EMPLOYMENT TRIBUNALS

Claimant: Mrs Bee Anthony

Respondents: 1) Glyn Richard Meacher-Jones

(2) Mr David Meacher-Jones

(3) Meacher Jones and Co Limited

(4) Mrs Davina Marjorie Meacher-Jones

(5) Chester Business Services Limited

HELD AT: Liverpool **ON:** 26 July 2018

BEFORE: Employment Judge Shotter

Members Ms J Eme-Power
Ms D Kelly

REPRESENTATION:

Claimant: In person
Respondent: Mr Flynn, counsel

JUDGMENT ON RECONSIDERATION

The unanimous judgment of the Tribunal is that the claimant's application for the Judgment to be revoked is unsuccessful and is dismissed. The Tribunal confirms its judgment and reasons promulgated on 2 October 2017.

REASONS

Preamble

1. The claimant applies for reconsideration on the basis that it was in the interests of justice for the Tribunal to reconsider its Judgment and Reasons promulgated on 2 October 2017 ("the promulgated Judgment"). This decision has been held back at the claimant's request pending her return from holiday.

2. In addition to the 28-page document setting out the grounds for reconsideration, the claimant has also produced written submissions referred to as "Application Outline Argument" that ran to 65 paragraphs in 13-pages and made lengthy oral submissions in support of her application, which the Tribunal took into account. The claimant also relied upon a number of new documents marked appendix 1 and 2 which the Tribunal has not seen previously. Given the fact the claimant was a litigant in person, the Tribunal considered the documents, despite the fact that the letter dated 20 March 2017 sent to the claimant from Allington Hughes was marked 'without prejudice'. "Appendix 1" is an email sent 26 April 2018 by the claimant to Allington Hughes after the liability hearing whereupon the claimant is raising fresh arguments concerning the fifth respondent's tax registration following her attempts to obtain evidence from HMRC.

3. With reference to the document marked "Appendix 2" undated and related to a hearing held by the Tribunal of the Disciplinary Committee on 9 and 10 January 2018 in relation to the second respondent, the Tribunal has considered its contents. The document confirmed the second respondent on 26 February and 4 July 2014 had issued an audit report in the trading name of the Meacher Jones when the firm was not a registered auditor. It recorded on 12 May 2014 the second respondent issued an accountant report in respect of unaudited statements of a company when the company was not entitled to audit exemption. The second respondent was issued with a "severe reprimand" and fine of £5000 plus £3000 costs to ICAEW. The claimant submitted the second respondent was a "liar and fraud" on the basis that the second respondent had denied signing the audit report and then admitted to this at the disciplinary hearing. For the reasons set out below, the Tribunal did not accept the findings of the Disciplinary Committee undermined the second respondent's credibility at the liability hearing.

4. The Tribunal took into account the Skeleton Argument produced on behalf of the respondents and oral submissions made by Mr Flynn. The claimant's arguments on reconsideration were not always easy to follow; and for this reason the Tribunal has attempted to set out and paraphrase its understanding of the arguments without repeating every single point that has been made. The Tribunal has re-visited the notes taken during the liability

hearing, which are voluminous and are not duplicated at length within this Judgment. It has also considered the promulgated Judgment.

4.1 During the claimant's oral application for a re-consideration the claimant accused Mr Flynn and his legal team of perjury, appreciating it was a very serious allegation and yet she continued to allege they had been party to the non-compliance of case management orders intentionally, and knowingly complicit when the second respondent had lied under oath in the knowledge that the template email had not been written by the claimant but by the second respondent, and the email was then used to threaten the claimant into a settlement. The claimant relied on a third document she produced at this reconsideration hearing, a "without prejudice" letter from Allington Hughes that referred to the claimant seeking £7.3 million pounds of damages, a final offer of £60, 00.00 and referred to the email sent to the second respondent of 30 May 2014 in which the claimant allegedly wrote "If you do not give me what I want then I will do everything I can to put your company into liquidation." All of these matters were nothing new and have been referred to in the promulgated Judgment. There is no requirement for the Tribunal to consider this matter again.

4.2 The disappointment she feels at the outcome of her case is understandable but it does not necessarily follow that the outcome of the case was partly a result of the respondents' legal advisors and counsel committing the very serious act of professional misconduct as alleged. The claimant as an accountant is fully aware of the seriousness of such allegations.

4.3 It is notable the claimant, when making oral submissions at this hearing, alleged the Tribunal was at fault because it had failed to lift the corporate veil and consider whether VAT/tax evasion had taken place. It was the Tribunal's view that this has always been the crux of the matter for the claimant, evidenced not least by her cross-examination of the second respondent at the liability hearing coupled with her pre-occupation with this allegation during the life of this case. The claimant has missed the point; all that was required was for her to establish she reasonably believed disclosure made to the ICAEW concerning the second respondent fell under section 43B(1)(a) and/or (b) and the Tribunal accepted a protected disclosure had been made. There was no requirement for the claimant to "prove" the second respondent had been embroiled in a fraud, it was not a matter the Tribunal was qualified to reach a judgment on and this was made clear to her at the time. In oral submissions Mr Flynn reminded the Tribunal that the claimant's allegation concerning VAT not being accounted for was new; it had not been raised and yet it was an issue apparent to the claimant at the liability hearing and even at its highest, whether VAT was accounted for or not, did not impact on the decision concerning why the respondents' acted as they did.

The law - reconsideration

5. An employment tribunal judgment can be challenged by seeking a 'reconsideration'. Rules 70–73 of the Employment Tribunal Rules of Procedure ('the Tribunal Rules 2013') contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 SI 2013/1237 ('the Tribunal Regulations') set out the procedure for tribunals to 'reconsider' judgments.

