



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Gunning

**Respondent:** BUPA Care Homes (CFH Care) Limited

## JUDGMENT

The claimant's application dated 22 June 2018 for reconsideration of the judgment sent to the parties in writing on 15 June 2018 is refused.

## REASONS

### Introduction

1. At the conclusion of the hearing on 24 May 2018 the Tribunal gave oral judgment with reasons dismissing the complaint of a breach of the duty to make reasonable adjustments. The written judgment was sent to the parties on 15 June 2018. The claimant requested written reasons on 18 June 2018. While they were being prepared she made an application for reconsideration in a letter attached to an email of 22 June 2018.

2. Written reasons were sent to the parties on 18 July 2018, and in a postscript the tribunal invited the claimant to make any further submissions in support of her reconsideration application within 14 days. She did so by letter and attachments on 1 August 2018.

3. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. I have considered her initial application of 22 June 2018 and the additional representations of 1 August 2018. I have not received any representations from the respondent.

4. References in these reasons in square brackets (e.g. [25]) are references to paragraph numbers from the written reasons.

### The Law

5. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

6. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

7. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly.

8. Achieving finality in litigation is part of a fair and just adjudication. Its importance was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.”

9. Similarly, in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the Employment Appeal Tribunal chaired by Simler P said in paragraph 34 that:

“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”

## The Application

10. The claimant makes three main points.

### Medical Condition

11. In her application of 22 June 2018 the claimant explains how she was distressed during the hearing, experiencing fear and anxiety because of the presence of witnesses for the respondent who she believed had in the past been involved in causing her breakdowns at work (recorded at [28] and [45]). She feels this put her at a disadvantage during the hearing, meaning that she was on an uneven footing in presenting her case. She does not think that the Tribunal knew all the relevant facts.

### Changes to Witness Statement

12. Further, she suggests that the witness statement of Ms Goodwin had been changed after she asked her first question of Ms Goodwin in cross-examination.

### Pages Not Referred to in the Reasons

13. In her further representations of 1 August 2018 the claimant makes

reference to numerous pages in the bundle not referred to, and suggests that these pages were relevant to her harassment complaints. She also mentions complaints of discrimination arising from disability under section 15 Equality Act 2010.

### **My Decision**

14. I will deal with each of the claimant's main points in turn.

#### Medical Condition

15. Whilst it was evident to the Tribunal during the hearing that the claimant was under stress, that is not unusual for a person representing herself. The Tribunal sought to put the parties on an equal footing by explaining procedural matters and the law to the claimant, and by ensuring that her case was properly put to the respondent's witnesses. She was also assisted during her submission. There was no indication that the claimant was not functioning well enough to put her case forward. At no stage did she ask the tribunal to adjourn the hearing or complain of such problems. It was only after the Tribunal announced its decision that the claimant became too distressed to participate in the hearing. She was unable to take in the oral reasons. Written reasons have now been provided.

16. No medical evidence has been provided to support the assertion now made. I do not consider that there is any reasonable prospect of the Tribunal's decision being revoked on this basis. The claimant participated effectively in the hearing up to the delivery of our judgment. We took into account all the relevant facts in the witness statements, the documents and the oral evidence.

#### Change to Witness Statement

17. There was no change to the statement of Ms Goodwin after the claimant started cross-examination. The Tribunal had read her statement before she gave oral evidence. This point is misconceived.

#### Pages Not Referred to in the Reasons

18. It is not necessary for a Tribunal giving reasons to mention every single document placed before it during the hearing. Documents of no relevance or significance need not be mentioned as long as the Tribunal explains its decision. It does not follow that a document not mentioned in the reasons must have been overlooked.

19. In any event these appear to be documents relating to complaints (harassment and discrimination arising from disability) which were dismissed because the claimant did not pay the deposit previously ordered [6]. They were not relevant to the reasonable adjustments complaint, and that is why they were not mentioned.

20. Finally, in an email of 4 August 2018 the claimant asked the Tribunal to consider some poems she sent in by email of 16 September 2017 which would show how she felt at that time. There is no record of these emails on the Tribunal file. However, I cannot see how they could be relevant to this application.

21. Accordingly, having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

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Employment Judge Franey

14 August 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE