THE EMPLOYMENT TRIBUNALS

Between

Claimant: **Mrs A Want**

Respondent: **Hounslow & Richmond Community Healthcare NHS Trust**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON AN APPLICATION FOR RECONSIDERATION UNDER RULE 70 OF THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE 2013

JUDGMENT

It is the judgment of the Tribunal in accordance with rule 72(1) that the application by the Claimant dated 20 March 2018 for a reconsideration of the judgment dated 5 March 2018 be refused on the ground that there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1 I first of all apologise to the parties for the significant delay in dealing with this matter. I had not appreciated until earlier this month that there was an outstanding matter to be dealt with.

2 The provisions of the Employment Tribunals Rules of Procedure 2013 relating to the reconsideration of judgments are as follows:

> **Principles**
> **70.** A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.
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> **Application**
> **71.** Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.
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> **Process**
> **72.**—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

> (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.
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> (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

3 I emphasise that the sole ground for granting a reconsideration is where the interests of justice require it. One of the elements of administering justice is that there should be a finality to litigation. If a first instance court or tribunal makes an error of law then there is a right of appeal. The simple fact that a party believes that the decision is wrong or unfair does not by itself give rise to the exercise of the discretion to allow a reconsideration.

4 On 5 March 2018 the Tribunal issued a judgment dismissing the various claims made by the Claimant together with extensive reasons for that judgment – 'the Reasons'. On 20 March 2018 the Claimant applied for a reconsideration in relation to what I might refer to as the 'DBS check issue'. The Claimant said that new evidence had become available concerning the matter, and also that the Tribunal had been wrong in deciding that the matter had not been raised in the public interest.

5 I will deal with the latter point first. As made clear above the reconsideration procedure is not appropriate for circumstances where a party considers that the Tribunal has simply made the wrong decision. An appeal is the appropriate course of action in such circumstances.

6 The point at issue concerns a finding at paragraph 112 of the Reasons as follows:

> We mentioned above the Employment Checks Policy. The document in the bundle, from which we have reproduced an extract, was dated August 2012. No later version was produced to us. We heard evidence concerning this policy from Professor Gregory, which we accept. We were impressed by her as a witness. One of the roles of Professor Gregory was the Safeguarding Lead, and this policy was therefore of particular relevance to her. The Board of the Respondent took a decision in late 2014 or early 2015 that, having assessed the risks involved in taking the decision, it would not be necessary for administrative staff, such as the Claimant, to have a DBS check carried out. Professor Gregory did not herself approve of that decision, but was bound by it as a decision of the Board.

7 The evidence which the Claimant now seeks to introduce is a statement obtained by the Claimant provided on behalf of the Respondent's Board that there was no record of any decision having been taken not to conduct any DBS check on administrative staff at the Respondent. That, said the Claimant, contradicted the evidence of Professor Gregory.

8 Let me assume for the moment that Professor Gregory's evidence was wrong. The question then arises as to any consequences that might have for the Tribunal's decision. The DBS check issue was material to claims

made by the Claimant of having been subjected to detriments for having made protected disclosures. The first alleged disclosure (referred to as 'D1') occurred on 19 and 25 November and again on 9 December 2015. The information conveyed on each occasion by the Claimant was that she had not been the subject of a DBS check.

9 We considered that matter in paragraphs 132 to 140 inclusive of the Reasons. We concluded in paragraph 136 that the Claimant did not raise the matter in the public interest on 19 November 2015, but rather as part and parcel of her induction process. That applies also to the third occasion on 9 December 2015. We found that the Claimant did not mention the point on 25 November 2015.

10 I conclude that the accuracy, or otherwise, of the evidence of Professor Gregory as to any decision made in late 2014 or early 2015 has no relevance to the decision we made as to whether the Claimant had made a protected disclosure. It is apparent that the Claimant considers that our conclusion on this point was wrong, but that is a mater for an appeal.

11 The Claimant has also raised a point concerning the accuracy of the evidence of Ms Jhita relating to the DBS check issue. I make very much the same point. What the Tribunal had to decide was whether the raising of the issue by the Claimant was reasonably believed by her to have been done in the public interest. The evidence of Ms Jhita was not material to that point.

12 The Claimant has also invited the Tribunal to make other findings of fact for the benefit of the CQC. That is not our function. We have made findings of fact relating to the issues before us to the best of our ability based on the evidence we read and heard.

13 In a letter of 16 March 2018 the Claimant raised various detailed points about specific parts of the Reasons. I do not propose to enter into detailed correspondence with the parties and the lay members concerning the precise wording of the Reasons. It is not appropriate to do so.

Employment Judge Baron

07 February 2019