EMPLOYMENT TRIBUNALS

Claimant: **Ms Folasade Odupelu**

Respondent: **(1) The Salvation Army Trustee Company.**
(2) Commissioner Clive Adams
(3) Colonel David Hinton
(4) Lieutenant-Colonel Paul Main

JUDGMENT

1. The Respondents' application under Rule 70 for reconsideration of the Judgment dated 12 October 2017 is refused.

2. If the parties wish to make further written representations, these should be exchanged and served on the Tribunal within 14 days of receipt of this Judgment.

REASONS

1. There was a Preliminary Hearing in this case on 12 September 2017, at which the Respondents made applications to strike out, alternatively for deposit orders. At the end of the Hearing, I reserved my decision.

The parties' correspondence

2. On 14 September, the Respondents' solicitors wrote to the Tribunal saying that they had written to the Claimant's solicitors asking for clarification of one of the submissions made by the Claimant's counsel at the Hearing. They asked me to delay issuing my reserved Judgment until they had received a response. Unfortunately, that request was not forwarded to me at the time and nor was the subsequent correspondence until after I had completed the decision.

3. On 18 September, the Claimant's solicitors wrote to the Tribunal and stated that the Claimant did not rely on her means in response to the application for deposit orders. They went on: "*It is evident that the Claimant has sufficient funds in the bank to make any payments into the Tribunal should any order be made. Notwithstanding, the Claimant's submissions in relation*

to the disproportionate and misconceived application for deposit orders stands; she simply withdraws any reference on means as additional mitigation".

4. On 20 September, the Respondents' solicitors wrote to the Tribunal with their response. They referred to the Claimant's counsel having said at the Hearing that the Claimant "*does not own a property*", although it transpired that the proceeds of a property sale were held in a bank account for a future purchase. The Respondent subsequently carried out Land Registry searches which showed that the Claimant owned two properties, both subject to mortgage, both rented out.

5. The Claimant's solicitor had told them that the rental payments covered the mortgage payments. I have now seen the letter dated 18 September in which this was explained. The position is therefore that the Claimant had the property she described at the Hearing, from which she had received £300,000. She also has two further properties (which she did not mention), but, "*is not currently earning positive income from the properties as the tenant in one of the rented properties is in arrears of rent*".

6. In their letter, the Respondents' solicitors stated that the Claimant had misled the Tribunal and they asked the Tribunal to note that fact, but said that the postponement of the Judgment was no longer necessary.

7. Meanwhile, I completed the decision (oblivious, therefore, to this exchange) and signed the Judgment on 12 October. It was received by the Respondent's solicitors on 30 October and they wrote again to the Tribunal on 10 November. They believed it was necessary for the decision to be varied, because I had not taken these matters into account.

8. They referred to three matters, as follows: (1) the Claimant's solicitor conceded that the Claimant did not rely on her means in response to the application for deposit orders (whereas Annex A expressly refers to submissions on means); (2) the outcome of their property searches, as explained above; and (3) in light of point 2, it was the case that the Claimant had misled the Tribunal at the hearing.

9. They applied (under Rule 70) for reconsideration of the Judgment, asking the Tribunal to vary the judgment by increasing the deposit sum payable by the Claimant.

10. On 15 November, the Claimant's solicitors replied to the above letter. They said that the correspondence regarding the Claimant's means was immaterial. They said that it was correct that the Claimant did not rely on her means as mitigation. They were extremely critical of the Respondents over their actions and at the suggestion that the Claimant had misled the Tribunal. They did however accept that I should review my decision in light of the correspondence.

11. The Respondents' solicitors wrote again on 21 November, denying they had acted oppressively. They submitted that the deposit orders should be increased to £1,000 per issue.

The application for reconsideration

12. I regret that I was not informed sooner of the correspondence and, in any event, before I had signed off the Judgment. That would have saved both time and correspondence and I apologise to the parties that this did not happen.

13. In terms of procedure, the extensive correspondence means that I believe I have a very full understanding of the parties' respective positions and a hearing is not necessary in the interests of justice. I have proceeded on that basis.

14. I have looked very carefully at that correspondence, my notes of the hearing and the Reasons (particularly Annex A). It is evident that I did take into account the Claimant's means, as I was asked to do. That influenced the amount of the deposit order and I described the total of £2,400 as being an amount that I believed the Claimant was capable of paying.

15. From what I have read in the correspondence, had I been given the additional information about the rented properties, it would not have affected my assessment of the Claimant's means. It appears that she is no better off in day-to-day terms as a result of having these two further properties. I would have made the same deposit order and there is no reasonable prospect of the original decision being varied. The application is therefore refused.

16. However, I make no criticism of the Respondents' solicitors for raising these matters with the Tribunal, nor for carrying out Land Registry searches. I am quite sure that, at the Hearing, the Claimant's lawyers were acting on their instructions and the information available to them; I am equally sure that there was no attempt deliberately to mislead the Tribunal. Nevertheless, it was incumbent on the Claimant to provide a full account of her means and it is obvious that the existence of these other two properties was relevant to that account.

17. As the application is refused under Rule 72(1) and without a hearing, I am required to give the parties reasonable opportunity to make further submissions, so I direct that any further submissions should be exchanged and submitted to the Tribunal (marked for my urgent attention)n within 14 days of receipt of this Judgment.

Employment Judge **Cheetham**
Date 7 December 2017