



## THE EMPLOYMENT TRIBUNALS

Claimant  
Ms S Smith

Respondent  
City and County Healthcare Group Ltd

### JUDGMENT AT A RECONSIDERATION HEARING

HELD AT NORTH SHIELDS  
EMPLOYMENT JUDGE GARNON

ON 23<sup>rd</sup> February 2018

Appearances :

Claimant In person

For the Respondent Ms G Smith Group HR Manager

### JUDGMENT

**I revoke my Judgment of 28<sup>th</sup> December 2017 because it is necessary in the interests of justice to do so and order the decision be taken again.**

### REASONS

1. The respondent has applied for a reconsideration of a judgment on liability only made by me under Rule 21 of the Employment Tribunal Rules of Procedure 2013 (the Rules) in circumstances where no response had been presented.

2. The claim was presented on 28<sup>th</sup> November 2017 and served on one of the respondent's trading addresses stated on the claim form as " *Monkton Business Park, Blue Sky Way, Hebburn, Newcastle, NE31 2EQ* ". No response was received by the due date of 26<sup>th</sup> December 2017. The file was referred to me on 28<sup>th</sup> December. Rule 21 (2) provides I must decide on the available material whether a determination can properly be made of the claim or part of it. Taking the content of the claim form as true in the absence of any response, a determination on liability only could be made. Rule 21(2) then says in terms I **shall** issue a judgement accordingly. The general power under Rule 41 for the tribunal to regulate its own procedure does not appear to give me power to refuse to issue a judgement simply because I have concerns about effective service of the claim.

3. Notwithstanding that, it has always been my practice when I see a respondent which is a limited company first to do a Companies House search then a search on some search engine to see if that company has a different trading address. In the reasons for the judgment, I wrote the respondent had a trading address in Blue Sky Way and a different registered office address . I directed a copy be sent to both addresses .

4. I signed judgment on Thursday 28<sup>th</sup> December and it was sent to the parties on Thursday 4<sup>th</sup> January 2018. It would have been received by the respondent in the normal course of post by Saturday 6<sup>h</sup> January but may not have been seen until Monday 8<sup>th</sup> by anyone with the authority to deal with it. The respondent claims to have emailed the Tribunal on 9<sup>th</sup> January requesting a reconsideration but no such email arrived. Having received no acknowledgement, Ms Smith for the respondent emailed again 22<sup>nd</sup> January, the day before the remedy hearing which I had fixed when issuing the Rule 21 judgment. I postponed that the hearing and a reconsideration hearing was fixed for today. If the email 9<sup>th</sup> January was sent the application for reconsideration was in time. If it was not, Rule 5 empowers me to extend time. The overriding objective contained in Rule 2 is that I must deal with all cases fairly and justly.

5. Having been an Employment Judge for over 20 years, I have been governed by three sets of rules issued in 1993, 2004 and now 2013. I have heard many fanciful "lost in the post" arguments put by respondents and claimants but some genuine ones. I always in such cases direct myself to be wary of cynicism. The main difference in the present rules is that the claim form, and sometimes other documents such as notices fixing a preliminary or full merits hearing in practice sent by the tribunal in one envelope, are the first and only communication a respondent will receive. If it goes astray the next document a respondent will receive is the Rule 21 judgement. In earlier years at least two documents would have been normally sent. Changes to the Rules have largely been in order to streamline procedures. The plain fact is the more documents that are sent, the less chance all go astray.

6. The issue today is whether I accept the evidence in the signed witness statement of Mr Kelvin Blakey, Facilities Manager that the proper full address is 7-8 Blue Sky Way, Monkton Business Park, Hebburn, Newcastle NE31 2EQ and that incompletely addressed mail is often delivered to the wrong businesses in Blue Sky Way. Some of the units on Blue Sky Way are unoccupied and mis-delivered post may go unseen for weeks. The claimant urges me not to believe the respondent but accepts that if I do, revocation of the judgment should follow.

7. I heard the sworn evidence of Ms Gill Smith well tested in cross examination by the claimant. Unsurprisingly her main point was that had the claim been received, a company of this size would have no reason at all not to respond. The first they knew of this claim after Early Conciliation had ended was when the judgment sent to the registered office was received there scanned and forwarded to Ms Smith at her base in Hebburn. The next day the hard copy sent by this Tribunal to the Hebburn address arrived. The claim form originally sent has quite simply never turned up anywhere.

8. Noting the detail of the evidence, on balance of probability, I accept what the respondent says. The only ground for a reconsideration is whether one is necessary in the interests of justice. As I believe the claim was not received, it is in the interests of justice to revoke a judgment made without a party having had the opportunity to be heard.

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TM Garnon Employment Judge  
Date signed 23<sup>rd</sup> February 2018.