issue of what effect her learning difficulties had on her ability to carry out day to day activities and therefore we were unable to conclude whether she was disabled at the relevant time.

14. On balance, having reviewed the lengthy and detailed reconsideration application provided by Dr Coulton I consider that the majority of the matters raised by the claimant in this application have been considered and explored by the tribunal at the hearing, and I do not consider that there is any reasonable prospect of success for the claimant to show that it would be in the interests of justice that the original judgment be varied or revoked.

15. The claimant's application for a reconsideration is therefore refused.

Employment Judge Webster

Date: 6 November 2018