6. Rule 70 of the Tribunal Rules 2013 provides an employment tribunal with a general power to reconsider any judgment where it is necessary in the interests of justice to do so. This power can be exercised either on a tribunal's own initiative or on the application of a party. Rules 71–73 set out the procedure by which this power can be exercised. Only a 'judgment' can be reconsidered using this power.

7. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation. Reconsiderations are thus best seen as limited exceptions to the general rule that employment tribunal decisions should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry, they are not intended to provide parties with the opportunity of a re-hearing at which the same evidence can be rehearsed with different emphasis, further evidence adduced which was available before or case law to which the Tribunal had not been taken to, for whatever reason.

8. Under rule 70 of the Tribunal Rules 2013, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'. This ground gives an employment tribunal wide discretion, but it does not mean that in every case where a litigant is unsuccessful he or she is automatically entitled to a reconsideration: it can be used to correct errors that occur in the course of proceedings it is irrelevant whether a tribunal's alleged error is major or minor taking into account the overriding objective to deal with cases justly and the interests of justice to both sides. This is particularly relevant to the claimant's application, as he is attempting to re-argue the case, formulating a number of arguments, both those previously used and new ones, possibly due to his own inexperience.

9. Upon reconsideration of a judgment, the employment judge or tribunal (as the case may be) may confirm, vary or revoke the original decision and, if revoked, the decision may be taken again — rule 70.

10. On behalf of the respondent the Tribunal was referred to the Court of Appeal decision in Ministry of Justice v Burton and another [2016] EWCA Civ 714 commenting that the earlier law on reconsideration cannot be ignored, and the EAT decision in Outasight VB Ltd v Brown UKEAT/0254/14 in which it was held the previous law on the interests of justice category remains relevant to

the Tribunal's discretion under the current rules. The same basic principles apply to the 2004 Employment Tribunal Rules as the 2013 Rules.

11. The Tribunal was referred to Fforde v Black UKEAT/68/80 decided under the 2004 Rules, relied upon by Mr Flynn as authority for the proposition that the "interest of justice" category could only be successfully relied upon when something had gone wrong with the Tribunal's procedure, so that a party had been denied natural justice and there had been no denial of natural justice in the case of Mrs Anthony. It was also referred to Flint v Eastern Electricity Board [1975] ICR 395 and the guidance from Mr Justice Philips that whilst a Tribunal has a wide discretion, it is not boundless, must be exercised judicially with regard to the interests of both parties and public interest in the finality of litigation. Mr Flynn submitted the claimant was attempting to re-litigate because she did not like the decision, and in the case of Serious Organised Crime Agency v O'Docherty [2013] EXCA Civ 518 (decided in a different context) Mummery LJ described finality as being "critically important."

12. Ladd v Marshall [1954] EWCA Civ 1, the case referred to the Tribunal by the claimant, established the criteria for the Court to accept fresh evidence in a case on which a judgement has already been delivered. In the Judgment of Lord Denning in order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive: thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

The claimant's grounds

13. First ground:

13.1 The first ground relied on is the Tribunal has failed to ensure the parties are on an equal footing.

13.2 Contrary to the claimant's assertion at paragraph 1 the issues subsumed into the promulgated Judgment were specifically produced for clarification purposes and agreement with the parties, having been produced by Mr Flynn at the Tribunal's request. At no stage did the claimant indicate she disagreed with them, and contrary to her oral submissions made at this hearing, she did not inform the Tribunal during the liability hearing that (a) she could not fully understand them, and (b) when offered an adjournment in relation to documents produced by the respondents during the liability hearing, did not say she needed an adjournment in order to understand the issues. The claimant had a number of days after she received the written issues to make such representations and she made none. In oral submissions made at the reconsideration hearing the claimant alleged "I pleaded for the Tribunal to dismiss the defence and in hindsight I should have pleaded

adjournment. The Tribunal on its own initiative should have offered an adjournment." The Tribunal does not agree as there was no indication before them the claimant had an issue with what the claimant took to be "agreed issues" and an adjournment having been offered and not taken up on another matter.

13.3 At paragraphs 2 and 3 the claimant alleges the issues placed "unfair weighted advantage in favour of the respondents" and it was unjust for the Tribunal to rely as heavily as it did on making its decisions based on a list of issues prepared by Mr Flynn. The parties were aware from the outset of the liability hearing understanding the issues were fundamental, and the Tribunal would be responding to them when it came to its decision. In oral submissions at the reconsideration hearing the claimant maintained she was not aware of the relevant sections of the legislation and wasn't given the opportunity to adjourn. This was not the case, and the written list of issues as set out in the promulgated judgment clarified the Section 43C relied upon following oral representations by Mr Flynn also confirming the same on day one.

13.4 The judge's hand-written notes taken on the first day of the liability hearing reflect:

(a) There is a note to the effect that the issues set out at paragraph 7 and 8 of the 14 October 2016 case management minute were discussed and in addition, Mr Flynn had raised the issue concerning the ICAEW and the claimant was aware that she would need to address it.

(b) At the outset the Tribunal and claimant were provided by Mr Flynn with a skeleton argument referred to as "opening submissions" that set out a number of issues which Mr Flynn spoke to, and the claimant, had she been in any doubt beforehand, was made fully aware of the respondent's case. This was further clarified and expanded upon at the outset of the liability hearing and she was cognisant of the fact that the issues in the case should be addressed. By the second day of the liability hearing it became apparent to the Tribunal that the claimant was not addressing the issues in the case by the way she answered questions on cross-examination and Mr Flynn was asked to prepare a list of issues early on in the second day. The claimant did not challenge the list of issues, nor did she ask for an adjournment or seek to amend the issues.

(c) The claimant produced a document at the reconsideration hearing by way of an email sent to her by Mr Flynn at 7.50pm on 9 August 2017 attaching the list of issues. These were the issues incorporated by the Tribunal in the Reserved Judgment. In response, the claimant produced for the Tribunal a "Response to list of Issues" stating "I know understand the concerns the Tribunal has in relation to the preliminary issue regarding protected disclosure raised by the respondent's counsel on the first day of the hearing." The claimant set out why she thought the respondent's position was incorrect in paragraphs 3 to 11. There was nothing to put the Tribunal

on notice that the claimant did not agree or understand the issues, which she was invited to address during her cross-examination of the second respondent and speak to during closing submissions.

(d) In the preliminary hearing notes reference was made to the screen shot and the email in which the claimant had allegedly threatened to put the company into liquidation, which she denied sending, alleging the respondent was perverting the course of justice. The Tribunal was aware of the claimant's position and took it into account.

(e) The claimant on 7 August indicated she needed more time to read the respondent's disclosure argument, and issue discussed at the start of the process. It was made clear from the outset by Mr Flynn that the pre-COT3 Public Interest Disclosure ("PID") was accepted by the respondent, and there was no concession of the 22 August 2018 PID "because it is not a PID as it was made to ICAEW and under S.43C…there is an issue of legal responsibility as ICAEW has legal responsibility for chartered accountants and the 4 and 5th respondent were not chartered accountants and therefore disclosure does not fall under S.43C and 43d does not apply." In response, the claimant maintained she was a worked for the fifth respondent and an employee of the third respondent, and "Mr Flynn is deflecting issues…the issue is whether the fifth respondent managed or influenced the first, second and third respondent." Mr Flynn indicating it was in issue, and the claimant queried why it had been not been raised before. There was no suggestion the claimant failed to understand the issue as set out by Mr Flynn orally, then in writing when asked to produce a document setting out the issues in full and finally, in oral submissions Mr Flynn having made his submissions first and the claimant offered and given time to absorb them before making her oral submissions after the evidence had been completed.

(f) Reference was also made by Mr Flynn to the claimant's personal relationship with the second respondent and its effect on her motivation, in response the claimant maintained a COT3 had been signed by her on the basis that the personal relationship would never be referred to again. The claimant was aware the past relationship was a fundamental part of the factual matrix in the case relied upon by the respondent. The judge's notes confirm the claimant was cross-examined on her personal relationship with the second respondent and its breakdown, and she referred to being offered £65,000 settlement before the proceedings started.

(g) The notes reflect the Tribunal adjourned at 11.48 to read the documents and did not re-convene until the next day. The claimant had time to understand the respondent's argument on the ICAEW. A note was made of the documents the Tribunal was referred to by the claimant. The documents it was referred to in the reconsideration hearing, namely pages 243, 245 and 961 were not referred to by her (or the respondent) at any stage during the liability hearing, and nor were they read.

13.5 On the second day of the liability hearing Mr Flynn reiterated that the respondent will argue the 22 August 2015 disclosure was not a protected disclosure; it was not made to a protected person as the fifth respondent was a separate legal entity and not a chartered accountant. The claimant clarified that it was the 22 August 2015 disclosure she was relying on, and not the earlier protected disclosure made whilst she was in employment which had not been included in the bundle, although the outcome of the investigation was included and the Tribunal was referred to it. The claimant did not complain that she could not understand the respondent's position and needed more time. It was a relatively straightforward matter although the facts in the case were complex and at times difficult to understand on the claimant's part, as she was unable to express herself at times without confusion. There is a note to the effect that the issues set out at paragraph 7 and 8 of the 14 October 2016 case management minute were discussed and in addition, Mr Flynn had raised the issue concerning the ICAEW and the claimant was aware that she would need to address it.

13.6 Paragraphs 6 to 8 of the claimant's reconsideration application are difficult to understand in the context of a reconsideration. The claimant relied upon the disclosure made to ICAEW on 22 August 2015; it was a fundamental part of the case considered by the Tribunal. The claimant was not happy with the respondent's argument that it did not amount to a PID in respect of the 4th and 5th respondent brought up at the outset of the liability hearing; however, she did not seek an adjournment or clarification of the respondent's position which had been made clear by Mr Flynn. As far as the Tribunal was concerned the claimant was aware from the morning of day 1 this was an issue it would need to decide, and she would have to deal with both in her evidence and closing submissions. The claimant did not maintain she had been caused "overwhelming hardship and injustice" and had she made an application for the issue to be have been "dismissed" (which she did not) the Tribunal would have rejected it on the basis that it was one of the key issues in the case and could not be ignored. The fact that it was raised by counsel at the outset is unsurprising; more often than not in Employment Tribunal cases when issues are discussed and agreed before the evidence is heard, new matters and fresh arguments are raised. Providing the parties understand the issues and have time to deal with them (which the claimant had over a period of days) it would not be in accordance with the overriding objective to derail a 6-day liability hearing as now suggested by the claimant at paragraph 13, although this was not proposed by her at the time.

13.7 With reference to paragraph 10 the Tribunal can do no more than repeat paragraphs 25 and 26 of the promulgated Judgment. There was no suggestion by the claimant at the time that the respondent was "allowed to take advantage of the fact that I was a litigant in person to require that I spend a substantial amount of time on a point that they knew was incorrect." Further, there was no suggestion Mr Flynn intentionally raised the point to disadvantage the claimant; such matters are often aired by parties during discussions concerning the issues with a view to them being resolved before

evidence is taken. That is what happened in the claimant's case, when the argument was found to be in her favour.

13.8 With reference to the remainder of paragraph 13 as indicated above, the claimant did not seek an adjournment and further, she responded by producing a written document titled "Claimant's response to list of issues" recording at paragraph 1 "Having received the list of issues from the respondents' legal representatives yesterday evening, I now understand the concerns the Tribunal has in relation to the preliminary issue regarding protected disclosure raised by the Respondent's counsel on the first day of the hearing. In paragraph 2 she wrote "I'd like to bring to the Tribunal's attention that the respondent's position is incorrect" and in paragraphs 3 to 11 set out arguments to this effect. Nowhere in her argument did the claimant raise any issue with a lack of understanding or requirement for an adjournment and the Tribunal formed the view at the time that the claimant was aware of the issues, agreed them and was prepared to deal with them, which she did.

13.9 With reference to paragraph 15 the claimant is incorrect in her assertion that she was unaware of the relevant legislation; she was made aware at the outset by Mr Flynn and this was then, for the avoidance of any confusion on the part of the claimant, set out in the written issues. The Tribunal accepts the written issues were provided to the claimant on the evening of 9 August 2017 at 19.50 well before close of evidence and oral submissions being given by her on the agreed issues.

13.10 With reference to paragraphs 23 and 24 the Tribunal accepts it informed the claimant that it was not a specialist in accountancy, it cannot recall using the phrase "nitty gritty," terminology the Judge would not ordinarily have been used. It did inform the claimant words to the effect that detailed accountancy information was unnecessary, the claimant sought to explore in detail whether the second respondent was guilty of fraud in addition to a number of other matters not relevant to the issues to be decided. At the reconsideration hearing the claimant clarified that the Tribunal had made a fundamental error in this regard on the basis that it had failed to lift the corporate veil and then explore whether the third and fifth respondent were separate businesses. The Tribunal made it clear at the liability hearing their role was not to lift the corporate veil; it considered whether the businesses were separate, a task the Tribunal undertook with much thought as set out in the promulgated judgment.

13.11 The claimant in her first ground repeats a number of arguments and submissions made during the liability hearing and the Tribunal does not intend to revisit its findings having considered the points in detail after closing submissions. It is notable on the second day of the liability hearing the judge's notes record on cross-examination the claimant confirmed the third respondent had instructed her to carry out work for the fifth respondent, and that she was a worker for the fifth respondent through the third respondent

and this matter was further explored by Mr Flynn with the claimant confirming a number of matters, including the fact the first and fourth respondent did not ask her to perform work on behalf of the fifth respondent, and that she was an employee of the third respondent. This is an argument she repeated at the reconsideration hearing, and is one which the Tribunal does not intend to revisit.

14. Second ground:

14.1 With reference to the second ground, namely, the second respondent's failure to comply with case management orders and the "tampering" of the 30 May 2014 email, the claimant alleges that the failure was on the part of the first respondent, who did not give evidence on health grounds, also. The Tribunal considered explanations given at the liability hearing for the failure to provide metadata ordered, accepting the second respondent's evidence and bundle of emails marked "R5" on the balance of probabilities. The Tribunal dealt with the Case Management Order and the failure to comply with it at paragraphs 11, 28 to 32, 84 and 95 of the promulgated judgment. It assessed the second respondent's evidence on cross-examination and the panel asked questions for clarification. Based on the evidence before it the Tribunal reached the conclusions it did on the balance of probabilities, taking the entire factual matrix into account when it came to assessing credibility. The fact the first and/or second respondent failed to comply with a case management order is but one matter that contributed to the Tribunal's overall assessment of the case, and its findings at paragraphs 84 and 85. The claimant in this application is re-hearing and finessing arguments previously before the Tribunal, which it considered when deciding the facts on the evidence before it at the time.

14.2 Mr Flynn reminded the Tribunal that as a result of the IT professional being out of the country and not being in a position to give evidence at the liability hearing an adjournment was suggested part way through, which the claimant did not want to take up. Authenticity of documents was not an issue raised by the claimant at the time. This was not disputed by the claimant at the reconsideration hearing.

14.3 With reference to paragraph 39 and 40 the Tribunal notes the promulgated judgment at paragraph 84 and had the claimant cross-examined the second respondent on the heading of the "tampered email" this would have been an important point and reflected in the judgment. She did not, and reconsideration is not the means by which a claimant can make up any deficiencies in cross-examination. It was not readily apparent to the Tribunal that the heading of the tampered email was indicative of the second respondent having printed it off from his own email account, and without giving the second respondent an opportunity to comment on the claimant's observation (i.e. via the claimant's cross-examination), it is not in the interests of justice for the Tribunal to now accept at face value, the claimant's

submission that the heading of the tampered email clearly shows the second respondent's evidence as untrue.

14.4 With reference to the paragraph 48 and the claimant's complaint that she had no opportunity to verify the authenticity of the documentation presented by the respondents during the liability hearing, this was not an argument she used at the time and has been raised exclusively for the purpose of the reconsideration hearing. At the reconsideration hearing it was pointed out to the claimant by the judge that she had no recollection of the claimant seeking an opportunity to "inspect authenticity" to which the claimant responded that she had not realised the Tribunal would accept evidence when there was "obvious non-compliance, which was clearly incorrect as the documents were admitted in evidence and cross-examined on.

14.5 There was no issue concerning authenticity of documents raised during the liability hearing. It is difficult for the Tribunal to understand the claimant's point raised after the event. It is notable the claimant has made no attempt to explore authenticity of documents prior to this hearing and she merely asserts she did not the opportunity to do so. That assertion is not entirely correct as she had the opportunity to cross-examine witnesses and could have explored authenticity of documents as she did with the "tampered email." The Tribunal has considered the 20 March 2017 email there being no strong objection by Mr Flynn that privilege should not be waived. In the same way the claimant introduced the 20 March 2017 letter into the reconsideration application she could have raised it at the liability hearing, and failed to do so. The 20 March 2017 letter adds nothing; a dispute had always existed concerning who had sent the "tampered email" one which the Tribunal unfortunately not able to resolve even on the balance of probabilities. The 20 March 2017 letter points the finger at the claimant, and it is conceivable that had the Tribunal this document before it there would have been no difference to the outcome.

14.6 The claimant has made similar submissions in the past, rejected by the Tribunal who would not accede to her request to make a referral to the Crown Prosecution Service on the basis that the second respondent had committed perjury and the Tribunal does not intend to deal with the claimant's application again.

15. <u>Third ground</u>

15.1 The claimant averred the Tribunal had, with reference to the Case management Order regarding the fifth respondent's registration as a tax agent with HRMC and professional indemnity insurance, erred in concluding the fourth respondent was a credible witness. The claimant's assertions and submissions in this regard were considered by the Tribunal at the liability hearing and it can do no more than reiterate its findings in this regard as set out in the promulgated judgment, especially at paragraphs 36 and 37. The claimant is attempting to rehearse and clarify evidence to persuade the Tribunal that the first respondent was supervised for Money Laundering

Regulations by ICAEW through the third respondent, was thus a prescribed person under Section 43F, and the second respondent had ultimate control behind the fifth respondent. The Tribunal heard a great deal of evidence on the control point, no evidence on the money laundering argument (which may in any event have been irrelevant) and a reconsideration is not the vehicle by which the claimant can make good any deficiencies in her case.

15.2 The claimant seeks to argue the case further at paragraph 16 onwards in her application Outline Argument document maintaining the Tribunal failed to identify the validity of tax registration as being paramount in determining the existence of two separate businesses as alleged by the respondent. In paragraph 18 the claimant maintained the Tribunal had erred in not considering the redaction of the letters sent by the respondent's seeking the fifth respondent's tax registration which must mean there was a previous response form HMRC and that correspondence had not been disclosed. Mr Flynn submitted the relationship between the two businesses took up time, the claimant stating the Tribunal should lift the corporate veil to establish tax evasion and despite clear guidance from the Tribunal at the time that these were not matters suitable for the Tribunal, the claimant did not listen.

16. Fourth ground:

16.1 The claimant's observation concerning the Tribunal's assessment of the credibility of her witnesses is noted, however, the Tribunal's position is clearly set out at paragraphs 17 to 19. The Tribunal acknowledges the correct name of Xiegong Li Hodgson should be Xuedong Li Hodson and the name in the judgment is amended under the slip rule as it was clearly a typing error.

16.2 In direct contrast to the claimant's observation at paragraph 89 in the reconsideration application, paragraph 18 of the promulgated judgment refers to the claimant's submission that Ms Hodson's husband prepared her statement. A reconsideration is not the means by which a Tribunal is required to re-assess the credibility of witnesses again, that exercise having been carried out when the evidence was fresh in the minds of the Tribunal and prior to it reaching its findings of facts.

17. Fifth ground:

17.1 The Tribunal makes the same observations in respect of Joanne Lark, who did not attend and could not be cross-examination as set out in paragraph 15 of the promulgated judgment. The claimant has not explained in the reconsideration application how she was prejudiced by the Tribunal giving weight to some the undisputed evidence set out in Joanne Lark's witness statement, rejecting other disputed evidence on the basis that the claimant could not cross-examine that evidence.

18. Sixth ground:

18.1 The claimant argued the Tribunal made an incorrect finding of facts in connection with paragraph 35 in the promulgated judgment in contrast to paragraph 6 of the fourth respondent's witness statement. The Tribunal has re-visited the witness statement of the fourth respondent and the Tribunal fails to see there being any conflict between its findings and paragraph 6, which makes no reference to PI cover. The claimant attempts to re-hearse the evidence in relation to PI cover, rental payments, invoices and engagement letters questioning the authenticity of the documents relied upon by the respondent. It was for the claimant to explore via cross-examination any issues she had with authenticity of documents. The Tribunal assessed the evidence before it, including the documents relied upon, having heard from the various witnesses. The Tribunal took into account the claimant's submissions and dealt with a number of them in the promulgated judgment.

18.2 With reference to paragraph 140 and 141 the Tribunal had before it evidence relating to the number of clients that moved from the fifth respondent to Morris & Co. The actual number is irrelevant; it was undisputed between the parties a considerable number of clients were approached and moved and this provided part of the motivation for the fifth respondent's actions.

19. Seventh ground:

19.1 The claimant's submissions (repeated at paragraph 20 onwards in the Application Outline Argument document) that she had made qualifying disclosures about tax evasion whilst still in employment was not evidence before the Tribunal, who was not referred to the claimant's witness statement in case number 2403196/2014 that was not relevant to these proceedings and which had resulted in a COT3 agreement. The claimant is in relation to the seventh ground attempting to introduce new evidence and revisit evidence already given, for example, in relation to Joanne Lark as set out in paragraph 145 which is irrelevant.

19.2 The clear evidence before the Tribunal was the claimant made two protected disclosures, one when she was still in employment the other to ICAEW after a delay. The claimant has repeated and expanded upon the evidence she gave for the delay arguing why ICAEW was the relevant authority. There is no requirement for the Tribunal to revisit this evidence.

19.3 Contrary to the claimant's observation at paragraph 20 of the Application Outline Argument document, the Tribunal took into account the fact the claimant had made two protected disclosures and the evidence before the Tribunal was not that the qualifying disclosure made during employment was "in respect of the second disclosure." The Tribunal considered in great detail the motivation of the respondents, particularly that of the second and fourth, drawing on the contemporaneous documentation in

addition to oral evidence given on cross-examination and re-examination. In her application before the Tribunal the claimant, with her references to the respondents' attempt to "camouflage the set up of the working arrangements…such as taking out professional indemnity insurance and registering as a separate tax agent...putting in place joint engagement letters and sub-contractor agreement" is attempting at re-hashing the evidence already heard by the Tribunal with a view to persuading the Tribunal to agree with the claimant's version of events and conclude the second respondent was engaged in a fraud and tax evasion. It was not the Tribunal's role to consider "whether the respondents were abusing the corporate veil" and it was not for the Tribunal to lift that corporate veil. It is notable that the lifting of the corporate veil and proving the second respondent had acted fraudulently was one of the claimant's main objectives at the liability hearing, and she found it difficult to move away from this and address the key issues in the case and the Tribunal's promulgated judgment reflects this including its view that the "personal intimate relationship" between the second respondent and claimant impacted on the events that transpired, and the fourth respondent. The animosity between the claimant and second respondent was out of kilter with an employment relationship.

20. Eighth ground:

20.1 When the claimant asked the Tribunal to redact the paragraphs at 27 and 28 of the second respondent's witness statement she did ask for the personal relationship not to be mentioned, and the Tribunal was sensitive to the fact that the claimant, who had a husband and family, wished to avoid her private affairs being aired in public. On its part the Tribunal sought to prevent either party from becoming embroiled in acrimonious personal allegations exploring the relationship, its breakdown and aftermath. It has always been the respondent's case that fact the claimant had been in an "intimate personal relationship" with the second respondent and that had broken down during a time when she was an employee of the third respondent, and this was relevant. There is a difference between exploring the "ins and out" of a broken personal relationship in a case where such information is not relevant; to the fact it was broken and steps were taken in the aftermath. As the case progressed and evidence became clearer the breakdown of the personal relationship was relevant, and given the claimant's sensitivities the judge took the view it was only right to warn her that it would be mentioned. The Tribunal has attempted to refer to the relationship in the most subtle and sensitive manner in order to minimise any hurt for the claimant in her personal life.

20.2 The evidence before the Tribunal was not that the first and fourth respondent were accustomed to the second respondent's infidelity and thought nothing of it. To the contrary, there was no evidence regarding the first respondent and in respect of the fourth respondent the Tribunal took into account all of the evidence before it (including that given by the second respondent) and came to the conclusions it did. It is irrelevant whether or not the first respondent was a party to the COT3, the fourth respondent's

motivation for her actions was a fundamental issue to be decided upon and the personal relationship and its aftermath was found to have been a factor.

21. Ninth ground

21.1 With reference to the information forwarded to the ICAEW the Tribunal heard evidence form the fourth respondent to the effect that she believed the claimant had in her possession of information confidential to the third and fifth respondent. This was supported by the contemporaneous documents and accepted by the Tribunal. Whether or not the second and/or fourth respondent believed the claimant held confidential information and whether this knowledge formed part of the motivation for her to act as she did was explored by the Tribunal. The Tribunal does not intend to re-hearse its findings on this matter set out in the promulgated judgment. The fact that claimant was a shareholder of the third respondent as she maintains in her written application, is not relevant. In oral submissions made during the reconsideration application the claimant accepted there was no requirement for the Tribunal to look to see if there was a "legal breach of confidentiality" by her, but the fact the fourth respondent approached the claimant and not the third respondent "means her motive was not to get the information back" alleging "the motive…cannot be true because the fourth respondent didn't ask for the information from the third respondent." The claimant's argument was that it was the third respondent and not the fourth who should have requested the information from her and this was what she would have expected.

21.2 It is undisputed the claimant retained documents containing confidential information belonging to the third and fifth respondent when she was no longer an employee; these were used by her and produced in the agreed bundle. The fact they were disclosed to ICAEW does not negate the reality of the situation as genuinely believed by the fourth respondent, namely, the claimant had retained the documentation post employment when she ought not have done so, and these documents could be used to harm individuals and the business. The fact that the documents were obtained legitimately in the first place during the claimant's employment is irrelevant; it is the retention of the documents post employment and what was in the mind of the second and fourth respondents when they acted as they did.

22. Tenth ground

22.1 With reference to paragraph 174 onwards under the title "Contradictory findings" the Tribunal did not accept the claimant's assertion that the fact Morris & Co did not write to the fifth respondent's clients and yet clients were lost was evidence the third respondent managed the fifth respondent's client ledger and the second respondent controlled the fifth respondent bearing in mind the relationship between the parties.

22.2 In the application Outline document the claimant further expanded upon this point at paragraph 8 arguing clients within the fifth respondent when

they moved to Morris & Co had only given permission to release information "withheld and managed" by the third respondent whom they identified as their authorised tax agent/accountant. With reference to paragraph 9 in the application Outline document the claimant incorrectly maintained the Tribunal failed to take into account the fact that the second respondent was founder of the fifth, represented the fifth respondent over billing in court and instructed a marketing executive to engage clients in the fifth respondent. The Tribunal does not intend to re-visit this issue again.

23. Eleventh ground

23.1 With reference to paragraph 179 onwards "Unfounded findings" the claimant is attempting to re-hearse and re-new her evidence and arguments. The Tribunal reached the findings it did partly based on the contemporaneous documentation, particularly the party-to-party correspondence and the litigation threats. It was irrelevant to the Tribunal's consideration whether the claimant breached the COT3 and/or her restrictive covenants and whether they were binding or had fallen away. The evidence was clear, litigation was being threatened on the part of both parties and having considered the factual matrix in it's entirely the Tribunal formed a view regarding the claimant's motive for making the protected disclosure and acting as she did, as set out in the promulgated judgment.

24. Twelfth ground

24.1 With reference to paragraphs 186 onward; "Detriments" the claimant repeats a number of her arguments set out within the reconsideration application and at liability hearing stage, which the Tribunal does not intend to re-visit.

25. Thirteenth ground

25.1 With reference to paragraph 191 "Incorrect interpretation and application of the law" the claimant expanded considerably on this in her document titled "Application Outline Argument for Hearing on 11 May 2018" and at the hearing itself. She clarified her argument was the Tribunal failed to correctly apply the extended definition of worker set out in Section 43K ERA in that:

(a) Section 43K does not require the terms on which the claimant worked for the fifth respondent to be determined by both the third and fifth respondent,

(b) The claimant was a "worker" for the fifth respondent on terms substantially determined by the third respondent through the second respondent. In oral submissions the claimant asserted the definition extends to a worker presented to a sub-contractor by its employer. The claimant argued as an employee of the third respondent she was "asked" to do work for the fifth respondent at the request of the second respondent and therefore was a

worker of the fifth respondent. The third respondent determined what work she did for the fifth respondent through the second respondent and under Section 43(K) the claimant maintained she was a worker for the fifth respondent, despite not having entered into a contract of employment with it.

(c) The claimant argued the Tribunal had erred in finding the first and fourth respondent were not workers of the second respondent by virtue of the extended definition of Section 43K. In oral submissions the claimant maintained the first and fourth respondent worked for the third respondent because the work they did was determined by the second and third respondent. The Tribunal does not intend to re-visit this argument, which it dealt with in the promulgated judgment.

25.2 The claimant selectively refers to paragraph 50 in the promulgated judgment. Mr Flynn submitted that what the claimant described was just a client relationship and nothing more. The fifth respondent was a client of the third respondent and work was distributed to the claimant (and other staff) via the second respondent. The claimant cannot be a worker under those circumstances, and if the claimant were found to have been a worker every accountant and solicitors practice giving work to their employees on behalf of a client would become a worker of that client. The Tribunal agreed. It found as set out in the promulgated judgment the third and fifth respondents were two separate companies with a contractual relationship involving clients, and the fact the claimant was employed by the third respondent and within her contract of employment instructed by the second respondent to carry out some work for the fifth respondent's clients does not make her a worker under Section 43K as there is no worker relationship. The claimant was not working for the fifth respondent, she was working for the third respondent and the Tribunal does not intend to revisit this issue, having considered it at length at liability stage.

26. Fourteenth ground

26.1 The correct dates are 7th to the 11th & 14 August 2017.

27. In the Application Outline Argument the claimant introduced an allegation that the Tribunal was perverse and/or biased in its judgment. Obviously, the Tribunal deny that this was the case as it would not knowingly produce a perverse or biased judgment; this is a matter for the EAT to consider. It is notable during oral submissions Mr Flynn described the Tribunal as "bending over backwards" for the claimant. The Tribunal, throughout the liability hearing, was mindful of the fact the claimant was a litigant in person and attempted, as best as possible, to level the playing field between her and a legally represented respondent, hence the suggestion that an agreed list of issues be produced in one document and the Tribunal reminded the claimant of those issues at various stages of the hearing, giving her time overnight to prepare additional cross-examination of the second respondent in order that she could take into account the issues.

28. The Judge's notes record at the end of the third day when it became apparent the claimant's cross-examination of the second respondent was limited to his alleged misconduct and to him allegedly providing her with no answer as to the audit status, the claimant was referred by the judge to the list of issues. The notes reflect the claimant was given an opportunity to prepare further questions with the issues in mind. In addition, she was referred to detriments and issues set out in the Case management Order. The hearing adjourned until the next day to give the claimant time to prepare her cross-examination. On the fourth day the claimant continued with her cross-examination of the second respondent and it was at this stage the second respondent gave evidence that he had found the email in a box of papers in his office in March 2017.

29. The judge's notes record a discussion also took place about the respondents attempt to rectify their failure to comply with the Case Management Order and an adjournment was discussed in order that further evidence could be obtained. The note reflects that the claimant "disagrees but wants to get the case done…I have a copy of the fabricated email on the phone. Agreed to crack on with the case."

30. After close of evidence both the claimant and respondent had prepared written closing submissions prior to making oral submissions, and prior to submissions being made the Tribunal reminded the parties again of the importance of the agreed issues. The claimant confirmed she did not agree with any of Joanne Lark's witness statement having originally only disputed paragraph 5. The claimant had been requested to deal with what weight should be given to Joanne Lark's evidence. Prior to closing submissions and after close of evidence the claimant also introduced new evidence in an email dated 13 August 2017 which the Tribunal allowed and considered despite the fact that the claimant's case had closed, given she was a litigant in person and some leeway was appropriate.

31. With reference to the Tribunal's alleged "overly lenient approach in condoning the respondent's obvious failure to comply with case management orders," this was a matter considered by the Tribunal at length and an adjournment offered to the claimant, which she refused. At no stage of that process did it become apparent to the Tribunal that the second respondent was guilty of perverting the course of justice as alleged by the claimant on numerous occasions, and this was dealt with in the promulgated Judgment.

32. With reference to the claimant's allegation set out in paragraph 58 onwards in the Application Outline Argument, the without prejudice correspondence had no effect on the Tribunal's findings. There was no application made by the claimant for the Tribunal to take the without prejudice correspondence placed in the agreed bundle to be taken out. The Tribunal understood privilege had been waived by the very fact that the documents (including without prejudice letters from the respondents) were in the agreed bundle. With reference to

paragraph 59 at not stage did the claimant state the issues were not agreed? They were referred to as agreed issues numerous times, a copy was given to the claimant, she did not dispute the contents, prepared a response to the list of issues and prepared written closing submissions with reference to them (at the Tribunal's suggestion) as can be seen by her references to the six detriments.

Conclusion

33. With reference to the new evidence produced by the claimant, seeking to adduce fresh evidence available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time can be a ground for reconsideration where the interests of justice required it under Rule 70. Even if those principles set out in Ladd v Marshall are not strictly met, the interests of justice may still allow fresh evidence to be adduced where some additional factor or mitigating circumstance has the effect that the evidence in question could not have been obtained with reasonable diligence at an earlier stage. This might apply where, for example, by the introduction of evidence at the hearing.

34. The Tribunal is mindful of the fact that it is not generally in the interests of justice that parties in litigation should be given a second bite of the cherry simply because they have failed for whatever reason to adduce all the evidence available in support of their cases at the original hearing. It is fundamental that the new evidence is likely to have an important bearing on the result of the case and is likely to influence the decision.

35. With reference to the document generated by the Tribunal of the Disciplinary Committee on 9 and 10 January 2018 in relation to the second respondent, clearly, this is a document that was not in existence at the time of the liability hearing. The claimant sought to argue that at the liability hearing the second respondent insisted he had done nothing wrong and the audit investigation was not conclusive, which he could not have believed given the Disciplinary Committee's findings, thus the Tribunal should find the second respondent was a "liar and fraud" on the basis that the second respondent had denied signing the audit report and then admitted to this at the disciplinary hearing. The Tribunal did not accept the findings of the Disciplinary Committee undermined the second respondent's credibility at the liability hearing. At the reconsideration hearing the Tribunal explored with the claimant the fact that it was not part of the case before the Tribunal whether or not the second respondent had signed the audit report. The Tribunal was referred to Ladd v Marshall [1954] EWCA by the claimant who argued a self-confessed liar cannot be a credible witness. Mr Flynn submitted there was no allegation of dishonesty made by the Disciplinary Committee, and on the face of the document that appeared to be the case. The process of signing audits and an accounts report appeared to be an administrative one, and without a great deal more evidence the Tribunal is not in a position to conclude the second

respondent's credibility was undermined to such an extent that it should set aside its judgment. The findings of the disciplinary committee may not show the second respondent in good light in respect of issuing two audit reports and one accountants report but it cannot be said from this the second respondent's evidence could not be relied upon, and that he had subjected the claimant to detriment and in doing so was "materially influenced" by the protected disclosure in accordance with NHS Manchester v Fecitt [2012] IRLR 64, which was one of the key issues at the liability hearing.

36. The claimant is seeking to argue the respondent had lied under oath and committed perjury, and the new evidence should result in the promulgated Judgment being revoked on the basis that the original decision was reached, where there were conflicts in evidence, these were resolved in the second respondent's favour and they should have been resolved in the claimant's favour. In short, the claimant submitted the new evidence showed the second respondent was unreliable and his evidence should not be accepted. The problem for the claimant is that the new evidence does not relate to any crucial finding of fact and the Tribunal reached its findings as to the credibility based on all the evidence before it and this would be difficult to revisit solely on the basis of the claimant's reconsideration application as she has not produced any evidence which casts doubt over the Second Respondent's credibility let alone the fifth respondent.

37. Events that occur subsequent to a hearing may justify reconsideration in the interests of justice. The Tribunal's view is that the claimant's attempts at uncovering evidence to support her case and challenge the Tribunal's findings is not a evidence the Tribunal can consider after the event, given the fact the claimant had sufficient opportunity at the liability hearing to explore the issue of credibility and put her arguments forward.

38. It was submitted on behalf of Mr Flynn that given the Tribunal's findings in paragraphs 181,184, 192, 195-6, 200, 204 and 2011 dealing with the issue that any disclosure was not a material factor in the alleged detriments, even if the claimant was correct it would not change the outcome and therefore, it is not in the interests of justice to grant the claimant her application. The Tribunal agreed.

39. Mr Flynn submitted that the claimant's reliance on the Sub-contractor's Agreement dated 4 July 2007 between the third and fifth respondent and signed by the second respondent had not been a document to which the claimant had referred to in the written evidence, oral evidence and numerous written submissions. The Tribunal agreed. It also accepted Mr Flynn's submission that the claimant's interpretation of page 245 of that Agreement was incorrect. The Tribunal considered the document for the first time at the reconsideration hearing concluding that clause 4 setting out the responsibilities and duties of the subcontractor, noting the agreement was that the subcontractor (being the fifth respondent) agreed to uphold all relevant aspects of the ICAEW's code of Ethics. It is not evidence that the fifth

respondent was regulated by the ICAEW, quite the reverse. Had the fifth respondent been so regulated clause 4 would not have been necessary. The Sub-contractor Agreement is merely a contract between two companies; one party to the contract (the third respondent) was regulated by ICAEW, the other party (the fifth respondent) who was not so regulated. Contrary to the claimant's belief the Sub-contractor's agreement does not give the ICAEW regulatory power to investigate the fifth respondent.

40. The Tribunal concludes that the claimant's reconsideration application is an attempt to re-litigate on issues the Tribunal has already considered at length over a 6-day hearing. A number of submissions made today were similar if not identical to those made at the liability hearing. The unanimous judgment of the Tribunal is that the claimant's application for the Judgment to be revoked is unsuccessful and is dismissed. The Tribunal confirms its judgment and reasons promulgated on 2 October 2017.

CASE MANAGEMENT ORDERS

41. The following case management orders are made to assist the parties to prepare for the preliminary hearing dealing with the respondent's cost application against the claimant. The claimant has been served with the application, cost schedule and breakdown of costs. The following case management orders are ordered:

1. The claimant will respond to the written application in writing, setting out the reasons why a cost order should not be made and any case law referred to. In addition, she will deal with the cost breakdown indicating which costs she accepts and/or disputes setting out cogent reasons for her position. The claimant will prepare a signed statement detailing her means including income, expenditure, savings and any other matters which could affect the Tribunal's discretion. She will attach to the statement any supporting evidence i.e. bank statements, bills etc.

2. The claimant will send the documents set out in paragraph 1 to the respondent and confirm that she has done so to the Tribunal no later than 6 weeks after she has received this Judgment on Reconsideration in order to give the claimant time to take legal advice if she requires.

3. All of the relevant documents to be relied upon by both parties will be delivered to the Tribunal by 9.30am on the day of the cost hearing.

4. The cost hearing is listed for 1 day before a full Tribunal on 1 February 2019 at Liverpool Employment Tribunal, 3rd Floor, Civil & Family Court Centre, 35 Vernon Street, Liverpool, L2 2BA commencing at 10.00am.

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14.8.18 Employment Judge Shotter

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 August 2018

FOR THE TRIBUNAL OFFICE